

ROBB EVANS
Receiver of
MX Factors LLC; BBH Resources LLC
and JTL Financial Group LLC

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Securities and Exchange Commission v. MX Factors LLC, et al.
CASE No. EDCV 04-223 VAP (SGLx)

Stipulation Resolving Motion for Order

- (1) Determining that Funds in Deposit Account of Engeldinger Family Trust of 1999 Constitute Receivership Property, and**
- (2) Authorizing and Directing Provident Savings Bank to Turn Over the Balance of Engeldinger Family Trust of 1999 Deposit Account to the Receiver;**

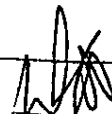
Order Thereon

Filed August 22, 2006

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7 Attorneys for Permanent Receiver
ROBB EVANS

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CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION

LOGGED

12 SECURITIES AND EXCHANGE
13 COMMISSION,

CASE NO. EDCV 04-223 VAP
(SGLx)

14 Plaintiff,

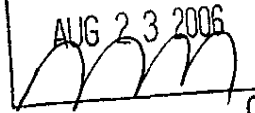
15 **STIPULATION RESOLVING
MOTION FOR ORDER (1)
DETERMINING THAT FUNDS IN
DEPOSIT ACCOUNT OF
ENGLDINGER FAMILY TRUST
OF 1999 CONSTITUTE
RECEIVERSHIP PROPERTY, AND
(2) AUTHORIZING AND
DIRECTING PROVIDENT
SAVINGS BANK TO TURN OVER
THE BALANCE OF
ENGLDINGER FAMILY TRUST
OF 1999 DEPOSIT ACCOUNT TO
THE RECEIVER; ORDER
THEREON**

16 v.

17 MX FACTORS, LLC; BBH
RESOURCES, LLC; JTL FINANCIAL
GROUP, LLC; RICHARD M.
18 HARKLESS; DANIEL BERARDI;
THOMAS HAWKESWORTH; and
19 RANDALL W. HARDING,

20 Defendants.

23 DATE: AUGUST 28, 2006
24 TIME: 10:00 A.M.
25 CTRM: 2

DOCKETED ON CM
AUG 23 2006


26 Robb Evans, the Permanent Receiver ("Receiver") of MX Factors, LLC
27 ("MX"), BBH Resources, LLC, JTL Financial Group, LLC, and their subsidiaries
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1 and affiliates, by and through his attorneys of record, McKenna Long & Aldridge
2 LLP, by Gary Owen Caris, on the one hand, and Olivia Engledinger
3 (“Engledinger”) by and through her attorneys of record, Vega & Overton, LLP, by
4 Mario D. Vega, on the other hand, enter into this Stipulation Resolving Motion for
5 Order (1) Determining That Funds in Deposit Account of Engledinger Family Trust
6 of 1999 Constitute Receivership Property, and (2) Authorizing and Directing
7 Provident Savings Bank to Turn Over the Balance of Engledinger Family Trust of
8 1999 Deposit Account to the Receiver (“Stipulation”) with reference to and in
9 consideration of the following facts:

10 RECITALS

11 A. On January 23, 2006, the Receiver filed his Motion for Order (1)
12 Determining That Funds in Deposit Account of Engledinger Family Trust of 1999
13 Constitute Receivership Property, and (2) Authorizing and Directing Provident
14 Savings Bank to Turn Over the Balance of Engledinger Family Trust of 1999
15 Deposit Account to the Receiver (“Motion”). The Motion sought an order (1)
16 determining that funds held in a deposit account at Provident Savings Bank
17 (“Provident Bank”), account no. 3282090 (“Account”), in the name of the
18 Engledinger Family Trust of 1999 (“Engledinger Trust”) constitute property of the
19 receivership estate and (2) authorizing and directing Provident Bank to turn over
20 the remaining funds in the Account to the Receiver.

21 B. As of October 25, 2005, the Account had a balance of \$71,868.92.

22 C. On January 31, 2006, Engledinger, through her daughter, contacted
23 counsel for the Receiver and indicated that Engledinger asserted an ownership
24 interest in the funds held in the Account. Thereafter, Engledinger retained the law
25 firm of Vega & Overton, LLP to represent her in the Motion.

26 D. Thereafter, in order to enable Engledinger sufficient time to conduct
27 discovery in support of her position that she had interest in the Account superior to
28 that of the Receiver, the Receiver first agreed to continue the Motion from February

1 13, 2006 to April 3, 2006, and thereafter pursuant to two written stipulations agreed
2 to two further continuances, continuing the Motion to June 26, 2006 and
3 subsequently to August 28, 2006, its present hearing date.

4 E. The Receiver and Engledinger engaged in the informal disclosure and
5 exchange of documents. Additionally, Engledinger conducted discovery and
6 subpoenaed various records from Provident Bank. Among other things,
7 Engledinger demonstrated to the Receiver that she was the beneficiary of the
8 Engledinger Trust and it appeared that withdrawals from the Engledinger Trust by
9 Julie Harkless ("Harkless"), the sole signatory on the Account, were made without
10 the knowledge of Engledinger, for the benefit of Harkless, and to the detriment of
11 Engledinger.

12 F. The Receiver contends that the funds used to replenish the Account to
13 its present balance came from the MX bank account at Business Bank and represent
14 the proceeds obtained from defrauded investors. Based thereon, the Receiver
15 argues that the funds in the Account constitute receivership property and that a
16 constructive trust can be impressed upon the remaining funds in the Account.

17 G. Engledinger contends that the Account was, at all times, intended to be
18 held for her benefit, that the funds withdrawn by Harkless are properly
19 characterized as loans made to Harkless (albeit without Engledinger's knowledge or
20 consent) and that payments back into the Account from MX are properly
21 characterized as loan repayments. Based thereon, and based upon other equitable
22 assertions, Engledinger claims that she has a superior right to the balance in the
23 Account over the Receiver and that the funds in the Account are not properly the
24 subject of a constructive trust.

25 H. The parties wish to resolve their disputes and differences without the
26 need for further litigation and without incurring further legal expense. This
27 Stipulation is intended to resolve all disputes and differences between the Receiver
28

1 and Engledinger and to satisfy any claims that Engledinger might otherwise assert
2 in the subject receivership case.

3 Now therefore, with reference to the facts set forth above and in
4 consideration of the mutual covenants and promises set forth below, the parties
5 stipulate and agree as follows:

6 STIPULATION

7 1. Based upon an Order to be entered pursuant to this Stipulation, all
8 funds in the Account shall be promptly turned over by Provident Bank to the
9 Receiver. Promptly upon receipt of the funds, the Receiver shall remit one-half of
10 all said proceeds to Engledinger in care of her attorneys of record and retain one-
11 half of said proceeds for the benefit of the receivership estate.

12 2. This agreement to split the proceeds of the Account 50-50 between the
13 Receiver and Engledinger shall constitute a full and complete resolution of the
14 Motion, all rights that Engledinger has or might otherwise have in the Account, and
15 all rights or claims that Engledinger has or might otherwise have in the receivership
16 proceeding.

17 3. Upon remittance of all sums in the Account, Provident Bank shall have
18 no further responsibility or obligation with respect to the Account, and shall have
19 no liability to the Receiver, Engledinger or any other person or entity with respect
20 to the Account.

21 4. The Court's approval of this Stipulation constitutes an order of the
22 Court that appropriate notice has been provided of the Motion and that, to the extent
23 otherwise required under Local Rule 66-7, or otherwise, notice of the Motion and
24 the settlement thereof is due, proper and sufficient, provided only that this
25 Stipulation and the Order entered thereon shall be: (a) served on all parties
26 originally served with the Motion; and (b) posted on the Receiver's website at
27 www.robbevans.com/html/mxfactors.html.

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Dated: August 16, 2006

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

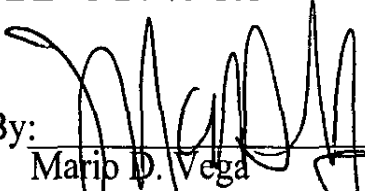
By: 

Gary Owen Caris

Attorneys for Permanent Receiver,
ROBB EVANS

Dated: August 16, 2006

VEGA & OVERTON, LLP
MARIO D. VEGA

By: 

Mario D. Vega

Attorneys for **OLIVIA
ENGLEDINGER**

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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is **444 South Flower Street, Los Angeles, California 90071.**

On August 16, 2006, I served the **STIPULATION RESOLVING MOTION FOR ORDER (1) DETERMINING THAT FUNDS IN DEPOSIT ACCOUNT OF ENGLEDEYER FAMILY TRUST OF 1999 CONSTITUTE RECEIVERSHIP PROPERTY, AND (2) AUTHORIZING AND DIRECTING PROVIDENT SAVINGS BANK TO TURN OVER THE BALANCE OF ENGLEDEYER FAMILY TRUST OF 1999 DEPOSIT ACCOUNT TO THE RECEIVER; [PROPOSED] ORDER THEREON** on the interested parties in this action by placing the **true copy/original** thereof, enclosed in a sealed envelope, postage prepaid, addressed as follows:

SEE ATTACHED MAILING LIST.

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service.

The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of such business.

- (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (FEDERAL) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 16, 2006 at Los Angeles, California.



Signature

Pamela A. Coates
Print Name

1 **SERVICE LIST**

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