ROBB EVANS & ASSOCIATES LLC
Receiver of
National Foreclosure Relief, Inc., et al.
11450 Sheldon Street
Sun Valley, California 91352-1121
Telephone No.: (818) 768-8100
Facsimile No.: (818) 768-8802

Federal Trade Commission v. National Foreclosure Relief, Inc., et al.
CASE No. SACV09-0117 DOC (MLGx)

Order Granting Receiver's Motion:

(1) Approving Receiver's Final Report and Accounting;
(2) Approving and Authorizing Payment of Receiver's and Counsel's Fees and Expenses for the Period from October 1, 2009 Through Closing;
(3) Discharging Receiver and Relieving Receiver of All Duties and Liabilities;
(4) Exonerating Receiver's Bond;
(5) Authorizing Abandonment and Destruction of Records; and Limiting Notice under Local Rule 66-7

Filed March 30, 2011

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 09-117 DOC (MLGx) Date: March 30, 2011

Title: FEDERAL TRADE COMMISSION v. NATIONAL FORECLOSURE RELIEF, INC. ET AL

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Nancy Boehme	Not Present
Courtroom Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
NONE PRESENT	NONE PRESENT

PROCEEDING (IN CHAMBERS): ORDER GRANTING RECEIVER'S MOTION

Before the Court is a Motion by Robb Evans & Associates ("Receiver") for an Order: 1) Approving Receiver's Final Report and Accounting; 2) Approving and Authorizing Payment of Receiver's and Counsel's Fees and Expenses from 10/1/09 Through Closing; 3) Discharging Receiver and Relieving Receiver of All Duties and Liabilities; 4) Exonerating Receiver's Bond; 5) Authorizing Abandonment and Destruction of Records; and 6) Limiting Notice under Rule 66-7. (Docket 124.) The Court finds the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local R. 7-15. After considering the Motion, the Court GRANTS the Motion.

I. Background

On February 2, 2009, Plaintiff Federal Trade Commission ("FTC") filed suit against David Ealy, Hugo Tapia, National Foreclosure Relief, Inc. and Chele Stone, alleging a violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a) in connection with the marketing and sale of Defendants' "mortgage rescue foreclosure rescue service." (*See* Docket 1.) The FTC alleged that the Defendants ran a mortgage foreclosure rescue service which misrepresented its ability to obtain new loans or modify existing loans for consumers facing foreclosure.

On February 2, 2009, the Court issued a Temporary Restraining Order freezing certain assets held by Defendants and on March 6, 2009, the Court entered a preliminary injunction freezing Defendants' assets and appointing the Receiver. On March 6, 2009, the Receiver was confirmed as permanent receiver, with the full powers of an equity receiver, pursuant to the Preliminary Injunction With Asset Freeze, Appointment of Permanent Receiver and Other Equitable Relief ("Preliminary Injunction").

The FTC's claims against all Defendants have now been resolved by entry of final permanent injunctions against all Defendants along with monetary judgments, subject to settlement provisions as provided in the stipulated judgments. Final permanent injunctions and related relief were entered against the Defendants, providing that the settlement funds to be paid to the FTC by the Defendants under the Judgments will be used by the FTC to administer a consumer redress program, if practicable.

The Receiver now brings the present Motion to wind up the estate.

II. Discussion

The Receiver's Motion requests an Order granting six of its requests. No objections have been raised as to any of the requests.

A. Receiver's Final Report and Accounting

The Receiver first requests an Order approving the Receiver's Final Report and Accounting (Exhibit 1). The Report describes the activities of the Receiver and all payments made by the Receiver in connection with the administration of the estate.

When the Receiver was appointed, the Receiver seized control of the Receivership Defendant's records as well as over seventy computer hard drives. On October 22, 2009, the Receiver filed a motion for approval of the fees and expenses of the Receiver and counsel for the initial expense period from the inception of the case through June 30, 2010. The Receiver gained possession and control of the business records of the Receivership Defendant, evaluated those records and analyzed the financial transactions and corresponding administrative issues. The Court granted Receiver's fee motion for the initial expense period. Since that fee motion, the Receiver has continued to monitor the Receivership Defendant's merchant processing reserve account until enough time passed for the credit card processor to turn over the reserve. By October 2010, according to the Final Accounting provided, all merchant reserve funds had been turned over.

After reviewing the Receiver's Final Report and Accounting, the Court believes that the Receiver has supported its accounting with sufficient details. Accordingly, the Receiver's Motion for approval of its final report and accounting is GRANTED.

B. Payment of Receiver's and Counsel's Fees and Expenses from 10/1/09 Through Closing

As part of this Motion, the Receiver seeks approval of all administrative expenses, including those fees and expenses of the Receiver and its counsel. This includes Receiver's and counsel's actual fees and expenses incurred and unpaid from July 1, 2009 through the closing of the estate through this Order.

The Receiver's counsel, McKenna Long & Aldridge LLP, has provided advice and assistance to the Receiver in performing the Receiver's duties under the Preliminary Injunction and addressing issues that have arisen during the case. Since July of 2009, the McKenna Firm has prepared and filed the fee motion to approve the Receiver's fees and expenses for the initial expense period and has assisted the Receiver in administrative issues that have arisen. The McKenna Firm also investigated a pre-receivership lawsuit filed by a former client against the Receivership Defendant and Washington Mutual, Inc. in New York and appeared telephonically at a hearing before the Magistrate Judge in that matter. In March 2010, after the telephonic hearing, that action was dismissed.

The Court therefore recognizes that both counsel and the Receiver merit the compensation sought. The Receiver provides evidence that during the sixteen-month period from July 1, 2009 through October 31, 2010, the estate has incurred Receiver fees of $13,978.51, which includes Receiver fees, senior and accounting staff fees, IT Management staff, and Support staff, as well as costs of $15,704.50, which includes $8,500 in tax preparation expenses. The Receiver' attorney's fees from July 1, 2009 through October 31, 2010 for the McKenna firm total $9,340.35, which includes fees of $9,085.05 and costs of $255.30. Total fees of the Receiver associated with the wind up estimated at $26,582.05, which are detailed in the Final Accounting. *See* Declaration of Brick Kane ("Kane Decl."), ¶¶ 5-8.

In support of this fee request, the Receiver has submitted a detailed accounting. The Court's review of the accounting reveals no irregularities and the amounts requested by the Receiver for it and its counsel are reasonable in light of the work performed. Therefore, the Receiver's request for payment of Receiver's and counsel's fees is GRANTED.

C. Receiver's Duties and Liabilities Related to Funds

As part of the wind-up of the estate, the Receiver wishes to turn over to the FTC any funds remaining in the estate after payment of the administrative expenses referenced above. The Court agrees with the Receiver that this relief will "promote the orderly and prompt wind up of the receivership estate in an expeditious and cost-effective matter." Motion, 9. As a result, the Court GRANTS this request.

D. Receiver's Bond

The Receiver further requests that it–along with its agents, employees, representatives, counsel, and contractors–be discharged and released from claim and liabilities emerging from the

Receiver's duties. The Court appreciates the Receiver's concerns. Indeed, receivers have qualified immunity from personal liability for actions that are taken within their receivership authority. *Morrison-Knudsen Co. v. CHG Int'l*, 811 F.2d 1209, 1222 (9th Cir. 1987). In the course of their duties, receivers, like trustees, "are often obliged to make difficult business judgments and the best that disinterested judgment can accomplish with foresight may be open to serious criticism by obstreperous creditors aided by hindsight." *Mosser v. Darrow*, 341 U.S. 267, 274 (1951). As such, "[c]ourts are quite likely to protect trustees against heavy liabilities for disinterested mistakes in business judgment." *Id. See also In re Cochise College Park, Inc.* 703 F.2d 1339, 1357 (9th Cir. 1983) (stating that "a trustee is not liable in any manner for mistakes in judgment where discretion is allowed").

Receivers cannot be sued without leave of court for actions taken within the scope of their receivership duties. *See, e.g., Barnette v. Wells Fargo Nevada Nat. Bank*, 270 U.S. 438, 439 (1926). Accordingly, the Court GRANTS the Receiver's Motion to release it and its agents from liability for claims resulting from the Receiver's activities in this case.

The Receiver also wishes to be relieves from duties and responsibilities related to this action and to have the bond exonerated. The Court GRANTS these requests as well.

E. Abandonment and Destruction of Records

The Receiver also seeks an Order authorizing it to dispose of the records it has collected and to destroy the dozens of computer hard drives in its possession unless it receives a subpoena request from the FTC within 30 days of this Court's Order.

The Court GRANTS this request and sees no reason–with the exception of any need on the part of the FTC–for the Receiver to retain these documents and hard drives in its possession.

F. Notice under Rule 66-7

The Receiver further requests that its Motion be granted without requiring the Receiver to give written notice of the hearing on the Motion to the estate's consumer creditors. In support of this request, the Receiver cites the likely thousands of potential consumer creditors and the resulting high costs of individualized notice as compared to the estate's limited assets. The Receiver proposes to provide notice to the approximately 23 potential non-consumer creditors of the Receivership Defendant, to provide copies of its Motion to any interested parties upon requests, and to post its Motion on the website at www.robbevans.com/html/nfrelief.html. However, the Receiver insists that to provide individualized notice would be unduly burdensome and unfeasible, given the large number of potential consumer creditors. Motion, 11.

Pursuant to Local Rule 66-8, a receiver is directed to administer receivership estates "as nearly as possible in accordance with the practice in the administration of estates in bankruptcy." In bankruptcy proceedings, requests to limit individual notices are granted in appropriate circumstances. *See, e.g.*, *In re First Alliance Mortgage Co.*, 269 B.R. 428, 442 (C.D. Cal. 2001). The Court finds that limiting individualized notice is reasonable under the circumstances present here.

Therefore, the Receiver's request for permission to wind up the estate without providing individualized notice to consumer creditors is GRANTED.

III. Disposition

For the reasons stated above, the Court GRANTS the Receiver's Motion in its entirety. Accordingly, the Court:

1) Approves Receiver's Final Report and Accounting

2) Approves and Authorizes Payment of Receiver's and Counsel's Fees and Expenses from 10/1/09 Through Closing

3) Discharges Receiver and Relieving Receiver of All Duties and Liabilities

4) Exonerates Receiver's Bond

5) Authorizes Abandonment and Destruction of Records

6) Limits Notice under Rule 66-7.

The Clerk shall serve this minute order on all parties to the action.