

ROBB EVANS & ASSOCIATES LLC

Receiver of

White Pine Trust Corporation

Richard R. Matthews, Jr.

11450 Sheldon Street

Sun Valley, California 91352-1121

Telephone No.: (818) 768-8100

Facsimile No.: (818) 768-8802

**Commodity Futures Trading Commission v. White Pine Trust Corporation, Inc, et al.
CASE No. 04-CV-2093 J (NLS)**

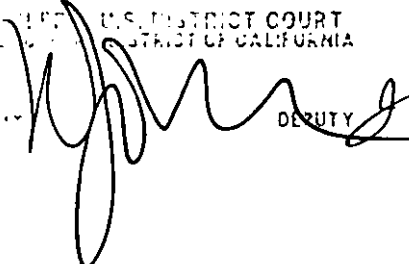
Notice of Motion and Motion of Receiver for:

- (1) Order Authorizing and Confirming Sale of Real Property; and**
 - (2) Approving Procedure for Limited Notice Thereof;**
- Declaration of Jeffrey M. Olshan in Support Thereof**

Filed September 22, 2005

ORIGINAL
FILED

05 SEP 22 AM 11:16

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

1 LINDA J. CANDLER, ESQ. [State Bar No. 181805]
2 ROBB EVANS & ASSOCIATES LLC
3 11450 SHELDON STREET
4 SUN VALLEY, CA 91352
5 TELEPHONE: (818) 768-8100
6 FACSIMILE: (818) 768-8802
7
8 ATTORNEY FOR ROBB EVANS & ASSOCIATES LLC,
9 PERMANENT RECEIVER

10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 COMMODITY FUTURES TRADING
14 COMMISSION,

15 Plaintiff,

16 v.

17 WHITE PINE TRUST CORPORATION,
18 a California corporation, RICHARD
19 MATTHEWS, an individual, and
20 STEPHEN BAERE, an individual.

21 Defendants.

22 LUCIA MATTHEWS, an individual,

23 Relief Defendant.

CASE NO. 04cv2093-J (NLS)

NOTICE OF MOTION AND MOTION OF
RECEIVER FOR (1) ORDER AUTHOR-
IZING AND CONFIRMING SALE OF REAL
PROPERTY, AND (2) APPROVING
PROCEDURE FOR LIMITED NOTICE
THEREOF; DECLARATION OF JEFFREY
M. OLSHAN IN SUPPORT THEREOF
[Real Property: 1568 Oliver, Unit D, San Diego, CA
92109]

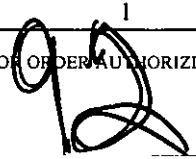
Date: November 28, 2005
Time: 10:30 A.M.
Place: Courtroom 12
940 Front Street
San Diego, CA 92101-8900
(Hon. Napoleon A. Jones, Jr.)

[ORAL ARGUMENT NOT REQUIRED]

24 TO THE HONORABLE NAPOLEON A. JONES, JR., UNITED STATES
25 DISTRICT JUDGE, AND TO ALL PARTIES IN INTEREST:

26 PLEASE TAKE NOTICE that on November 28, 2005, at 10:30 a.m. in Courtroom
27 12 of the United States District Court for the Southern District of California located at 940
28 Front Street, San Diego, California 92101, or sooner, if the Receiver's Motion for an
Expedited Hearing is granted, Robb Evans & Associates LLC, Receiver in the above-

CR



1 captioned case, will and does hereby move the Court for an Order authorizing and
2 confirming the sale of certain real property consisting of a townhouse condominium located
3 at 1568 Oliver Avenue, Unit D, San Diego, California 92109-5307, in the County of San
4 Diego, Assessor's Parcel Number 423-284-15-04, to Konstantinos Hatzidakis and Jose
5 Pulido ("Buyers") for a gross sales price of \$670,000.00. This price exceeds the average of
6 the three appraisals and the average of the two Brokers' Opinions of Value for the property.

7 PLEASE TAKE FURTHER NOTICE that this Motion is made pursuant to 28
8 U.S.C. § 2001, Local Civil Rule 66.1(f)(2), and this Court's Order Granting in Part Receiver's
9 Motion for Order Approving Sale of Real and Personal Property; Granting in Part
10 Receiver's Motion to Modify Statutory Sale Procedures and Approving Procedure for
11 Limited Notice Thereof, entered on May 4, 2005.

12 The Receiver's Motion is based on this Notice of Motion, the Memorandum of
13 Points and Authorities; the Declaration of Jeffrey M. Olshan annexed hereto, and the
14 Court's records and pleadings on file in this action, and all other evidence, both oral and
15 documentary, as may be presented at the time of hearing, if one occurs. The Receiver
16 respectfully submits that this matter does not require oral argument, unless opposition to the
17 Motion is subsequently submitted to the Court.

18 Any person or entity opposing this Motion must timely file with the Court and serve
19 upon the Receiver a written opposition which complies in all respects with the
20 rules of this Court. Failure to timely file an opposition may be deemed by the Court to be
21 consent to the granting of the Receiver's Motion.

22 PLEASE TAKE FURTHER NOTICE that this Motion is posted on the Receiver's
23 website at <http://www.robbevans.com/html/whitepine.html>, where it may be reviewed in
24 its entirety. A copy of this Motion will be provided to any interested party upon receipt of a

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1 request therefore which may be directed to: Robb Evans & Associates LLC, Attn: Judi
2 Ehrlich, 11450 Sheldon Street, Sun Valley, CA 91352 telephone: (818) 768-8100, facsimile:
3 (818) 768-8802.

4
5 Dated: September 20, 2005

ROBB EVANS & ASSOCIATES LLC

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7 By: Linda J. Candler
8 LINDA J. CANDLER, ESQ.
9 ATTORNEY FOR RECEIVER
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INTRODUCTION

On October 21, 2004, Robb Evans & Associates LLC (“REA” or “Receiver”) was appointed as Temporary Receiver in the within action pursuant to an “*Ex Parte* Statutory Restraining Order; Order Permitting Expedited Discovery, the Appointment of a Receiver and Other Equitable Relief”. Thereafter, on October 28, 2004, the Court entered an Order of Preliminary Injunction (“Order”). Pursuant to the terms of the Order, REA was appointed as Receiver for Defendants White Pine Trust Corporation and Richard Matthews, and all of the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by them with the full powers of an equity Receiver. The Order states that the Receiver shall be the agent of the Court in acting as Receiver under the Order, and charges the Receiver with managing the assets of Receivership Defendants for the purpose of preserving the interests of, and preventing any loss, damage or injury to, customers or clients of Receivership Defendants. On November 18, 2004, the CFTC filed an Amended Complaint which added Lucia Matthews as a Relief Defendant and Stephen Baere as a Receivership Defendant. On February 23, 2005, the Receiver filed a Motion for Order Approving the Sale of Real and Personal Property and Modifying the Procedures for Sale. (Docket Entry 46). The Defendant, Richard Matthews, and the Plaintiff, CFTC, filed Notices of Non-Opposition (Docket Entry 44; Docket Entry 54).

On May 4, 2005, this Court entered an Order: (1) Granting in Part Receiver’s Motion for Order Approving Sale of Real and Personal Property; (2) Granting in Part Receiver’s Motion to Modify Statutory Sale Procedures; and (3) Approving Procedure for Limited Notice Thereof (“May 4, 2005 Order”), which authorized the Receiver to sell real property of the Receivership Estate by private sale. (Docket Entry 66). The May 4, 2005 Order directed the Receiver to ask the Court by motion to confirm each real property sale in accordance with the requirements of 28 U.S.C. § 2001(b).

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II.

PROPOSED SALE

Among the assets of the Receivership Estate is certain real property consisting of a condominium located at 1568 Oliver Avenue, Unit D, San Diego, California 92109-5307, in the County of San Diego, Assessor's Parcel Number 423-284-15-04 ("Property"). The Receiver is informed and believes that the Property was originally purchased by Receivership Defendant Richard Matthews on August 1, 2003 for the sum of \$507,500.00. The property was purchased with funds diverted from White Pine Trust Corporation. There is currently one Deed of Trust on the Property, recorded on August 1, 2003, in favor of Argent Mortgage Company LLC in the principal sum of \$456,540.00. The Receiver has received an offer to purchase the Property for the sale price of \$670,000.00, cash, which it has tentatively accepted, subject to this Court's approval.

Attached as Exhibit "A" to the Declaration of Jeffrey M. Olshan is the Receiver's "Record of Approval for Sale of Real or Personal Property". As outlined therein, the Receiver has complied with the procedures set forth in 28 U.S.C. Section 2001 (b) and by the Court in its Order of May 4, 2005; specifically:

A. Three appraisals by disinterested persons were obtained. All three appraisals were performed by disinterested appraisers with state certification. The certifications for these three appraisers are attached to Mr. Olshan's Declaration as Exhibit "B". By this Motion, the Receiver seeks this Court's approval and confirmation of these appraisers. The average value of the three appraisals was \$635,000.00. The valuations of the three appraisers are attached to Mr. Olshan's Declaration as Exhibit "C". The proposed sales price of \$670,000.00 is in excess of the average value;

B. In addition, as set out in Mr. Olshan's Declaration, two Brokers' Opinions of Value were obtained from disinterested brokers, with an average valuation of

1 \$653,750.00. The 2004 San Diego County tax assessment for the Property is
2 \$507,000.00;

- 3 C. Notice of the proposed sale will be published in the San Diego Union Tribune
4 and in the San Diego Uptown Examiner at least ten days prior to the hearing
5 date, as required by 28 U.S.C. 2001 (b).

6 A copy of the "Residential Purchase Agreement and Joint Escrow Instructions",
7 counter offers and addenda thereto dated as of August 25, 2005, which provides a complete
8 list of the terms and conditions governing the sale proposed herein; is attached to Mr.
9 Olshan's Declaration as Exhibit "D". The terms of sale are as follows:

- 10 A. The proposed sale price is \$670,000.00, is payable in cash at close of escrow;
11 B. Buyers have placed a non-refundable deposit of \$20,000 with the escrow
12 company. Said sum has been released to the Seller and is to be treated as
13 liquidated damages in the event the escrow cancels; however, if the sale is not
14 approved by the Court or the Seller cannot deliver clear title, Seller will refund
15 the amount to Buyers;
- 16 C. The sale is on an "as-is, where-is" basis. No representations or warranties of
17 any kind have been made as to the condition of the Property, including but
18 not limited to, its fitness for any particular purpose;
- 19 D. A brokers' commission of five percent (5%) will be paid as part of the sale;
20 E. A repair allowance for a new hot water heater has been authorized in the
21 amount of \$500.00 to be credited to the Buyer at closing.
- 22 F. The Receiver has advised the Buyer that the Receiver is obligated to seek and
23 obtain overbids for the Property. Additionally, the Receiver will publish the
24 sale terms in the legal section of a local general circulation newspaper, at least
25 ten (10) days before sale confirmation. Notice of the proposed sale will be
26 published in the San Diego Union Tribune and in the San Diego Uptown
27 Examiner at least ten days prior to the hearing date, as required by 28 U.S.C.
28 2001 (b).

III.

THE RECEIVER REQUESTS APPROVAL OF THE PROCEDURE FOR LIMITED NOTICE OF THIS MOTION

Pursuant to Local Rule 66.1(f)(2), the Receiver is required to give at least ten days notice to all interested parties of the time and place for hearings on Receiver's petitions for confirmation of sales of real property. The Receiver has served the parties by mail. The Receiver proposes to serve all investors and potential creditors of the estate by posting a copy of the motion on the Receiver's website, and by serving Notice of Motion on each investor by mail. There are approximately 260 known investors and approximately 25 known creditors, and it is more cost-effective to serve the Motion and all accompanying exhibits by posting on the website. The Receiver will also provide a written copy to any investor or creditor, upon request. The expense associated with copying and serving this Motion on all such parties would be unduly burdensome and expensive, and service by posting on the website will save costs for the receivership estate.

This Court, as a court of equity supervising the receivership estate, may make appropriate administrative orders governing the receivership, including limitations on and changes in notice and other procedures. See F.R. Civ. P. 5(a) and (c) (authorizing the court to modify service procedures when numerous defendants are involved in litigation). Orders limiting notice when the Bankruptcy Code or Rules would otherwise require notice to all creditors are routinely granted in bankruptcy cases to promote the expeditious and economical administration of bankruptcy estates. See In re First Alliance Mortgage Co., 269 B.R. 428, 442 (C.D. Cal. 2001) (referencing in dicta in the court's recitation of facts the bankruptcy court's order limiting notice issued in that case); 11 U.S.C. § 102(1)(A) (defining the phrase "after notice and a hearing" to mean "after such notice as is appropriate in the particular circumstances, and such opportunity for hearing as is appropriate in the particular circumstances"); 11 U.S.C. § 105(a) and (d) (granting broad equitable powers to the court to issue orders "necessary or appropriate to carry out the provisions" of title 11 including "prescribing such limitations and conditions as the court deems appropriate to ensure the

1 case is handled expeditiously and economically").

2 In light of the fact that the Motion is being served on the parties to the action and
3 will be posted on the Receiver's website, the Receiver submits that it is reasonable and cost-
4 effective to serve all creditors/investors of the Receivership entities by posting the Motion
5 on the Receiver's website and by serving the Notice of Motion and instructions for
6 requesting a written copy on all known investors by mail. The Receiver has communicated
7 with many of the investors by email and is aware that many of the investors routinely check
8 the Receiver's website for updated information about this case. The Receiver requests
9 approval to proceed based on this procedure. In order to maximize notice of this situation,
10 the Receiver has taken the following steps:

11 1. This Motion has been served on all parties named in this action;

12 2. The Notice of Motion will be served on all known investors and creditors by
13 mail. Notice has been given in the Notice of Motion that the Receiver will provide a copy
14 of the Motion to any interested party upon request. Parties may direct such a request to:
15 Robb Evans & Associates LLC, Attn: Judi Ehrlich, 11450 Sheldon Street, Sun Valley, CA
16 91352 telephone: (818) 768-8100, facsimile: (818) 768-8802; and

17 3. The Motion has been posted on the Receiver's website at the following
18 address: <http://www.robbevans.com/html/whitepine.html>.

19 The above-described procedure for limited service of this Motion is designed to
20 permit the Receiver to obtain approval of the sale of real property in an expeditious and
21 cost-effective manner, while providing full disclosure as required by Local Civil Rule 66.1. It
22 minimizes the cost of reproducing and mailing voluminous exhibits. The Receiver submits
23 that the notice provided for herein is reasonable and designed to provide fair notice and an
24 opportunity to be heard to all creditors and interested parties in the Receivership Estate
25 while minimizing the expense of service that would otherwise be borne by those creditors.

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IV.

CONCLUSION

WHEREFORE, Robb Evans & Associates LLC, Receiver, prays that this Court enter an Order:

1. Approving the sale of the Property on the terms and conditions set forth in the "Residential Purchase Agreement and Joint Escrow Instructions", counter offers and addenda thereto dated as of August 25, 2005 attached hereto as Exhibit "D" to Mr. Olshan's Declaration;

2. Confirming the appointment of the three disinterested appraisers identified in the attached Declaration of Jeffrey M. Olshan;

3. Authorizing the Receiver to distribute the net sale proceeds pursuant to the "Residential Purchase Agreement and Joint Escrow Instructions", counter offers and addenda thereto dated as of August 25, 2005 attached hereto as Exhibit "D" to Mr. Olshan's Declaration;

4. Authorizing and instructing the Receiver to execute all documents and/or instruments, and to do all of the acts necessary to effect the sale and transfer of the Property;

5. Approving the procedures for limited notice of this Motion described herein; and

6. For such other and further relief as the Court may deem just and proper.

Dated: September 20, 2005

ROBB EVANS & ASSOCIATES LLC

By: Linda J. Candler
LINDA J. CANDLER, ESQ.
ATTORNEY FOR RECEIVER

- 1 A. Three appraisals by disinterested persons were obtained. All three appraisals
2 were performed by appraisers with state certification. The certifications for
3 these three appraisers are attached hereto as Exhibit "B". By this Motion, the
4 Receiver seeks this Court's approval and confirmation of these appraisers.
5 The average value of the three appraisals was \$635,000.00. The valuations of
6 the three appraisers are attached hereto as Exhibit "C". The proposed sales
7 price of \$670,000.00 is in excess of the average value;
- 8 B. Two Brokers' Opinions of Value were obtained from disinterested brokers,
9 with an average valuation of \$653,750.00. The 2004 San Diego County tax
10 assessment for the Property is \$507,000.00;
- 11 C. Notice of the proposed sale will be published in the San Diego Union Tribune
12 and in the San Diego Uptown Examiner at least ten days prior to the hearing
13 date, as required by 28 U.S.C. 2001 (b).

14 5. Attached hereto collectively as Exhibit "B" are the certifications for the three
15 disinterested appraisers.

16 6. Attached hereto as Exhibit "C" are the valuations presented by each of the three
17 disinterested appraisers.

18 7. Attached hereto as Exhibit "D" is a copy of a "Residential Purchase Agreement
19 and Joint Escrow Instructions", counter offers and addenda thereto dated as of August 25,
20 2005, which provides a complete list of the terms and conditions governing the sale
21 proposed herein; specifically but not limited to the following:

22 A. The proposed sale price is \$670,000.00, is payable in cash at close of
23 escrow;

24 B. Buyers have placed a non-refundable deposit of \$20,000 with the escrow
25 company. Said sum has been released to the Seller and is to be treated as
26 liquidated damages in the event the escrow cancels; however, if the sale is
27 not approved by the Court or the Seller cannot deliver clear title, Seller
28 will refund the amount to Buyers;

- 1 C. The sale is on an "as-is, where-is" basis. No representations or warranties
2 of any kind have been made as to the condition of the Property, including
3 but not limited to, its fitness for any particular purpose;
- 4 D. A brokers' commission of five percent (5%) will be paid as part of the
5 sale;
- 6 E. A repair allowance for a new hot water heater has been authorized in the
7 amount of \$500.00 to be credited to the Buyer at closing.
- 8 F. The Receiver has advised the Buyers that the Receiver is obligated to seek
9 and obtain overbids for the Property. Additionally, the Receiver will
10 publish the sale terms in the legal section of a local general circulation
11 newspaper, at least ten (10) days before sale confirmation. Notice of the
12 proposed sale will be published in the San Diego Union Tribune and in the
13 San Diego Uptown Examiner at least ten days prior to the hearing date, as
14 required by 28 U.S.C. 2001 (b).
- 15 G. The sales contract provides for an expected closing date on or before 15
16 days after Receiver obtains Court approval.

17 8. Based on the foregoing, the Receiver believes that the proposed sale conforms
18 with the provisions of 28 U.S.C. § 2001, as well as with this Court's Order of May 4, 2005
19 regarding sale procedures for real property of the Receivership Estate.

20 I declare under penalty of perjury under the laws of the United States of America that
21 the foregoing is true and correct. Executed this 21st day of September, 2005, at Sun
22 Valley, California.

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25 _____
26 JEFFREY M. OLSHAN
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and am not a party to the within action or proceeding. I am employed by Robb Evans & Associates, LLC, located at 11450 Sheldon Street, Sun Valley, CA 91352-1121, Telephone: (818) 768-8100; Facsimile: (818) 768-8802.

On September 21, 2005, I served the foregoing document described as: NOTICE OF MOTION AND MOTION OF RECIVER FOR ORDER AUTORIZING AND CONFIRMING SALE OF REAL PROPERTY AND APPROVING PROCEDURE FOR LIMITED NOTICE THEREOF; DECLARATION OF JEFFREY M. OLSHAN on the interested parties in said action, as follows:

James H. Holl, Esq.
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581
Attorney for Plaintiff

Charles G. LaBella, Esq.
Ronald Giusso, Esq.
LaBella & McNamara LLP
401 West "A" Street, Suite 1150
San Diego, CA 92101
Attorneys for Defendant Richard Matthews, Jr.

Gregory A. Vega, Esq.
Selzer, Caplan, McMahon, Vitek
750 "B" Street, Suite 2100
San Diego, CA 92101
Attorney for Lucia Matthews

Dirk T. Metzger, Esq.
550 West "C" Street, Suite 700
San Diego, CA 92101
Attorney for Defendant Stephen Baere

- (By Mail) I caused such envelope with postage thereon, fully prepaid, to be placed in the United States mail. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal service on that same day with postage thereon fully prepaid at Sun Valley, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit. Executed on September 21, 2005, at Sun Valley, California.
- (Federal) I declare that I am an employee in the offices of the Receiver, an officer of this Court at whose direction the service was made.



JUDYS. EHRLICH