

ROBB EVANS & ASSOCIATES LLC

Receiver of

White Pine Trust Corporation

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

Order Approving Receiver's Plan for Initial Distribution

Filed January 9, 2007

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

WHITE PINE TRUST CORPORATION,
a California corporation; RICHARD
MATTHEWS, an individual; and
STEPHAN BAERE, an individual,

Defendants,

LUCIA MATTHEWS, an individual,
Relief Defendant.

CASE NO. 04cv2093 J (NLS)

**ORDER APPROVING RECEIVER’S
PLAN FOR INITIAL DISTRIBUTION**

This matter comes before the Court on the Motion of Permanent Receiver Robb Evans & Associates, LLC, (“Receiver”) for an order approving its proposed plan for initial distribution on allowed investor and non-investor claims. [Doc. No. 167.] None of the parties have opposed the Motion. The Court decides the matter on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d)(1). *See* S.D. Cal. Civ. R. 7.1(d)(1). For the reasons set forth below, the Court **GRANTS** Receiver’s Motion.

Background

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2 Plaintiff Commodity Futures Trading Commission alleges that since at least August 2000,
3 Defendants White Pine Trust Corporation (“White Pine”), Richard Matthews and Stephan Baere
4 (collectively, “Defendants”) have been illegally operating a foreign currency trading firm out of
5 San Diego, California.¹ (*See* Compl. at 1.) Plaintiff claims that through direct solicitation and a
6 Web site, Defendants invited retail customers to trade purported foreign-currency contracts and
7 foreign-currency options contracts. (*See id.*) Furthermore, Plaintiff contends that since at least
8 February 2003, Defendants have solicited at least \$650,000 in customer funds from at least three
9 customers, and solicited millions of additional dollars from hundreds of other retail customers.
10 (*See id.* at 1-2.) Plaintiff also alleges that Defendants misappropriated customer funds by
11 depositing the money into Defendant White Pine’s operating accounts and using it for personal
12 expenses. (*See id.* at 2.)

13 On October 20, 2004, pursuant to Section 6c(a) of the Commodity Exchange Act, 7
14 U.S.C. § 13a-1, the Plaintiff instituted an action against the Defendants to enjoin their unlawful
15 actions and compel compliance with the provisions of this Act. [Doc. No. 1.] Also, on October
16 20, 2004, the Plaintiff filed an Ex Parte Motion for Statutory Restraining Order, Appointment of
17 a Temporary Receiver and Other Ancillary Relief. [Doc. No. 4.] On October 28, 2004, the
18 Receiver was designated Permanent Receiver for the Defendants by Order of this Court, stating
19 that all of the funds, properties, premises, accounts and other assets owned by the Defendants
20 were under the power of the Receiver. (*See* Order of Prelim. Inj. at 7.) On February 23, 2005,
21 the Receiver filed a Motion for Order Approving Sale of Defendant’s Real and Personal
22 Property by Private Sale and Approving Procedure for Limited Notice.² [Doc. No. 46.] The
23 Court denied the Receiver’s request for order approving sale of real property because the sale
24 was not in compliance with requirements under 28 U.S.C. § 2001(b), but approved the sale of
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26 ¹ On November 19, 2004, the Plaintiff filed a First Amended Complaint, adding Stephan
27 Baere as a defendant. (*See* First Am. Compl. at 1-2, 6.)

28 ² The Motion pertained to the “sale of personal and real property . . . owned by
[Defendant Matthews] and/or his wife, Relief Defendant Lucia Matthews.” (*See* Order Granting
in Part Receiver’s Mot. for Approval of Sale of Real and Personal Property at 1.)

1 Defendant's gold coins and jewelry. (*See* Order Granting in Part Receiver's Mot. for Approval
2 of Sale of Real and Personal Property at 2-3.) Subsequently, on August 11, 2005, the Court
3 approved the sale of real property. (*See* Order Granting Mot. for Sale of Real Property at 3.)

4 On June 6, 2005, the Receiver filed a Motion for Order Approving Payment of
5 Administrative Fees and Expenses Incurred from October 21, 2004, through April 30, 2005.
6 [Doc. No. 71.] On July 22, 2005, the Receiver's request was granted. (*See* Order Granting
7 Receiver's Request for Payment of Fees at 2-3.) Another Motion for Order Approving Payment
8 of Administrative Fees and Expenses Incurred from May 1, 2005, through August 31, 2005, was
9 filed on October 20, 2005. [Doc. No. 98.] On June 15, 2006, the Receiver's request was
10 granted. (*See* Order Granting Receiver's Second Request for Payment of Fees.)

11 On January 27, 2006, the Court approved the Receiver's proposed pro rata initial
12 distribution plan and the procedure for limited notice thereof. (*See* Order Approving Proposed
13 Claims Filing and Allowance Procedures.) On November 27, 2006, Plaintiff and Defendant
14 Matthews entered into a settlement agreement. (*See* Stipulation as to Def. Matthews at 2.)

15 16 *Legal Standard*

17 The "primary purpose of equity receiverships is to promote orderly and efficient
18 administration of the estate by the district court for the benefit of creditors." *S.E.C. v. Hardy*,
19 803 F.2d 1034, 1038 (9th Cir. 1986). Generally, reasonable procedures instituted by the district
20 court that serve this purpose are upheld. *See id.* Furthermore, "a district court's power to
21 supervise an equity receivership and to determine the appropriate action to be taken in the
22 administration of [it] is extremely broad" *Id.* at 1037. The complex nature of receiverships
23 warrants such treatment and it is "a recognized principle of law that the district court has broad
24 powers and wide discretion to determine the appropriate relief in an equity receivership." *S.E.C.*
25 *v. Lincoln Thrift Association*, 577 F.2d 600, 606 (9th Cir. 1978).

1 *Discussion*

2 **Initial Distribution for Allowed Investor and Non-Investor Claims**

3 The Receiver now asks the Court to approve its proposed initial distribution on allowed
4 investor and non-investor claims against the receivership estate of White Pine Trust Corporation
5 in the sum of not less than \$3.2 million, representing 21.46% of allowed investor and non-
6 investor claims. (*See* Receiver’s Mot. for Order Approving Plan for Initial Dist. at 2.) The
7 Receiver also asks the Court to authorize an initial distribution in an amount higher than \$3.2
8 million to allow for the inclusion of proceeds in the event that this Court approves the sale of
9 other assets prior to entry of this Order. (*See id.*) According to the Receiver, the “proposed
10 distribution of \$3.2 million represents cash turned over to the Receiver and the proceeds of the
11 sale of the following assets: real property . . . , gold coins, jewelry, home furnishings, office
12 furniture, automobiles, and a [forty-eight] foot yacht.” (*See id.*)

13 As an initial matter, the Receiver has followed the claims filing and allowance procedures
14 pursuant to this Court’s Order. (*See* Order Approving Proposed Claims Filing and Allowance
15 Procedures at 6-8.) According to the Receiver, Investors were identified based on a verified
16 database, all investors were merged into a single investor claimant class, and said Investors’
17 claims will be treated equally as a pro-rata share in all receivership assets. (*See* Receiver’s Mot.
18 for Order Approving Plan for Initial Dist. at 5.) Investor account balances were ordered credited
19 for funds actually deposited or paid by the investor, and credits characterized as interest and
20 applied by the Receivership Defendants to increase investor account balances were reversed.
21 (*See id.*) Actual payments of interest and payments for any other purposes were treated as a
22 return of capital and the investor account balance was reduced accordingly. (*See id.*)

23 Additionally, the Receiver provided written notice to each investor of the Receiver’s calculation
24 of the investor’s account balance and the amount of the investor’s claim based on treatment of
25 the account and payments and adjustments as required by this Court’s Order. (*See id.*) Each
26 investor claimant was provided with a period of thirty days from the date of service of written
27 notice of the calculated claim to object to the proposed amount, and similar procedures were
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1 applied to non-investor claimants. (*See id.* at 5-6) The Receiver also claims that it was able to
2 resolve any and all disputes made by investors. (*See id.* at 6.)

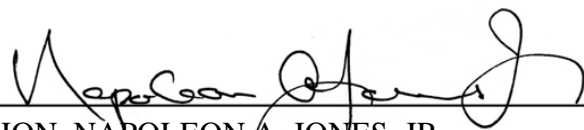
3 The initial pro rata distribution proposed by the Receiver is reasonable and efficient
4 because it treats all investors' claims equally. This kind of distribution plan was approved by the
5 U.S. Court of Appeals for the Ninth Circuit in *S.E.C. v. Capital Consultants, LLC*, 397 F.3d 733,
6 737 (9th Cir. 2005) (having placed the defendant in receivership, the receiver's plan to pool the
7 private assets of the defendant receivership and give each client a pro rata distribution of those
8 assets was approved). In the instant Motion, the Receiver seeks an initial distribution of not less
9 than \$3.2 million, representing 21.46% of allowed investor and non-investor claims, and as
10 approved by this Court's previous Order, plans to make the payments on approved investor
11 claims on a pro rata basis. This method of repayment is reasonable and it is within the Court's
12 broad discretion to approve it. *See S.E.C. v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986).

13 **Conclusion**

14 In light of the discussion above and the fact that there is no opposition to the Motion, the
15 Court **GRANTS** Receiver's Motion and **APPROVES** an initial pro rata distribution on allowed
16 investor and non-investor claims against the receivership of White Pine Trust Corporation in the
17 amount of \$3.2 million, representing 21.46% of allowed investor and non-investor claims. Since
18 at the present time the Court has not approved the sale of assets other than those represented in
19 this initial proposed distribution, the Court does not at this time authorize a distribution in an
20 amount higher than \$3.2 million.

21 **IT IS SO ORDERED.**

22 DATED: January 9, 2007

23 
24 HON. NAPOLEON A. JONES, JR.
25 United States District Judge

26 cc: Magistrate Judge Stormes
27 All Counsel of Record
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