

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 Second Distribution

Filed September 20, 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.)

Civil No. 04cv2093 J (NLS)

**ORDER APPROVING RECEIVER’S
PLAN FOR SECOND
DISTRIBUTION [Doc. No. 244.]**

_____)
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 second distribution on allowed investor and non-investor claims. [Doc. No. 244.] 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 6(c)(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 ¹On November 19, 2004, the Plaintiff filed a First Amended Complaint, adding Stephan Baere as
27 a defendant. (*See* First Am. Compl. At 1-2,6.)

28 ²The 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 January 27, 2006, the Court approved the Receiver's proposed pro rata initial
5 distribution plan and the procedure for limited notice thereof. [Doc. No. 115.] On November 27,
6 2006, Plaintiff and Defendant Matthews entered into a settlement agreement. (*See* Stipulation as
7 to Def. Matthews at 2.) On January 9, 2007, the Court approved the Receiver's Initial
8 Distribution Proposal. [Doc. No. 231.] On January 19, 2007, the Receiver made an initial
9 distribution of \$3.2 million, which represented 21.45% on allowed investor claims and non-
10 investor claims. (*See* Receiver's Mot. for Order Approving Plan for Second Dist. at 5.)

11 *Legal Standard*

12 The "primary purpose of equity receiverships is to promote orderly and efficient
13 administration of the estate by the district court for the benefit of creditors." *S.E.C. v. Hardy*,
14 803 F.2d 1034, 1038 (9th Cir. 1986). Generally, reasonable procedures instituted by the district
15 court that serve this purpose are upheld. *See id.* Furthermore, "a district court's power to
16 supervise an equity receivership and to determine the appropriate action to be taken in the
17 administration of [it] is extremely broad...." *Id.* at 1037. The complex nature of receiverships
18 warrants such treatment and it is "a recognized principle of law that the district court has broad
19 powers and wide discretion to determine the appropriate relief in an equity receivership." *S.E.C.*
20 *v. Lincoln Thrift Association*, 577 F.2d 600, 606 (9th Cir. 1978).

21 *Discussion*

22 **Second Distribution for Allowed Investor and Non-Investor Claims**

23 The Receiver now asks the Court to approve its proposed second distribution on allowed
24 investor and non-investor claims against the receivership estate of White Pine Trust Corporation
25 in the sum of 1.1 million, representing 7.37% of allowed investor and non-investor claims. (*See*
26 Receiver's Mot. for Order Approving Plan for Second Dist. at 2.) According to the Receiver, the
27 "proposed distribution of \$1.1 million represents cash turned over to the Receiver as part of a
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1 settlement with a family member of Defendant..., the proceeds of the sale of a condominium in
2 San Diego.” (*See id.*)

3 As an initial matter, the Receiver has followed the claims filing and allowance procedures
4 pursuant to this Court’s Order. (*See Order Approving Proposed Claims Filing and Allowance*
5 *Procedures at 6-8.*) According to the Receiver, Investors were identified based on a verified
6 database, all investors were merged into a single investor claimant class, and said Investors’
7 claims will be treated equally as a pro-rata share in all receivership assets. (*See Receiver’s Mot.*
8 *for Order Approving Plan for Second Dist. at 6.*) Investor account balances were ordered
9 credited for funds actually deposited or paid by the investor, and credits characterized as interest
10 and applied by the Receivership Defendants to increase investor account balances were reversed.
11 (*See id.*) Actual payments of interest and payments for any other purposes were treated as a
12 return of capital and the investor account balance was reduced accordingly. (*See id.*)
13 Additionally, the Receiver provided written notice to each investor of the Receiver’s calculation
14 of the investor’s account balance and the amount of the investor’s claim based on treatment of
15 the account and payments and adjustments as required by this Court’s Order. (*See id.*) Each
16 investor claimant was provided with a period of thirty days from the date of service of written
17 notice of the calculated claim to object to the proposed amount, and similar procedures were
18 applied to non-investor claimants. (*See id.*) The Receiver also claims that it was able to resolve
19 any and all disputes made by investors. (*See id. at 7.*)

20 The second pro rata distribution proposed by the Receiver is reasonable and efficient
21 because it treats all investors’ claims equally. This kind of distribution plan was approved by the
22 U.S. Court of Appeals for the Ninth Circuit in *S.E.C. v. Capital Consultants, LLC*, 397 F.3d 733,
23 737 (9th Cir. 2005) (having placed the defendant in receivership, the receiver’s plan to pool the
24 private assets of the defendant receivership and give each client a pro rata distribution of those
25 assets was approved). In the instant Motion, the Receiver seeks a second distribution of \$1.1
26 million, representing 7.37% of allowed investor and non-investor claims, and as approved by
27 this Court’s previous Order, plans to make the payments on approved investor claims on a pro
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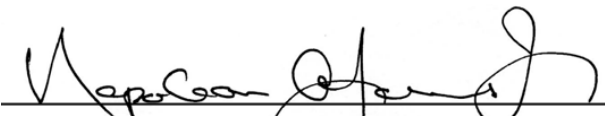
1 rata basis. This method of repayment is reasonable and it is within the Court's broad discretion
2 to approve it. *See S.E.C. v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986).

3 ***Conclusion***

4 In light of the discussion above and the fact that there is no opposition to the Motion, the
5 Court **GRANTS** Receiver's Motion and **APPROVES** a second pro rata distribution on allowed
6 investor and non-investor claims against the receivership of White Pine Trust Corporation in the
7 amount of \$1.1 million, representing 7.37% of allowed investor and non-investor claims.

8 **IT IS SO ORDERED.**

9
10 **DATED: September 20, 2007**

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12 _____
13 **HON. NAPOLEON A. JONES, JR.**
14 **United States District Judge**

15 cc: Magistrate Judge Stormes
16 All Counsel of Record