

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	No. 6:02CR45
)	(Judge Leonard E. Davis)
ALLEN PETTY, JR., a.k.a.)	
AI PETTY)	

**NOTICE OF MOTION AND MOTION FOR APPROVAL OF PROPOSED
DISTRIBUTION TO INVESTORS; MEMORANDUM OF POINTS &
AUTHORITIES; DECLARATION OF ROBB EVANS**

TO THE HONORABLE LEONARD E. DAVIS, JUDGE OF THE UNITED STATES DISTRICT COURT, ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Robb Evans, Receiver in the above-captioned case, hereby presents his Motion for Approval of Proposed Distribution to Investors (“Motion”). No hearing has been set on the Motion at the present time.

The Receiver’s Motion is based on this Notice; the Memorandum of Points and Authorities; the Declaration of Robb Evans annexed hereto, and the Court’s records and pleadings on file in this action, and all other evidence, both oral and documentary, as may be presented at the time of hearing, if a hearing is subsequently scheduled by the

Court.

Any person or entity opposing this Motion must file with the Court and serve upon the Receiver a written opposition which complies in all respects with the rules of this Court. Failure to timely file an opposition may be deemed by the Court to be consent to the granting of the Receiver's Motion without a hearing.

I.
BACKGROUND

In this case, the Receiver was appointed by the Court following the Defendant Allen Petty, Jr.'s conviction on October 30, 2002. On that date, the Jury also returned a Special Verdict of Forfeiture. A Preliminary Order of Forfeiture was entered on December 20, 2002. Paragraph 4 of that Order lists the Property which is the subject of this Motion to Sell. The Receiver files this Motion based upon the Order Appointing Receiver dated January 27, 2003. Pursuant to that Order, Robb Evans, of Robb Evans & Associates LLC, was appointed to liquidate the property subject to forfeiture and oversee and administer claims made against the forfeited property for restitution.

Since his appointment, the Receiver has submitted periodic reports to the Court regarding the status of liquidation efforts and claims administration. At November 30, 2004, the sum of \$1,958,352.00 existed in the Receivership Estate.

II.
REQUEST FOR APPROVAL OF PROPOSED
DISTRIBUTION TO INVESTORS

In October, 2003, a statement of claim form was mailed to each investor, based upon the Receiver's analysis of all data from all sources. The statements itemized the investors' investments and any repayments, thus arriving at a potential net claim against the restitution fund. Investors were asked to reply to the statement of claim only if they had documents to dispute the Receiver's analysis. In an effort to finalize the claims process, the Receiver set a claims bar date of October 29, 2004. The Receiver has reviewed the claims and in a number of instances requested and received supplemental information from the claimants. The claims are summarized as follows:

RANGE OF CLAIMS	NUMBER OF INVESTORS	TOTAL AMOUNT OF CLAIMS
Rejected Claims		
Investors overpaid	593	(\$4,618,765.54)
Original Investment paid back	105	\$0.00
Total rejected claims	698	(\$4,618,765.54)
Approved Claims		
\$16.17 to \$1,000	137	\$91,194.23
\$1,001 to \$5,000	1,303	\$2,737,940.21
\$5,001 to \$10,000	309	\$2,047,890.24
\$10,001 to \$20,000	192	\$2,433,617.74
\$20,001 to \$30,000	50	\$1,163,267.28
\$30,001 to \$40,000	21	\$730,228.61
\$40,001 to \$50,000	32	\$1,425,220.30
\$50,001 to \$133,886	28	\$1,520,424.93
Total Approved Claims	2,072	\$12,149,783.54

Due to financial privacy concerns, the Receiver has elected not to make public the list of victims; however, that list will be made available to the Court upon request.

The Receiver proposes to distribute the sum of \$1,943,500.00, on a *pro rata* basis, to investors with approved claims. Thus, each investor with an approved claim would receive a distribution of 15.996% of his or her allowed claim. The Receiver proposes to reserve the remaining funds in the Receivership Estate for payment of administrative costs associated with the distribution of funds; preparation and submission of the Receiver's Final Account and Report, and other expenses which may be incurred through the entry of an Order discharging the Receiver.

III.

MEMORANDUM OF POINTS & AUTHORITIES

The Court's January 27, 2003 Order Appointing Receiver, at p.5, paragraphs 2 and 3, states as follows:

The Government in this case has advised that it will not seek to finalize the forfeiture of the property to the United States of America. The Government has requested that the property be utilized as restitution to the approximately 3,000 victims of Defendant's fraudulent conduct. The total losses suffered by these victims has not been precisely determined, but is without question in the millions of dollars.

Determining which victims will be entitled to what will be a time consuming and laborious task. In that the United States Attorney's Office and United States Probation Office are not staffed or funded to accomplish such work, the Court finds that the most timely and efficient means to accomplish restitution in this case is the appointment of a Receiver pursuant to 18 U.S.C. § 3664. Accordingly, the Court after considering the Government's Motion for Appointment of a Receiver, finds it has merit and should be granted.

Unless there is a statute providing otherwise, the receivership court, as a court of equity, has the power to fashion the claims procedure as it feels appropriate to promote justice. See generally, *Fletcher, Cyclopaedia Corporations, Receivers*, §§7898, 7901 (*Perm. Ed. 1979*). “Since the appointing court, by taking control and possession of the defendant’s property, has deprived claimants of their claims against the defendants’ property, it must provide a method and procedure to claimants to present and process their claims.” *1 Clark at § 125*.

When the court orders claims presented to the receiver, the receiver must accept or reject the claims. In doing so, the Receiver acts in many respects as a master and passes on the validity and fairness of the claims and also as to their legality. When the court reviews the receiver’s findings of fact and law and approves or disapproves the findings the court’s action is equivalent to a final order. *3 Clark at § 650*.

When a court approves of an allowance of a claim by a receiver or otherwise allows a claim by making an order that it be paid, such order is a final order because it determines rights, and authorizes complete withdrawal of certain funds in the court’s possession and control. *3 Clark at § 648*.

In most receiverships, certain costs and expenses of preserving and conserving and even realizing the funds or property will accrue and must of necessity be paid before the termination of the suit. Such payments, as well as all payments by the receiver, should only be paid when he is properly authorized thereto by the court . . . (.) *3 Clark at § 648*.

United States v. Arizona Fuels Corp., 739 F.2d 445, 458 (9th Cir. 1984)

[“Receivership courts have the general power to use summary procedure in allowing, disallowing and subordinating the claims of creditors.”] See also, *Chicago Joint Stock Land Bank v. Minnesota Loan & Trust Co.*, 57 F.2d 70, 72 (8th Cir. 1932).

The requirement that investors submit their claims to a Receiver for review and objection to the improper claims is similar to the procedure used in Bankruptcy Court. See, generally, *Federal Rules of Bankruptcy Procedure, Rules 3001 and 3002.*

VI.
CONCLUSION

WHEREFORE, the Receiver prays that this Court enter an Order as follows:

1. Approving the Receiver's proposed distribution to investors in the sum of \$1,943,500.00 as described herein, and authorizing the Receiver to immediately disburse funds to investors with approved claims on a *pro rata* basis;
2. For such other and further relief as the Court may deem just and proper.

Dated: December 14, 2004



ROBB EVANS, RECEIVER

DECLARATION OF ROBB EVANS

I, ROBB EVANS, declare as follows:

1. I am the duly appointed, qualified and acting Receiver in the within action, pursuant to this Court's January 27, 2003 Order. I have caused the foregoing Motion to be prepared and know the contents thereof, and the same is true of my own knowledge, except as to those matters which are stated upon information or belief, and as to those matters, I believe them to be true.

2. Pursuant to the Order Appointing Receiver entered on January 27, 2003, I was appointed to liquidate the property subject to forfeiture and oversee and administer claims made against the forfeited property for restitution. Since my appointment, I have submitted periodic reports to the Court regarding the status of liquidation efforts and claims administration. As of November 30, 2004, the sum of \$1,958,352.00 existed in the Receivership Estate.

3. With regard to the administration of claims, on October 23, 2003, my office mailed a statement of claim form to each investor, based upon my analysis of all data from all sources. The statements itemized the investors' investments and any repayments, thus arriving at a potential net claim against the restitution fund. Investors were asked to reply to the statement of claim only if they had documents to dispute my analysis. In an effort to finalize the claims process, I set a claims bar date of October 29, 2004. My office has reviewed the claims and in a number of instances requested and received supplemental information from the claimants. The claims are summarized

as follows:

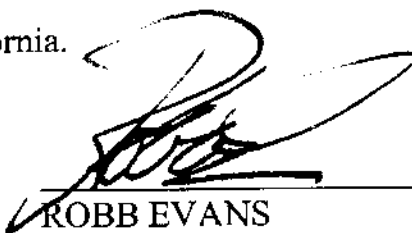
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Total Approved Claims	2,072	\$12,149,783.54

4. Due to financial privacy concerns, I have elected not to make public the list of victims; however, that list will be made available to the Court upon request.

I propose to distribute the sum of \$1,943,500.00, on a *pro rata* basis, to investors with approved claims. Thus, each investor with an approved claim would receive a distribution of 15.996% of his or her allowed claim. I propose to reserve the remaining funds in the Receivership Estate for payment of administrative costs associated with the distribution of funds; preparation and submission of my Final Account and Report, and other expenses which may be incurred through the entry of an Order discharging me as Receiver in this action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14 day of December, 2004, at

Sun Valley, California.



ROBB EVANS

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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 December 14, 2004, I served the foregoing document described as NOTICE OF MOTION AND MOTION FOR APPROVAL OF PROPOSED DISTRIBUTION TO INVESTORS; MEMORANDUM OF POINTS & AUTHORITIES; DECLARATION OF ROBB EVANS on the interested parties in said action, as follows:

Traci Kenner, Assistant U.S. Attorney
United States Attorney's Office
110 N. College
Suite 700
Tyler, TX 75702
Attorney for Plaintiff

James W. Volberding, Esq.
One American Center
909 E.S.E. Loop 323
Suite 700
Tyler, TX 75701
Attorney for Defendant

- (By Mail) I caused such envelope with postage thereon, fully prepaid, to be placed in the United States mail. Executed on December 14, 2004, at Sun Valley, California.
- (By Facsimile) I caused said document to be sent via facsimile. Executed on _____, at Sun Valley, California.
- (By Federal Express/Express Mail) I caused said document to be sent via Federal Express / Express Mail for next business day delivery. Executed on _____, at Sun Valley, California.
- (Federal) I declare that I am an employee in the offices of an officer of this Court at whose direction the service was made.



JUDI S. EHRLICH