

ROBB EVANS
Receiver of
D.W. Heath & Associates, Inc.;
PCM Fixed Income Fund I, LLC;
Private Capital Management, Inc.;
Private Collateral Management, Inc.
and the Schlarmann Interests

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Securities and Exchange Commission v. D. W. Heath & Associates Inc., et al.
CASE No. CV-04-02949 JFW (Ex)

Order:

- (1) Approving Final Report and Accounting;**
- (2) Approving Modified Treatment of Troxler Enterprises Claim;**
- (3) Approving Final Distribution of Receivership Assets;**
- (4) Approving Receiver's and Attorneys' Fees and Expenses from March 1, 2008 Through Closing;**
- (5) Discharging the Receiver;**
- (6) Relieving Receiver of All Duties and Liabilities;**
- (7) Exonerating Receiver's Bond; and**
- (8) Authorizing Abandonment and Destruction of Records and Wind-Up of Receivership Estate**

Filed July 28, 2009

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ROBB EVANS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

D.W. HEATH & ASSOCIATES, INC.,
etc., et al.,

Defendants.

CASE NO. CV 04-02949 JFW (Ex)

ORDER: (1) APPROVING FINAL REPORT AND ACCOUNTING; (2) APPROVING MODIFIED TREATMENT OF TROXLER ENTERPRISES CLAIM; (3) APPROVING FINAL DISTRIBUTION OF RECEIVERSHIP ASSETS; (4) APPROVING RECEIVER'S AND ATTORNEYS' FEES AND EXPENSES FROM MARCH 1, 2008 THROUGH CLOSING; (5) DISCHARGING RECEIVER; (6) RELIEVING RECEIVER OF ALL DUTIES AND LIABILITIES; (7) EXONERATING RECEIVER'S BOND; (8) AUTHORIZING ABANDONMENT AND DESTRUCTION OF RECORDS AND WIND-UP OF RECEIVERSHIP ESTATE

Date: July 27, 2009
Time: 1:30 p.m.
Place: Courtroom 16
312 N. Spring Street
Los Angeles, CA

The Motion by Receiver for Order: (1) Approving Final Report and Accounting; (2) Approving Modified Treatment of Troxler Enterprises Claim; (3) Approving Final Distribution of Receivership Assets; (4) Approving Receiver's and Attorneys' Fees and Expenses from March 1, 2008 Through Closing; (5) Discharging Receiver; (6) Relieving Receiver of All Duties and Liabilities; (7) Exonerating Receiver's Bond; (8) Authorizing Abandonment and Destruction of Records and Wind-Up of Receivership Estate ("Wind Up Motion") filed by Robb Evans, as permanent receiver of D. W. Heath & Associates, Inc., Private Capital Management, Inc. ("PCM"), Private Collateral Management, Inc. and PCM Fixed Income Fund I, LLC and their subsidiaries and affiliates (collectively, the "Heath Receivership Defendants") and as Receiver over the Schlarmann Interests ("Receiver"), came on regularly for hearing at the above-referenced date, time and place before the Honorable John F. Walter, United States District Judge presiding. Gary Owen Caris of McKenna Long & Aldridge LLP appeared on behalf of the Receiver, and Molly M. White appeared on behalf of plaintiff Securities and Exchange Commission. There were no other appearances despite due and proper notice. The Court, having reviewed and considered the Motion and all pleadings and papers filed in support thereof, and plaintiff Securities and Exchange Commission having filed its Notice of Non-Opposition to the Wind Up Motion, and no opposition to the Wind Up Motion having been filed, and good cause appearing therefor,

IT IS ORDERED that:

1. The Wind Up Motion and all relief sought therein is granted in its entirety;
2. Without limiting the generality of the foregoing:
 - A. The Receiver's Final Report and Accounting attached to the Declaration of Robb Evans and filed concurrently with the Wind Up Motion are hereby approved;

B. The investor claim of Troxler Enterprises, Inc./Rocco Troxler is hereby approved in a modified amount in the sum of \$46,142.78 after taking into account an offsetting claim of the Receiver against Troxler Enterprises, Inc. based on an outstanding, unsatisfied loan made by Receivership Defendant PCM to Troxler Enterprises, Inc.;

C. The Receiver is authorized to distribute pro rata, along with the final distribution to holders of Allowed Investor Claims and Allowed Non-Investor Claims, the proceeds of assets transferred to the Receiver from defendant Daniel Heath ("forfeited assets") in connection with the action entitled People of the State of California v. Daniel William Heath, et al., Case No. RIF 117775 pending in the Superior Court of California, County of Riverside ("Criminal Action");

D. The Receiver is hereby authorized to make a final distribution of all remaining receivership assets, including the forfeited assets, to be distributed pro rata among the holders of all Allowed Investor Claims and Allowed Non-Investor Claims after payment or reserve for payment from such assets of all remaining administrative expenses of the receivership as set forth in the Receiver's Final Report. In connection therewith, (a) all distribution checks issued on account of the final distribution to holders of Allowed Investor Claims and Allowed Non-Investor Claims are required to be negotiated within 60 days of the date of issuance ("stale date deadline"), and checks returned without a valid forwarding address or checks uncashed after the stale date deadline be deemed void, (b) the Receiver is hereby authorized to turn over and escheat to the State of California any distribution payments on Allowed Investor and Allowed Non-Investor Claims that are uncashed after such stale date deadline, with such escheated funds to be escheated to the State of California in the name of the party to whom the distributions are due, and (c) with respect to the 32 investor claimants who to date have not cashed their distribution checks and who the Receiver has been unable to locate, the Receiver is authorized to turn over and escheat to the State of California any distribution

payments due on the Allowed Claims held by such 32 investor claimants, with such escheated funds to be escheated to the State of California in the name of the party to whom the distributions are due;

E. The Court hereby approves and confirms all actions and activities taken by or on behalf of the Receiver and all payments made by the Receiver in connection with the administration of the receivership estate;

F. The Court hereby approves all receivership administrative expenses, including the Receiver's fees and expenses and those of his professionals incurred in connection with the receivership proceeding, including those previously paid to the Receiver and its counsel, and the Court hereby approves and authorizes payment of all administrative expenses and Receiver's and professionals' fees and expenses through the conclusion of this proceeding and the discharge of the Receiver, as reflected in the Final Report and Accounting, to the extent any such administrative expenses and Receiver's and counsel's fees and expenses remain unpaid, including Receiver's and counsel's fees and expenses incurred and unpaid from the period from March 1, 2008 through the closing of the estate;


G. To the extent there are any other miscellaneous funds remaining in the estate after payment of all remaining administrative expenses and distributions authorized under this Order, the Receiver is authorized to turn over those funds to the Department of the Treasury;

H. The Receiver is authorized to abandon records of the Heath Receivership Defendants and records pertaining to the Schlarmann Interests, and to destroy all records of the Heath Receivership Defendants and the Schlarmann Interests and any other corporations or businesses under the control of any of the Heath Receivership Defendants and the Schlarmann Interests in the possession, custody or control of the Receiver if, within 30 days after service of written notice to plaintiff Securities and Exchange Commission, the Securities and Exchange Commission does not take custody of such records;

I. The Receiver, its agents, employees, members, officers, independent contractors, attorneys and representatives shall be discharged and the Receiver, its agents, employees, members, officers, independent contractors, attorneys and representatives shall be relieved of all duties, liabilities and responsibilities pertaining to the receivership previously established in this action effective upon the completion of the Receiver's wind up of the estate, payment of administrative expenses and final distribution of funds as provided in this Order; and

J. The Receiver's bond shall be exonerated effective upon the completion of the Receiver's wind up of the estate, payment of administrative expenses and final distribution of funds as provided in this Order.

Dated: July 28, 2009

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