

ROBB EVANS & ASSOCIATES LLC

Receiver of

**High Park Investment Group, Inc. and
Harbor Financial Investment Group, Inc., et al.**

11450 Sheldon Street
Sun Valley, California 91352-1121
Telephone No.: (818) 768-8100
Facsimile No.: (818) 768-8802

**Securities and Exchange Commission v. Edward Showalter
Civil Action No. 98-1106 (RMU)**

**Motion for Order for Limited Intervention by Receiver of High Park
Investment Group, Inc. and Statement of Facts and Memorandum in
Support Thereof**

Filed June 28, 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SECURITIES AND EXCHANGE

COMMISSION,

Plaintiff,

v.

EDWARD R. SHOWALTER,

Defendant.

Civil Action No. 98-1106 (RMU)

**MOTION FOR ORDER FOR LIMITED INTERVENTION BY RECEIVER OF
HIGH PARK INVESTMENT GROUP, INC. AND STATEMENT OF FACTS
AND MEMORANDUM IN SUPPORT THEREOF**

Robb Evans & Associates LLC as Receiver over High Park Investment Group, Inc., Harbor Financial Investment Group, Inc. and their subsidiaries and affiliates, appointed in the pending action *Securities and Exchange Commission v. High Park Investment Group, Inc., et al., et al.*, United States District Court, Central District of California, Southern Division, Case No. SACV 05-1090 CJC (MLGx), hereby moves the Court for an order for the Receiver to intervene in this action for the limited purpose of filing and prosecuting the concurrently filed Motion for Turnover of Funds Paid by Defendant Showalter to Receivership Estate of High Park Investment Group, Inc. ("Turnover Motion") and the relief sought therein. This Motion for Order for Limited Intervention is made pursuant to Federal Rule of Civil Procedure 24(a)(2) and 24(b), and the Receiver submits that good cause exists for the relief requested herein based on the pleadings and papers submitted in connection with the Turnover Motion, of which the Receiver requests the Court take judicial notice in support hereof, and further based on the following.

The Receiver seeks a limited order allowing it to intervene in this action for the sole purpose of filing and prosecuting the Turnover Motion. The Turnover Motion seeks an order for

plaintiff Securities and Exchange Commission (“SEC”) to turn over to the Receiver the sums held by the SEC comprising the \$150,000 civil penalty (“Penalty”) and the sums held by the Registry of this Court comprising the disgorgement award of \$538,400 in this action, plus pre-judgment and post-judgment interest paid by defendant Edward R. Showalter, believed to be in the total amount of \$863,393.23 (“Disgorgement Award”) (collectively such sums believed to be in the total amount of \$1,013,393.23 being referred to as the “Judgment Amount”), plus interest accrued thereon since the funds have been deposited and until the funds are turned over to the Receiver. The Receiver seeks the immediate turnover of the Judgment Amount, plus all accrued interest thereon, to the Receiver for the benefit of the receivership estate of High Park Investment Group, Inc. (“High Park”), and its related affiliates and subsidiaries, on the ground that the source of the vast majority of the funds used to pay the Judgment Amount are funds that belong to the High Park receivership estate as they are funds wrongfully and illegally obtained by defendant Showalter in connection with his operation of a fraudulent investment scheme through High Park and its affiliates, and that equity and good cause exist for the turnover of all such funds for the benefit of the High Park receivership estate under the circumstances of this case. The Receiver submits that good cause exists for the relief sought in this Motion based on the following.¹

I. STATEMENT OF FACTS

In this civil enforcement action by the SEC filed in 1998 in this Court, the SEC asserted claims against Hollywood Trenz, Inc., Edward R. Showalter and two other individuals (“DC Action”). In November 2005, the SEC filed a civil enforcement action in the United States

¹ Pursuant to Local Civil Rule 7(m), the Receiver has conferred with counsel for the SEC and attempted to confer with counsel for Edward R. Showalter prior to filing this motion and the Turnover Motion. The Receiver has conferred extensively with the SEC regarding the relief sought and understands the SEC will take a formal position regarding the Motion and the related Turnover Motion shortly after the two motions are filed with the Court. Counsel for defendant Showalter in this action, Soloman Wisenberg, did not return telephone calls made in an attempt by Receiver’s counsel to reach them prior to the date of filing of these motions. Jonathan Boynton, counsel for defendant Showalter in the California Action, as hereinafter defined, took no position regarding the motions on the basis that he has not represented Showalter, and does not now represent Showalter, in this case.

District Court for the Central District of California against High Park, Harbor Financial Investment Group, Inc. ("Harbor"), and Edward R. Showalter ("Showalter") (such action being referred to as the "California Action"). These civil actions allege that Showalter through the entities identified in the actions, committed various violations of the securities laws, including non-disclosure or misrepresentation of material investment information, and in the case of the California action, securities fraud and violations of the securities laws by unlawfully selling unregistered investment contracts.

Judgment was entered in the action pending before this Court against Showalter on May 15, 2001. After Showalter failed to timely pay the amounts due the SEC under the Final Judgment, Showalter was held in civil contempt. Subsequently, the Court entered an order providing a payment plan for satisfaction of the judgment by Showalter on November 19, 2002. Showalter began making small payments on the Judgment Amount of a few thousand dollars per month, and by August 10, 2004, Showalter had fully paid the Judgment Amount. By order entered August 17, 2004, the entire Judgment Amount was satisfied and paid by Showalter. The sums paid on the Judgment have been retained by the SEC (as to the \$150,000 civil penalty) and the Registry subject to further order of the Court as to the balance.

As set forth in the Turnover Motion and supporting pleadings, almost all of the funds paid by Showalter in connection with this Action, \$831,719.08, are traceable to High Park and the funds Showalter, through High Park, fraudulently and illegally solicited from investors under its improper investment scheme. Those funds properly belong to the receivership estate and should be restored to the Receivership Entities' estate from which they were improperly transferred by Showalter.

The Receiver seeks authority of the Court to intervene in this action for the limited purpose of filing and prosecuting the Turnover Motion. The Receiver contends that it is entitled to intervene as of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure in that the Receiver has a claim to property which is the subject of this action being held by this Court and the SEC subject to further order of this Court, and the Receiver's rights and claims to the funds cannot be adequately represented by the other parties to the action in that the Receiver seeks the

funds as a court-appointed fiduciary for the High Park receivership estate which holds the claims to the funds. The Receiver is an arm of the California court based on its appointment in the California Action and therefore occupies a unique role and position that should be prosecuted by the Receiver.

II. THE RECEIVER SHOULD BE PERMITTED TO INTERVENE FOR THE LIMITED PURPOSE OF PROSECUTING THE TURNOVER MOTION

A. The Receiver Should Be Permitted To Intervene As Of Right Under Rule 24(a)(2) of the Federal Rules of Civil Procedure

Rule 24(a) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") sets forth the basis upon which one shall be permitted to intervene in an action as a matter of right:

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Here, the Receiver over High Park should be permitted to intervene as a matter of right to file and prosecute the Turnover Motion. As more particularly set forth in the Turnover Motion, the Receiver claims an interest in the funds held by the SEC and the Registry of this Court in connection with the DC Action, based upon the fact that most of those funds belong to the High Park receivership estate because they were wrongfully and illegally obtained by Showalter. Equity and good cause exists to have these funds returned to the receivership estate because they are held in constructive trust for the receivership estate and because the transfers of these funds from High Park constitute fraudulent conveyances, all as more particularly set forth in the Turnover Motion.

Applications to intervene in which the proposed intervenor advances a clear property interest present the easiest cases for

intervention. If an action involves a dispute about a particular property or fund, and an applicant claims a direct, substantial, and legally protectable right to this property or fund, the existence of a sufficient interest is apparent. For example, an interest in a specific monetary fund supports intervention in an action affecting that fund.

6 James Wm. Moore et al., *Moore's Federal Practice* § 24.03(2)(a) (Matthew Bender 3d ed.). See, e.g., *Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1124 (5th Cir. 1970) (government tax lien asserted against funds before court in multiple-party litigation was an "interest" in property that was subject of suit pursuant to Rule 24(a)).

Second, because the Receiver is not the plaintiff in the California Action, it lacks standing to obtain pre-judgment relief, in the form of a pre-judgment writ of attachment, or otherwise, in that action. Additionally, because the funds held in the Registry of this Court are subject to disposition only by order of this Court, it is doubtful that any order issued in the California Action with respect to those funds would be binding upon this Court. As a consequence, the Receiver is so situated that the only way it can protect its interest in the funds is to intervene in the DC Action for the limited purpose of filing and prosecuting the Turnover Motion.

So as long as movant can demonstrate that its interest may be impaired or impeded if the matter is disposed of, intervention of right is appropriate. For example, in *Hardy-Latham v. Wellons*, 415 F.2d 674 (4th Cir. 1968), a broker brought an action against a seller to recover brokerage commissions. Prospective intervenors claimed an interest in the sales transaction and the fund which was the subject of the main action. *Id.* at 676. The prospective intervenors argued that if the amounts were paid directly to the broker, their ability to collect their proper share would as a practical matter be more difficult. *Id.* The Fourth Circuit found that intervention as of right was appropriate under Fed. R. Civ. P. 24(a). *Id.*

Finally, the Receiver's interest is not adequately represented by the existing parties. The Receiver is the only Court-appointed fiduciary responsible for protecting the interests of the

High Park receivership estate and to date the SEC has not taken steps to have these funds turned over to the Receiver. Therefore, even if the SEC ultimately joins in the relief sought, it is the Receiver which must be the party to bring this motion in order to protect the interests of the receivership estate in the California Action.

In considering whether the interests of a prospective intervenor are adequately represented, the Court must consider whether existing parties are willing to make the arguments sought by the intervenor. *U.S. v. State of Oregon*, 122 F.R.D. 571, 578 (D. Or. 1988), *aff'd*, 913 F.2d 576 (9th Cir. 1990). The moving party need not show that the representation by existing parties will be certainly inadequate, only that the representation “may be” inadequate, so that the applicant’s burden is “minimal.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538, n.10 (1972).

Receivers have typically been allowed to intervene under Fed. R. Civ. P. 24(a). In *Frank J. Delmont Agency, Inc. v. Graff*, 55 F.R.D. 266, 266-67 (D. Minn. 1972), a state court-appointed receiver of an insolvent insurance company sought to intervene in a class action by insurance agents against accountants to recover for alleged auditing negligence which permitted the insurance company to continue in business despite its insolvency. The receiver claimed exclusive rights to assert claims on behalf of the company’s creditors based upon its appointment order, Minnesota state law and a written assignment. *Id.* at 268. Without ruling on whether the receiver was correct in his contentions, the court in *Graff* recognized that there was a race to judgment to recover the proceeds of the accountants’ malpractice policy between the class action plaintiffs and the receiver, thereby rendering it necessary to permit the receiver to intervene under Rule 24(a). *Id.* Similarly here, unless the Receiver is permitted to intervene for the limited purpose of obtaining a turnover order on the funds held by the SEC and the Court Registry, a cognizable risk exists that these funds will become unavailable to the receivership estate.

B. Alternatively, The Receiver Should Be Permitted to Intervene Under Rule 24(b) of the Federal Rules of Civil Procedure.

In the alternative, the Receiver should be granted permissive intervention here. Rule 24(b) states that permissive intervention is allowed:

Upon timely application anyone may be permitted to intervene in an action. . . . when an applicant's claim or defense and the main action have a question of law or fact in common . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Fed. R. Civ. P. 24(b)(2). There can be no question that the Receiver's request for turnover of funds has identical questions of law and fact to those before this Court. Moreover, given that a final judgment has already been entered in this action, no possible delay or prejudice could result from permitting the Receiver's intervention here.

III. CONCLUSION

Based upon the foregoing, the Receiver respectfully requests that the Court grant its motion for limited intervention.

Dated: June 27, 2006

MCKENNA LONG & ALDRIDGE LLP

By: _____/s/_____
CHRISTINA M. CARROLL
District of Columbia Bar No. 473337
1900 K Street, NW
Washington, D.C. 20006
Telephone: (202) 496-7500
Facsimile: (202) 496-7756
E-Mail: ccarroll@mckennalong.com

GARY OWEN CARIS
California Bar No. 088918
LESLEY ANNE HAWES
California Bar No. 117101
444 South Flower Street, 8th Floor
Los Angeles, California 90071
Telephone: (213) 688-1000
Facsimile: (213) 243-6330
E-Mail: gcaris@mckennalong.com
lhawes@mckennalong.com

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June 2006, I served a copy of the Motion for Order for Limited Intervention by Receiver of High Park Investment Group, Inc. and Statement of Facts and Memorandum in Support Thereof and Proposed Order on:

Antonia Chion (via electronic case filing system)
SECURITIES AND EXCHANGE COMMISSION
Division of Enforcement
100 F Street, NE
Washington, DC 20459-4030

Mark A. Adler (via electronic case filing system)
SECURITIES AND EXCHANGE COMMISSION
450 Fifth Street, NW
Washington, DC 20549-0911

Solomon L. Wisenberg (via electronic case filing system)
Joshua A. Mooney
ROSS, DIXON & BELL, LLP
2001 K Street, NW
Washington, DC 20006-1040
Counsel for Edward Showalter

Jonathan A. Boynton (via U.S. mail, first class)
Post Kirby Noonan & Sweat LLP
One America Plaza
600 West Broadway, Suite 1100
San Diego, CA 92101-3387
Counsel for Edward Showalter in the California Action

/s/
Christina M. Carroll