

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. High Park Investment Group, Inc., et al.
CASE No. SACV 05-1090 CJC (MLGx)**

Order Granting Receiver's Motion for Fees and Expenses

Entered July 26, 2006

ENTERED
CLERK, U.S. DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Sumner
Evans
Robb
Evans

Case No. SACV 05-1090 CJC (MLGx)

Date: July 24, 2006

Title: SECURITIES AND EXCHANGE COMMISSION v. HIGH PARK INVESTMENT GROUP, INC., et al.

PRESENT:

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

Debra Beard
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:

ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING RECEIVER'S MOTION FOR FEES AND EXPENSES (filed 7/6/06)

The Receiver Robb Evans & Associates LLC ("Receiver") moves for a court order approving its fees and expenses in connection with its role as the permanent receiver over Defendant High Park Investment Group, Inc. ("High Park"). Because the fees and expenses requested by the Receiver are reasonable in light of the tremendous task of complying with the Court's preliminary injunction against Defendants High Park and Edward R. Showalter (collectively, "Defendants"), the Receiver's motion is GRANTED.

I. BACKGROUND

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(c)

The Securities and Exchange Commission ("SEC") filed this action and an *ex parte* application for a temporary restraining order against Defendants on November 8, 2005. The Court issued a temporary restraining order and appointed the Receiver over High Park on November 9, 2005. The Receiver acted immediately and discovered that, among other things, High Park had defrauded over one-hundred investors out of approximately \$16 million. The Receiver also determined that High Park now faces a \$9.3 million "shortfall" resulting from over \$27 million in liens against \$18.5 million worth of High Park properties. On December 13, 2005, pursuant to a stipulation by the parties, the Court made the Receiver permanent and issued a preliminary injunction against Defendants. On January 26, 2006, after no responsive pleadings were filed by Defendants, the Clerk of the Court entered a

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default against Defendants at the request of the SEC.

Following the issuance of the preliminary injunction, beginning on January 20, 2006, numerous defrauded creditors of High Park filed motions to intervene in this action. *See* Fed. R. Civ. P. 24. The SEC opposed all of these motions to intervene. On February 7, 2006, creditor Fourteen Ninety Two, LLC filed a motion to preserve the secured status of two trust deeds it was issued by High Park. *See* CAL. CIV. CODE § 2898 (Deering 2006). The Receiver opposed Fourteen Ninety Two's motion.

On March 20, 2006, the Receiver filed a motion for instructions and orders, essentially seeking court authority and supervision for the liquidation of High Park. The Receiver also sought a court order extinguishing all secured creditors' notes and liens. The SEC filed a memorandum in support of the Receiver's motion for instructions and orders. Numerous secured investors filed motions in opposition to the Receiver's motion.

On May 15, 2006, the Court held a hearing on the Receiver's motion for instructions and orders, the proposed intervenors' motions to intervene in this action, and creditor Fourteen Ninety Two, LLC's motion to preserve the secured status of its two trust deeds. At the hearing, the Receiver and the SEC argued that the Court should exercise its broad equitable powers to extinguish all of the creditors' secured notes and to liquidate High Park in light of its insolvency. The large majority of the proposed intervenors, who are all secured creditors who invested with High Park and stand to lose a significant amount of money based on Defendants' illegal ponzi scheme, vigorously contended that their due process rights would not be adequately protected were this Court to summarily extinguish all of the secured notes and liens and order the liquidation of High Park. The Court denied all of the parties' motions without prejudice and expressed its concern that bankruptcy court is the more proper forum to liquidate High Park and to protect the rights of all of High Park's creditors. The Court also ordered the Receiver to propose a plan for transferring this case to bankruptcy court. The Receiver subsequently filed a motion for reconsideration of the Court's May 15, 2006 ruling and the SEC filed a memorandum of points and authorities in support of the Receiver's motion. Many of the proposed intervenors, for their part, filed opposition papers on the ground that this case and their claims should be administered in bankruptcy court pursuant to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure to protect their due process rights and ensure fairness. The Court denied the Receiver's motion for reconsideration and ordered the Receiver to submit a plan for transferring this action to

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bankruptcy court. The Receiver complied with the Court's order and has represented to the Court that it will file for bankruptcy on High Park's behalf as soon as this motion is ruled on by the Court.

II. RECEIVER'S REQUEST FOR FEES AND EXPENSES

By way of this motion, the Receiver requests the payment of its fees and expenses in connection with the duties imposed on it by this Court. Specifically, the Receiver requests \$178,836.28 for its fees and \$12,945.73 for its expenses incurred during the approximate eight month period from the inception of the receivership until now. The Receiver also requests \$223,355.35 for its attorneys' fees and \$26,820.66 for its attorneys' costs incurred during the last eight months. The Receiver also requests all sums owed third party vendors relating to post-receivership expenses, including repairs, maintenance, and appraisals and the payment of Receiver and attorneys' fees in the amount of a \$50,000 retainer for the initial required filings and proceedings that will take place in bankruptcy court. The Receiver also requests an order authorizing the payment of all approved fees and expenses from any funds that are paid to the receivership estate pursuant to the turnover motion in the District of Columbia District Court action and directing the Receiver to remit all surplus funds to the bankruptcy estate of High Park once such bankruptcy proceedings are initiated. Finally, the Receiver seeks an order approving the Temporary Receiver's Report for the period of November 9, 2005 through November 14, 2005 and the Receiver's Pre-Bankruptcy Report and Accounting for the period of November 15, 2006 through June 30, 2006.

The Securities and Exchange Commission filed a notice of non-opposition to the Receiver's instant motion. Certain creditors, however, did file opposition papers to the Receiver's motion for fees and expenses. While a few creditors contend that the amount requested by the Receiver for fees and expenses is unreasonably high, the main crux of most of the creditors' argument is that this Court should refuse to rule on the Receiver's motion and permit the bankruptcy court to consider the Receiver's motion for fees and expenses. The Court disagrees with the creditors' argument.

The Receiver was appointed by *this* Court. The Receiver took on the monumental task of taking over the High Park estate, bringing High Park into compliance with the law, and somehow taking inventory of the estate despite the chaotic mess that Defendants left behind. In addition, the Receiver and its attorneys have had to spend countless hours

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responding to the numerous criticisms and challenges leveled by the High Park creditors. The Court is sympathetic to the plight of the High Park creditors and their financial losses. Their losses, however, are attributable to the wrongful acts of Defendants, and not the Receiver's acts in acting pursuant to the Court's temporary restraining order and subsequent preliminary injunction. Because the Receiver was appointed by the Court and was asked to fulfill the duties imposed on it by the Court's orders, it is only fair and reasonable that this Court – and not the bankruptcy court – review the Receiver's request for fees and expenses.

Relevant case law is clear that this Court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. *See, e.g. SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986). Indeed, the basis for broad deference to the district court's supervisory role in equity receiverships arises out of the fact that the receivership is an agent of the court and because most receiverships involve multiple parties and complex transactions. *See id.* Clearly, part of this Court's broad authority over equitable receiverships is its obligation to review and approve or reject the receivership's request for payment of fees and expenses. It simply would not be fair to require the Receiver to wait in line in bankruptcy court after the Receiver was appointed by the Court and acted pursuant to the Court's temporary restraining order and subsequent preliminary injunction. The ability of district courts to employ capable and reputable receivers to take on a task such as the one taken on by the Receiver in this case would be greatly curtailed if courts had the authority to appoint, manage, and direct the receivers as agents of the court but did not have the authority to approve payment to the receiver and its counsel for the work performed. A leading treatise on receiverships makes this clear:

The costs and expenses of a receivership are primarily those incurred by the court in performing its duty of preserving the assets of the defendant so that these assets or their proceeds if sold will be available to meet the valid demands of the litigants and other creditors of the defendant. The costs and expenses of preserving, administering and realizing the property or fund must primarily be paid out of the property or fund. The obligations and expenses which the court creates in its administration of the property are necessarily burdens on the property taken possession of, and this, irrespective of the question who may be the ultimate owner, or who may have the preferred lien, or who may invoke the receivership. The appointing court pledges its good faith

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that all duly authorized obligations incurred during the receivership shall be paid.

When a fund is realized or produced or brought into court for distribution among claimants, those who by their exertions and activities have brought the fund into court are entitled to be paid out of the fund before it is distributed.

2 RALPH EWING CLARK, CLARK ON RECEIVERS § 637, pp. 1052-53 (3d ed. 1959).

The Local Rules also contemplate that permanent receivers shall apply to the district court for the payment of fees and expenses incurred by the receiver and its counsel. *See* Local Rule 66-7(f).

Simply put, it is the province of this Court, and not the bankruptcy court, to review and approve the payment of fees and expenses to a permanent receiver appointed by this Court pursuant to a temporary restraining order and preliminary injunction. Here, the Receiver was charged with many significant tasks, including physically inspecting and protecting each of the High Park properties, analyzing and obtaining valuations for each of the properties, holding investor meetings and communicating with numerous investors and their counsel, and reviewing and organizing the High Park records for each property. The Receiver's attorneys also spent numerous hours in connection with these tasks and significantly discounted their hourly fee rates. In short, based on the declarations, expense reports, and billing records submitted in connection with the Receiver's motion, the Court concludes that the amount requested is reasonable in light of the work done by the Receiver and its counsel pursuant to the temporary restraining order and subsequent preliminary injunction. Accordingly, the Receiver's request is approved.

III. CONCLUSION

For the foregoing reasons, the Receiver's motion is GRANTED in its entirety. The Receiver represented to the Court at the hearing on this matter that it intends to file a voluntary chapter 7 petition to send this case to bankruptcy court in light of the Court's June 19, 2006 Order in which it determined that bankruptcy court is the proper forum for this action. The Receiver is hereby GRANTED leave to file a chapter 7 petition. The Receiver

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shall have seven calendar days from the date of this Order to file the petition. Finally, at the hearing on this motion a few creditors argued that this case belongs in chapter 11, as opposed to chapter 7, bankruptcy. Those creditors are free to file a motion in bankruptcy court to convert this action into a chapter 11 proceeding if they deem it appropriate.

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