

ROBB EVANS & ASSOCIATES LLC
Receiver of
Longboat Global Funds Management, LLC, et al.
11450 Sheldon Street
Sun Valley, California 91352-1121
Telephone No.: (818) 768-8100
Facsimile No.: (818) 768-8802

Commodity Futures Trading Commission v. Longboat Global Funds Management, LLC
CASE No. 05-CV-2142 PJH

Notice of Motion and Motion for Approval of Receiver's Report of Assets
for the Period May 24, 2007 Through September 30, 2007;
and Proposed Order

Filed November 27, 2007

1 Linda J. Candler, CA Bar No. 181805
Linda_candler@robbevans.com
2 Robb Evans and Associates LLC
11450 Sheldon Street
3 Sun Valley, CA 91352
Tel: (818) 768-8100
4 Fax: (818) 768-8802

5 Attorney for Robb Evans & Associates LLC
6 Receiver

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
10

11
12 COMMODITY FUTURES TRADING)
COMMISSION,)

13)
14 Plaintiff,)

15 vs.)

16 ROBERT JOSEPH BEASLEY,)
LONGBOAT GLOBAL FUNDS)
17 MANAGEMENT, LLC,)

18 Defendants.)
19)
20)
21)

Case No.: No. 05-2142 PJH

NOTICE OF MOTION AND MOTION
FOR APPROVAL OF RECEIVER'S
REPORT OF ASSETS FOR THE
PERIOD MAY 24, 2007 THROUGH
SEPTEMBER 30, 2007, AND
PROPOSED ORDER

Date: January 2, 2008

Time: 9:00 A.M.

Place: Courtroom 3, 17th Floor
450 Golden Gate Ave.
San Francisco, CA 94102
(Hon. Phyllis J. Hamilton)

Oral Argument Not Requested

22
23 TO THE HONORABLE PHYLLIS J. HAMILTON, UNITED STATES
24 DISTRICT COURT JUDGE, AND TO ALL PARTIES AND THEIR
25 ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that on January 2, 2008, at 9:00 a.m. in
27 Courtroom 3 of the United States District Court for the Northern District of
28

1 California located at 450 Golden Gate Avenue, 17th Floor, San Francisco, California
2 94102, Robb Evans & Associates LLC, Receiver in the above-captioned case, will
3 present its Motion for Approval of the Receiver's Fifth Report of Assets. The
4 Receiver is willing for this Motion to be considered without Oral Argument.

5 Pursuant to L.R. 66-5, the Receiver, Robb Evans and Associates LLC,
6 submits this Report regarding assets of the receivership. This Report will be served
7 on all parties and will be posted on the Receiver's website at
8 <http://www.robbevans.com/html/longboat.html>, where it may be reviewed in its
9 entirety. A copy of the report will be provided to any interested party upon receipt
10 of a request, therefore, which may be directed to: Robb Evans & Associates LLC,
11 Attn: Cherrie Eustaquio, 11450 Sheldon Street, Sun Valley, CA 91352 telephone:
12 (818) 768-8100, facsimile: (818) 768-8802. Any person or entity opposing this
13 Motion must timely file with the Court and serve upon the Receiver, whose name
14 and address appear in the upper left-hand corner of the first page of this Motion, a
15 written opposition which complies in all respects with the rules of this Court.
16 Failure to timely file an opposition may be deemed by the Court to be consent to the
17 granting of the Receiver's Motion.

18
19 Dated this November 26, 2007

20 

21 Linda J. Candler
22 Attorney for Receiver,
23 Robb Evans and
24 Associates LLC
25
26
27
28

ROBB EVANS & ASSOCIATES LLC
Receiver of
Longboat Global Funds Management, LLC, et al.

RECEIVER'S REPORT OF ASSETS
May 24, 2007 through September 30, 2007

Introduction

This action was commenced on May 25, 2005 by the Commodity Futures Trading Commission ("CFTC") against the Defendants. The CFTC's Complaint alleges that the Defendants committed fraud by misrepresenting the condition and status of certain investments held by Piranha Capital, L.P., a commodity pool that Defendants operated, and failed to disclose Defendant Robert J. Beasley's personal financial interest in those investments, in violation of certain provisions of the Commodity Exchange Act.

On August 19, 2005, Robb Evans & Associates LLC ("REA" or "Receiver") was appointed as Temporary Receiver pursuant to a "Consent Order of Preliminary Injunction and Other Equitable Relief" ("Order"). Pursuant to the terms of the Order, REA was appointed as Temporary Receiver for Defendant Longboat Global Funds Management, LLC ("Longboat") and any affiliates or subsidiaries solely with respect to matters involving Piranha Capital, L.P. ("Piranha"), and all of the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by Piranha with the full powers of an equity Receiver, except as limited by the terms of the Order.

Defendant Beasley entered into a Settlement Agreement with the CFTC, which was approved by the CFTC on June 15, 2007. It was filed with this Court on August 16, 2007, and was approved on August 27, 2007. On that date, this Court entered an Order of Permanent Injunction and Order Appointing Robb Evans and Associates LLC as Permanent Receiver over Longboat Global Funds, and its affiliates or subsidiaries or related entities, solely with respect to matters involving Piranha Capital LP and Piranha Capital Investment (Bahamas) (“receivership defendants”), with full powers of an equity Receiver.

This is the Receiver’s Fifth Report of Assets. On December 14, 2005, the Receiver filed a Report of Assets and Petition for Instructions relating to a bank account held by Pershing LLC. On February 14, 2006, the Receiver filed its Second Report of Assets, which discussed properties in Montana purchased by Defendant Robert J. Beasley (Beasley) with funds loaned by Piranha Capital LP to Lewis and Clark Capital LLC and Diamond B LLC, entities controlled by Beasley. On November 30, 2006, the Receiver filed its Third Report, which detailed the Receiver’s efforts to identify and collect other assets pledged as security for other promissory notes. That Report also discussed the Receiver’s investigation of entities, which received loans from Piranha Capital, specifically, Pinnacle West LLC (Pinnacle), Plutus Alternative Strategies (Plutus), and Sunquest Development (Sunquest), now known as Branford Partners LLC (Branford). The Receiver’s Fourth Report was filed on May 23, 2007 and discussed loans by Piranha Capital to Plutus, Sunquest and Pinnacle West and

prospects for collection of those notes. This Report is to provide an update on the pending litigation and claims against third parties.

Promissory Notes

As set out in the prior reports, even before it started trading, Piranha Capital LP and Longboat Global Funds transferred funds to entities controlled by Beasley, and to Pinnacle West LLC (Pinnacle), Sunquest Development LLC (Sunquest) and Roth/DCM (Roth). The Receiver has completed its analysis of the Promissory Notes and the investments made with the proceeds of those Notes. As indicated in prior reports, with the exception of the Branford property, discussed below, the loans to Pinnacle West and Sunquest were not secured by real property. Options for the projects purportedly being managed by Pinnacle West and Sunquest have expired. Collection on these notes is at a standstill because the Receiver has not been able to identify other assets of either Pinnacle West or Sunquest. Promissory Notes to Sterling Capital were paid at a discount, and no interest was paid on these notes. The Receiver is negotiating the terms of repayment of a Sterling Capital note payable to Piranha Capital Investments Ltd. in the principal sum of \$30,000.00. The Receiver has agreed to accept \$21,000 cash to settle this note.

Montana Properties

As set out in previous reports, Beasley caused Piranha to loan money to his wholly-owned entities to purchase property in Montana. Based on the entry of the final judgment and Settlement Agreement, the Receiver is foreclosing on the Montana

properties. Montana law requires that a lawsuit be filed to foreclose on parcels greater than 40 acres. Four of the five properties fall into this category. On September 19, 2007, the Receiver retained the services of a Montana attorney to foreclose on all five properties. Foreclosure title policies have been ordered. Upon receipt, appraisals will be updated and values compared against liens shown on the title reports. The Receiver will then proceed with foreclosure on those properties with sufficient equity.

Plutus Note

Initially, the Promissory Note signed by Plutus Alternative Strategies, a company owned and controlled by Mark Boucher, was secured by real estate. This loan to Plutus Alternative Strategies in the amount of \$1.6 million was made to buy out a loan to the Sunquest/Branford project by the Genesis L.A. Real Estate Fund that held a First Deed of Trust on the real property purchased by Sunquest. Plutus became the holder of the Genesis security interest pursuant to an assignment, which was recorded on September 17, 2002. Subsequently, Branford sought additional construction funding. In order to obtain a \$5 million loan from the California Environmental Redevelopment Fund, Plutus removed its Deed of Trust and instead entered into an agreement with the Second Deed of Trust Holder for priority repayment. Branford Partners LLC filed a Chapter 11 voluntary bankruptcy petition on December 26, 2006. (Case No. SV 06-12551-KT (USDC, CDCAL, San Fernando Valley Division). The Branford property was sold in the Bankruptcy proceedings on May 29, 2007 for \$18,750,000.00.

The Receiver filed a Proof of Claim in the Bankruptcy proceeding based on the investment made by Piranha to buy out the Genesis L.A. Real Estate Fund Note. Mark Boucher, the Principal of Plutus, confirmed in a deposition on April 20, 2007 that this First Deed of Trust held by Plutus based on the Assignment by Genesis was removed in order to obtain funding from the California Environmental Redevelopment Fund (CERF). To protect Plutus' First Lien position, a separate agreement was negotiated for payment of the Plutus note ahead of payment to the second lien holder. This agreement is set forth in the Second Amendment to the Operating Agreement of Sunquest Development II, LLC, dated December 29, 2003.

On September 20, 2007, the Bankruptcy Court held a hearing on the Receiver's claim to repayment out of the sales proceeds on the Plutus Note. The Court entered an Order on October 4, 2007, granting a Motion for Summary Judgment against the Receiver. The Court found that the Second Amendment did not give the Receiver the right to payment ahead of the secured creditors. The Receiver is appealing this ruling to the United States District Court, based on the language of the Second Amendment regarding priority of payment of funds disbursed to the members of Sunquest.

Pershing Funds

As previously reported, the Receiver was holding a \$1 million deposit transferred by Pershing Securities. This deposit was the subject of a Writ of Attachment in an action filed by four Plaintiffs against Beasley and Longboat in Illinois prior to the Receiver's appointment. The United States District Court for the Northern District

of Illinois granted summary judgment in favor of the Plaintiffs on March 22, 2006, and entered judgment in their favor in the amount of \$903,631.59, plus interest. The Court also granted the Receiver's Motion to Vacate the Attachment Order and the funds were transferred to the Receiver. The Plaintiffs appealed the Order to Vacate the Attachment Order and the Seventh Circuit Court of Appeal entered an Order on July 25, 2007 reinstating the attachment order and directing the Receiver to return the funds. The Receiver filed a petition for Rehearing, arguing that the Illinois Plaintiffs did not have a final judgment entitling them to payment as of the date of the Receiver's appointment. The Seventh Circuit denied the Petition for Rehearing. The Receiver filed a Motion seeking approval of this Court to return the funds and pay the claims of the Illinois plaintiffs, based on the Order of the Seventh Circuit. That Motion was granted on November 16, 2007, and the sum of \$1,054,115.11, representing the balance of the account with accrued interest, was paid to the Illinois plaintiffs on November 19, 2007.

Pershing Securities Offshore Funds

Based on the August 27, 2007 Order of Appointment over Piranha Capital Investment (Bahamas), the Receiver has taken custody of a deposit held at Pershing for the Piranha Capital Bahamas in the amount of \$742,684.89. These funds are being held in a segregated account pending approval of a Motion for Distribution to the investors of Piranha Capital Investment (Bahamas).

///

Timing of Distributions

The Receiver intends to submit a Motion for Distribution to all investors of Piranha Capital L.P. as soon as the additional properties in Montana have been sold. The Motion for payment of claims of the Piranha Offshore investors will be filed once the funds from Sterling Capital are received.

Respectfully submitted,

/s/

Robb Evans & Associates LLC
Receiver

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

ROBERT JOSEPH BEASLEY AND
LONGBOAT GLOBAL FUNDS
MANAGEMENT, LLC,

Defendants.

CASE NO. 05-CV-2142-PJH

[Proposed] ORDER FOR APPROVAL
OF RECEIVER'S REPORT OF ASSETS
FOR THE PERIOD MAY 24, 2007
THROUGH SEPTEMBER 30, 2007

Date: January 2, 2008
Time: 9:00 a.m.
Place: Courtroom 3, 17th Floor
450 Golden Gate Ave.
San Francisco, CA 94102
(Hon. Phyllis J. Hamilton)

[PROPOSED] ORDER

The Motion of Robb Evans & Associates LLC, Receiver in the above-captioned case for an Order Approving the Fifth Report of Assets came on regularly for hearing on January 2, 2008, in Courtroom 3 of the above-referenced Court, the Honorable Phyllis J. Hamilton, United States District Judge, presiding. Linda Candler, Esq. appeared on behalf of the Receiver, Robb Evans & Associates LLC; other parties appeared as reflected in the Court's record.

The Court, having reviewed the Receiver's Report and Motion and all papers filed in support thereof, hereby rules as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY ORDERED:

The Receiver's Fifth Report of Assets is approved in its entirety.

Dated: _____

PHYLLIS J. HAMILTON
United States District Judge