

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SECURITIES AND EXCHANGE COMMISSION	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 1:13-cv-01036-LY
	§	
ROBERT A. HELMS, ET AL.,	§	
<i>Defendants,</i>	§	
	§	
and	§	
	§	
WILLIAM L. BARROW AND GLOBAL CAPITAL VENTURES, LLC,	§	
<i>Relief Defendants, solely for the purposes of equitable relief.</i>	§	
	§	

**RECEIVER’S MOTION FOR
ORDER APPROVING SETTLEMENT**

COMES NOW, Thomas L. Taylor III (“Receiver”), as the Court-appointed Receiver for Vendetta Royalty Partners, Ltd. (“VRP”), Vendetta Royalty Management, LLC (“VRM”), Robert A. Helms (“Helms”), Janniece S. Kaelin (“Kaelin”), Deven Sellers, Roland Barrera, Vesta Royalty Partners, L.P., Vesta Royalty Management, LLC, Iron Rock Royalty Partners, LP, Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, G.P., G3 Minerals, LLC, Haley Oil Company, Inc., Lake Rock, LLC, Sebud Minerals, LLC, and Technicolor Minerals, G.P., and all other entities under their control (collectively, the “Defendants”), and files this Motion for Order Approving Settlement (the “Motion”) seeking this Court’s approval of a Settlement Agreement reached with Amegy Bank National Association (“Amegy Bank”). The proposed Settlement Agreement is attached as **Exhibit A**.

Background

The Securities and Exchange Commission initiated the above-styled Enforcement Action on December 3, 2013, alleging, *inter alia*, that Defendants had offered and sold securities of VRP and other entities in violation of the anti-fraud and broker dealer registration provisions of the federal securities laws, and that Helms and Kaelin had operated a Ponzi scheme to the detriment of investors and creditors.

On December 3, 2013, the Court entered a Temporary Restraining Order (Doc. #10) restraining and enjoining the Defendants from further violations of the anti-fraud and broker-dealer registration provisions of the federal securities laws.¹ On the same day, the Court entered an Order appointing Thomas L. Taylor III as Receiver for the Defendants (Doc. #11).² The Order Appointing Receiver directs the Receiver, *inter alia*, to take control and possession of the assets of Defendants, to operate the Receivership Estate, and to perform all acts necessary to conserve, hold, manage, and preserve the value of the Receivership Estate for the benefit of the defrauded investors and creditors of Defendants. The Order Appointing Receiver further directed the Receiver to prepare and submit to the Court by March 3, 2014 a proposed liquidation plan.

The Receiver filed his Proposed Liquidation Plan on March 3, 2014 (Doc. #50). The Receiver's Proposed Liquidation Plan informed the Court that the portfolio of oil and gas interests held by VRP and related entities ("Oil & Gas Interests") is the most significant asset of the Receivership Estate and the likeliest source of recovery for and distribution to investors. The

¹ This Court entered a Preliminary Injunction by consent against all of the Defendants on December 18, 2014 (Doc. #37). The Receiver consented to the Preliminary Injunction as to the entity Defendants.

² On May 27, 2014, this Court entered its First Amended Order Appointing Receiver (Doc. #76) (the "Order Appointing Receiver").

Receiver informed the Court that it would file a Motion for Approval of an agreement, or agreements, to market and sell the Oil & Gas Interests in the Receivership Estate.

On March 13, 2014, the Receiver filed his Opposed Motion: (1) for Authority to Sell Oil and Gas Interests; (2) for Authority to Retain Sales and Marketing Firm; and (3) for Approval of Sales Procedures (“Motion to Sell Oil & Gas Interests”) (Doc. #69). The Court granted the Motion to Sell Oil & Gas Interests “in all respects” (Doc. #77). The Court authorized the Receiver to enter into a marketing agreement with EnergyNet.com, Inc. (“EnergyNet”) to market and sell the Oil & Gas Interests. The Court ordered that the Oil & Gas Interests are to be sold in sealed bid auctions conducted by EnergyNet, with all such sales subject to Court approval. The Court further ordered that all sales of the Oil & Gas Interests confirmed by the Court shall be free and clear of all liens, claims and encumbrances.

Amegy Bank’s Claim

Amegy Bank has asserted a claim against the Receivership Estate which, as of July 31, 2014, totaled \$3,244,856.30, with interest accruing at a rate of \$460.54 per day. *See* Status Report for the Calendar Quarter Ending June 30, 2014, at p. 21 (Doc. #87). Amegy Bank’s claim arises from a loan of approximately \$5,400,000 extended to VRP in or about 2009, near in time to VRP’s formation. Amegy Bank asserted that its claim was secured by VRP’s assets, including cash flow generated by, and proceeds arising from the sale of, VRP’s Oil & Gas Interests. The agreements between VRP and Amegy Bank include:

1. Credit Agreement between VRP and Amegy Bank dated December 31, 2009.
2. Revolving Note dated December 31, 2009.
3. Security Agreement dated December 31, 2009.
4. Pledge Agreement by VRM dated December 31, 2009.

5. Notice of Pledge to VRP and acknowledged by VRP and VRM dated December 31, 2009.
6. Pledge Agreement by Helms dated December 31, 2009.
7. Notice of Pledge to VRP and acknowledged by VRP and VRM dated December 31, 2009.
8. Pledge Agreement by Kaelin dated December 31, 2009.
9. Notice of Pledge Agreement to VRP and acknowledged by VRP and VRM dated December 31, 2009.
10. Guaranty by Helms and Kaelin dated December 31, 2009.
11. UCC-1 Financing Statement covering the collateral described in the Security Agreement filed with the Texas Secretary of State on January 5, 2010.
12. UCC-1 Financing Statements covering collateral described in the pledge agreements of VRM, Helms and Kaelin filed on January 7, 2010.
13. First Amendment to the Credit Agreement dated December 22, 2010.
14. Representative sample of UCC-1 Financing Statements covering as-extracted collateral filed in real property records of every Texas county in which VRP held certain oil & gas interests between March 20, 2013 and May 17, 2013.
15. Second Amendment to the Credit Agreement dated July 10, 2013.

Amegy Bank asserted that based on these documents, its claim was fully secured and duly perfected and that it was entitled to payment of the entire amount of its claim from VRP's royalty income and proceeds from any sale of properties in which VRP held an interest. Amegy Bank asserted the priority of its claim as to all other creditors and investors of the Receivership Estate.

Settlement Agreement with Amegy Bank

The Receiver reviewed Amegy Bank's claim and related documents, and disputed Amegy Bank's assertion of a perfected secured interest related to VRP's Oil & Gas Interests.

Amegy Bank and the Receiver exchanged their respective legal authorities and equitable arguments and, after approximately three months of negotiations, have agreed upon terms for a reasonable and fair settlement of Amegy Bank's claim.

As evidenced by the terms of the Settlement Agreement, Amegy Bank agrees to reduce significantly its claim to \$1,000,000 ("Settled Amount") and, in exchange, the Receiver agrees to pay the Settled Amount from the net proceeds received from the sales of the Oil & Gas Interests. *See Exhibit A.* The Receiver will pay Amegy Bank 50% of the net proceeds received from each such sale, until Amegy Bank has received the full Settled Amount. Amegy Bank and the Receiver also agree to mutually release any and all claims that could be asserted by the Receiver against Amegy Bank or by Amegy Bank against the Receiver. *See id.* The Settlement Agreement also provides that the Receiver, upon settlement, may sell any assets of the Receivership Estate free and clear of any liens, claims or encumbrances which were or could have been asserted by Amegy Bank. The terms of the Settlement Agreement do not affect Amegy Bank's rights with respect to the Guaranty executed by Helms and Kaelin.³

Settlement Agreement is Fair and in the Best Interest of the Receivership

The settlement with Amegy Bank is fair, equitable, reasonable, and in the best interests of the Receivership Estate and all who would claim substantive rights to distribution of Estate assets. The Receiver has analyzed Amegy Bank's claim and the expense and uncertainties of potential litigation. The Settlement Agreement is both necessary and appropriate to prevent waste and dissipation of Receivership assets.

³ Notwithstanding that Amegy Bank's rights with respect to the Helms and Kaelin Guaranty are fully reserved, "actions of any nature involving . . . any of the Receivership Defendants," including actions against Helms and Kaelin, "are stayed until further Order of this Court." Order Appointing Receiver at ¶32 (Doc. #76).

Amegy Bank's agreements with VRP, VRM, Helms and Kaelin, and its UCC-1 filings, provide Amegy Bank with at least a colorable, albeit disputed, claim that its claim against the Receivership Estate is superior to all other Estate creditors and investors. Should the Receiver and Amegy Bank proceed to litigation on the merits, which is inevitable absent an approved settlement, Amegy Bank's documents would enable it to assert that its claim was duly perfected and secured by the assets of VRP, including VRP's Oil & Gas Interests and the proceeds generated therefrom. Litigation between the Receiver and Amegy Bank regarding the validity of the claim would be extensive, requiring full discovery. Amegy Bank would seek to encumber the Receiver's sales of the Oil & Gas Interests and to delay any distribution to Estate claimants of proceeds from the sale of the Oil & Gas Interests. The litigation would be lengthy and would deplete Receivership Estate resources; the Receiver's likelihood of success would be uncertain. The finality of a fair and reasonable settlement of Amegy Bank's claim is preferred over the expense and uncertainty of litigation. The settlement significantly reduces the amount of Amegy Bank's claim, avoids the expense, delay and uncertainties of litigation and finally and permanently compromises a significant claim against the Receivership Estate to the benefit of the defrauded investors.

The Receiver has Authority to Enter into the Settlement Agreement

In considering whether to approve a settlement brokered by an equity receiver, a district court will examine the parameters of the receivership order's mandate. In *SEC v. Credit Bancorp, Ltd.*, No. 99 Civ. 11395 (RWS), 2001 WL 1658200 at *2 (S.D.N.Y. Dec. 27, 2001), when faced with a federal equity receiver's motion to approve a settlement with a creditor, the court held that "[i]t is enough that the Receiver's request for settlement falls well within the broad discretion granted to him by the January 2000 Order and the ordinary powers of a

receiver.” In that case, the January 2000 Order authorized the receiver to “investigate, prosecute, . . . compromise and adjust actions in any state, federal or foreign court or proceeding of any kind as may in his sole discretion be advisable to or proper to recover or conserve funds, assets, or property of Credit Bancorp.” *Id.* at *1. The court reasoned that this comports with the ordinary practice of receivers: “[T]he receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit.” *Id.* at *2 (*quoting* 3 Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 770 (3d ed. 1959)). Subsequently, in *SEC v. Bancorp, Ltd.*, No. 99 Civ. 11395 (RWS), 2002 WL 1792053 at *4-5 (S.D.N.Y. Aug. 2, 2002), the court approved another receiver settlement with broker-dealers because it was within the receiver’s discretion based on the January 2000 Order and the ordinary practice for receivers.

The proposed Settlement Agreement with Amegy Bank falls squarely within the Receiver’s mandate from this Court. The Court empowered the Receiver, among other powers and duties, “to take such action as necessary and appropriate for the preservation of Receivership Property.” *See* Order Appointing Receiver at ¶7(G) (Doc. #76). The Court also authorized the Receiver “to take all actions to manage, maintain, or wind-down business operations of the Receivership Estates, including making legally required payments to creditors . . . of the Receivership Estate . . . as appropriate.” *Id.* at ¶40. The Court further ordered that the Receiver:

shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the entity Receivership Defendants under applicable state and federal law, by the governing charters, by-laws, articles or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provision of 28 U.S.C. §§ 754, 959 and 1692, and FED. R. CIV. P. 66.

Id. at ¶4. Accordingly, the Receiver has the authority to settle Amegy Bank’s claim. *See SEC v. Credit Bancorp, Ltd.*, 2001 WL 1658200 at *2; *see SEC v. Bancorp, Ltd.*, 2002 WL 1792053 at *4-5.

In addition, a settlement by a receiver in a federal equity receivership is within the receiver’s broad discretion and should be approved if it is fair. *Gordon v. Dadante*, 336 Fed. Appx. 540 (6th Cir. 2009); *SEC v. Credit Bancorp, Ltd.*, 2002 WL 1792053 at *4-5 (S.D.N.Y. August 2, 2002); *SEC v. Princeton Economic International, Inc.*, 2002 WL 206990 at *1 (S.D.N.Y. February 8, 2002). “[R]eceptors benefit from the general presumption that district courts favor settlements.” *Sterling v. Stewart*, 158 F.3d 1199, 1202 (11th Cir. 1998). A receiver’s authority to settle claims is inherent in the charge to an equity receiver to collect assets:

Since the court has authority to authorize the receiver to collect assets of a corporation, it has the further authority to authorize the receiver to sue to collect the assets of the corporation. It naturally follows, as a necessary corollary of the foregoing, that the receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit.

3 Clark, Ralph Ewing, *A Treatise on the Law and Practice of Receivers*, § 770, p. 1424 (3d ed. 1992) (cited with approval in *SEC v. Credit Bancorp, Ltd.*, 2002 WL 1792053 at *4 (S.D.N.Y. August 2, 2002)). Settlement of claims by a receiver furthers the purposes of an equity receivership to marshal the estate’s assets for the benefit of injured creditors. *SEC v. Parish*, 2010 U.S. Dist. LEXIS 11786 at *18-19 (D.S.C. 2010) (receiver’s proposed settlement approved by the court, finding the settlement was “consistent with and furthers the purposes of the receivership”).

Therefore, the Receiver has the power to enter into the Settlement Agreement and Court approval is not expressly required by the Order Appointing Receiver. However, the Receiver

submits the proposed Settlement Agreement for the Court's approval in order to ensure full transparency and notice to the Court and the public of the settlement with Amegy Bank.

Notice of the Settlement Agreement

The Receiver respectfully submits that this matter does not require oral argument, unless opposition to the Motion is subsequently submitted to the Court. Although not required by the Federal Rules of Civil Procedure, a copy of this Motion will be served on Defendants and all other parties entitled to receive notice either electronically or by regular, first class United States mail. This Motion and all exhibits hereto will be posted on the Receivership Estate's website at <http://vendettaroyaltyreceivership.com/> where they can be reviewed in their entirety. A copy of this Motion (with exhibits) will be provided to any party upon request, which may be directed to:

Thomas L. Taylor III, Receiver
The Taylor Law Offices, P.C.
4550 Post Oak Place Drive, Suite 241
Houston, Texas 77027

The Receiver has discussed this Motion and the proposed Settlement Agreement with counsel for Plaintiff Securities and Exchange Commission, who does not oppose this Motion. The Receiver has conferred with the individual Defendants regarding this Motion and the proposed Settlement Agreement. Defendants Helms and Kaelin oppose this Motion. Defendants Sellers and Barrera do "not support or oppose" the relief sought in this Motion.

Conclusion

The negotiated settlement with Amegy Bank is a significant step toward realization of a maximum asset recovery for the ultimate benefit of individuals who have a claim to Estate assets. After this settlement is approved by the Court and becomes final, the uncertainties attendant to the presence of Amegy Bank's claim for over \$3,200,000 will be significantly

reduced to the benefit of the Receivership Estate. The Settlement Agreement also saves the Receiver from expending further Receivership Assets in pursuit of reducing or eliminating Amegy Bank's claim and the uncertainties inherent in litigation on the merits. If the proposed settlement is not approved, a singular opportunity will be lost as will a realizable gain benefitting the Receivership Estate. The Receiver therefore urges the Court that the settlement with Amegy Bank is overwhelmingly fair, equitable and reasonable, is in the best interest of the Receivership Estate, and should be approved.

Relief Requested

The Receiver respectfully requests that this Court enter an order approving the Settlement Agreement, and grant such other relief to which the Receiver is legally and equitably entitled.

Dated: August 14, 2014

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By: 

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CERTIFICATE OF CONFERENCE

I certify that counsel for the Receiver has conferred with counsel for the Securities and Exchange Commission, who do not oppose the relief sought herein. I further certify that counsel for the Receiver has conferred with the *pro se* Defendants to this action. Defendants Helms and Kaelin oppose the relief sought herein. Defendants Sellers and Barrera do “not support or oppose” the relief sought herein.

/s/ Andrew M. Goforth
Andrew M. Goforth

CERTIFICATE OF SERVICE

On August 14, 2014, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Western District of Texas, using the electronic case filing system. I hereby certify that I have provided copies to all counsel of record and *pro se* parties electronically or by other manner authorized by the Federal Rules of Civil Procedure 5(b)(2).

/s/ Andrew M. Goforth
Andrew M. Goforth