

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

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SECURITIES AND EXCHANGE	:	:
COMMISSION,	:	:
	:	:
Plaintiff,	:	:
	:	Civil Action No.
v.	:	1:12-CV-3261-WSD
	:	:
ANGELO A. ALLECA, SUMMIT	:	:
WEALTH MANAGEMENT, INC.,	:	:
SUMMIT INVESTMENT FUND, LP,	:	:
ASSET CLASS DIVERSIFICATION	:	:
FUND, LP, and PRIVATE CREDIT	:	:
OPPORTUNITIES FUND, LLC	:	:
	:	:
Defendants.	:	:
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**RECEIVER’S OPPOSITION TO THE MEYERS GROUP’S MOTION
FOR A RULE 1 CONFERENCE REGARDING A STAY OF THE
CURRENT BRIEFING SCHEDULE ON MODIFICATION OF THE
DISTRIBUTION PLAN**

COMES NOW Robert D. Terry, the Court-appointed Receiver for Defendants Summit Wealth Management, Inc. (“Summit”), Summit Investment Fund, LP (“SIF”), Asset Diversification Fund, LP (“ACDF”) and Private Credit Opportunities Fund, LLC (“PCOF” and, collectively with Summit, SIF, and ACDF, the “Receivership Entities”), hereby files his opposition to the motion by

the Meyer's Group, Inc. ("TMG") for a Rule 1 Conference Regarding Stay of Briefing Schedule on Modification of the Distribution Plan [Doc. No. 132] ("Motion").

The Receiver opposes the Motion for the reasons set forth below:

1. As recognized by the Securities and Exchange Commission's ("SEC") opposition [Doc. No. 134] to the Motion, the Receiver's understanding is that the Court's Standing Order and Rule 1 are addressed to parties to litigation, not claimants in a receivership proceeding. If the Court determines that a Rule 1 conference, however, is applicable in the context of a receivership claimant, the Receiver maintains that in the present case it should not be required nor would it be a good use of Receivership assets for the reasons set forth herein.
2. The Receiver requested, and the Court established in its Opinion and Order dated September 21, 2017 [Doc. No. 131], a procedure for TMG to oppose the Receiver's request that TMG's claim amount be modified. The procedure set up by the Court is sufficient for TMG to address and respond to the Receiver's request to modify TMG's claim amount.
3. The Court's use of summary proceedings to implement the distribution plan and to administer the estate is customary in federal receiverships and is perfectly permissible under "due process" rules so long as potential claimants are given the

opportunity to be heard and to present their claims.¹ *SEC v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 668-671; *SEC v. Elliott*, 953 F.2d 1566-67, 1570-71 (11th Cir. 1992); *SEC v. Wencke*, 783 F.2d 829, 834-839 (9th Cir. 1986); *U.S. v. Arizona Fuels Corporation*, 739 F.2d 455,458-460 (9th Cir. 1984).

As the Eastern District of New York noted in *FDIC v. Bernstein*, 786 F.Supp. 170 (E.D.N.Y. 1992):

. . . One common thread keeps emerging out of the cases involving equity receivership—that is, a district court has extremely broad discretion in supervising an equity receivership and in determining the appropriate procedures to be used in its administration. In keeping with this broad discretion, “the use of summary proceedings in equity receiverships as opposed to plenary proceedings under the Federal Rules [of Civil Procedure], is within the jurisdictional authority of a district court.” Such procedures “avoid formalities that would slow down the resolution of disputes. This promotes judicial efficiency and reduces litigation costs to the Receivership,” thereby preserving receivership assets for the benefit of creditors. 786 F.Supp. 170, 177-78.

¹ Contrary to the position taken by TMG, the Receiver’s request to the Court at the hearing on September 21, 2017 that the claim amounts for Claim No.’s 470 and 485 be modified was not an ex parte communication in violation of Georgia Bar Rule 3.5(b). The communications made in the hearing before the Court were not ex parte, as the holders of claim no.’s 470 and 485 are claimants in a receivership and not parties to the case. The receivership is a summary proceeding and there was no requirement for the Receiver to have any counsel for any of the claimants present at the hearing.

4. The request by the Receiver to modify the TMG claim is not, as alleged by TMG, a “zero sum game” between the Receiver and TMG. As the Receiver’s counsel indicated to the Court at the hearing, if the Court decides that TMG’s claim should be modified, the funds would remain in the Receivership estate to be ultimately distributed to claimants in an interim or final distribution at the conclusion of the case.²

5. TMG is not prejudiced as it has been provided ample opportunity to address the reasons set forth by the Receiver for modifying TMG’s claim amount.

6. Unless the Court determines to abandon the rising tide method, which the Receiver believes is unwarranted, the distribution to the other claimants will not affect TMG’s claim amount. The amount of TMG’s proposed original distribution amount is being held by the Receivership. If the Court determines the TMG’s claim amount should not be modified then the original amount will be distributed to TMG.

7. The discovery sought by TMG is not warranted. TMG has the opportunity to address the manner of the calculation of its “Allowed-Claim” and “Pre-

² The distribution amount of \$1,360,000 (which includes the original TMG distribution amount) leaves an ample amount to pay the Receiver’s forthcoming fee petition and costs anticipated to close out the Receivership, as may be approved by the Court.

Receivership Withdrawals” in its filings with the Court.

8. There is no basis for TMG to file suit against the Receiver for the proposed modification of its claim amount. TMG’s allegations related to the Receiver’s sale of the pieces of the Summit business have been previously addressed by the Court [Doc No. 85, p.3].

9. The Receiver agrees with the SEC’s position that the relief that TMG seeks would waste the assets for the Receivership Estate. TMG is not prejudiced by having its claim determined by the procedure and briefing schedule set forth by the Court.

10. A settlement conference is not needed. If TMG would like to make a settlement proposal, the Receiver will evaluate any such proposal and respond promptly to TMG.

Conclusion

For the foregoing reasons, the Receiver proposes that TMG’s Motion be denied in its entirety.

Respectfully submitted this 18th day of October 2017.

/s/ Robert D. Terry
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CERTIFICATE OF SERVICE

I certify that the foregoing was prepared with one of the font and point selections approved by the Court in LR 5.1B. I further certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of electronic filing to counsel of record.

This 18th day of October, 2017

/s/ Robert D. Terry
Robert D. Terry

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