UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	CIVIL ACTION FILE NO. 1:13-CV-01817-WSD
v.	)	
DETROIT MEMORIAL PARTNERS, LLC and MARK MORROW,	)	
Defendants.	)	

DMP RECEIVER'S RESPONSE TO OBJECTION FILED BY SUMMIT RECEIVER ROBERT D. TERRY TO MOTION TO APPROVE PLAN OF DISTRIBUTION

I. INTRODUCTION

Jason S. Alloy, the Receiver for Detroit Memorial Partners ("DMP"), files this response to Mr. Terry's Objection (the "Summit Objection"). For over a year and half, the DMP Receiver sought evidence from Mr. Terry to determine if the Summit entities' claims in the DMP Receivership have legitimacy. The DMP Receiver communicated with Mr. Terry in January and February 2015 and again in July 2016 about this issue. The DMP Receiver made it clear in those communications that unless Mr. Terry provided evidence in support of Summit's claims, the DMP Receiver was likely to deny the claims.

The reasons to deny the claims were communicated to Mr. Terry at the time, including that (1) DMP transferred a net positive amount to Alleca-controlled funds in the aggregate, and (2) the claims submitted by Mr. Terry appeared duplicative of claims filed by others in the DMP receivership. The DMP Receiver sought *evidence* from Mr. Terry that supports the Summit entities' position on these two points, so the DMP Receiver could consider that evidence before submitting a plan for distribution to the Court that could deny Mr. Terry's claims.

The DMP Receiver's recent request to Mr. Terry in July 2016 for evidence was the DMP Receiver's last effort before going through the significant effort of preparing a motion for a distribution and the related complex accounting. The communications by the DMP Receiver to Mr. Terry attempted to avoid the very thing that has now happened here – Mr. Terry filing an objection on the Summit entities' $7,000,000+ of claims – just before the DMP Receivership was about the "cross the finish line" and before Mr. Terry gave the DMP Receiver any evidence to consider whether such an objection would have merit.

Mr. Terry never provided the DMP Receiver with the evidence. Instead, after the July 2016 communications, Mr. Terry indicated that he would make a *proposal* to the DMP Receiver by August 1, 2016. Mr. Terry did not submit a proposal at that

time. Mr. Terry's objection now includes, for the first time, a game-changing proposal to combine claims against numerous entities in two different receiverships.

Mr. Terry's proposal is the equivalent of "hitting the reset button" and would set the DMP receivership, and likely the Summit receivership, back months if not years. Mr. Terry could have made the proposal to combine the receiverships years ago, if the proposal had merit. This Court appointed Mr. Terry as receiver in 2012 and Mr. Alloy as DMP receiver in 2013. It is way too late to go down a road of combining Summit and DMP receiverships. (Perhaps the Summit entities, for which Mr. Terry is receiver, should combine their claims, but that is a separate question from combining claims and receiverships of Summit and DMP.)

Putting aside the untimely nature of Mr. Terry's proposal, the proposal is also a bad idea. The two issues cited above related to Summit's claims in the DMP Receivership have still not been addressed by Mr. Terry. Combining receiverships does not resolve them either; it merely "punts" them to the DMP Receiver. In addition, combining receiverships would unduly prejudice investors who only invested in DMP without going through any Summit entity. Even presuming these problems can be adequately addressed (which the DMP Receiver doubts at this point), combining the receiverships would (i) undo a significant amount of work by the DMP Receiver, (ii) result in lengthy delays for the claimants in both receiverships

to get paid, and (iii) cause both receiverships to incur significant additional attorneys fees. The DMP claimants (and the Summit claimants) have waited long enough to be paid. They should not have to wait months if not years longer.

For the foregoing reasons, as set forth in more detail below, the Court should overrule Mr. Terry's objection.

II. BACKGROUND

The Summit receivership and DMP receivership have proceeded as separate receiverships for many years. The Court appointed Mr. Terry Receiver for the Summit entities on September 21, 2012. [*See* Case No. 12-cv-3261, Doc. 9, Order Appointing Receiver.]

In that Order, the Court ordered Mr. Terry to perform an accounting:

> IT IS FURTHER ORDERED that the Receiver shall perform an accounting of investor funds and other assets included in or under the control of the Receiver Estate, including, but not limited to, the Defendants' solicitation, receipt, disposition and use of investor monies and related proceeds that is outlined in the Commission's Complaint.

(Id. at 6.) An accounting could have been used to determine whether Summit's claims are duplicative of claims filed by other claimants in the DMP Receivership (one of the two outstanding issues cited above). It could have also been used to address the commingling issue and to see where DMP's money went after it was

transferred to different Summit entities. To the DMP Receiver's knowledge, however, no accounting of the Summit entities has been filed with the Court. Nor has Mr. Terry provided such an accounting to the DMP Receiver for the DMP Receiver to consider.

The DMP Receiver was appointed on November 22, 2013. [Doc. 51.] The DMP Receiver was ordered to perform an accounting for DMP. The DMP Receiver performed the accounting and filed a detailed accounting report with the Court as ordered on February 21, 2014 (within 90 days of the Order). [Doc. 73.] Mr. Terry has not disputed the accuracy of DMP's accounting, including in particular that DMP transferred more money to Alleca-controlled entities than Alleca-controlled entities transferred to DMP.

The DMP accounting showed that Alleca-controlled entities received at least a net of $8,468,488 from DMP, which is almost a million dollars more than the PCOF and ACDF claim is due to them from DMP. Specifically:

a. DMP wired $3,678,350 more to Summit Capital Holdings ("SCH") than SCH wired to DMP. (SCH only wired $2,531,050 to DMP and received $6,209,400 from DMP.)

b. DMP wired $4,590,138.64 to Summit Investment Fund, L.P. even though DMP received nothing from that fund.

c. DMP wired $200,000 to Summit Wealth Management, even though DMP received nothing from Summit Wealth Management.

(*See* Doc. 73-2.)

On November 13, 2014, Mr. Terry submitted claims in the DMP Receivership for Private Credit Opportunities Fund, LLC ("PCOF") and Asset Class Diversification Fund, LP ("ACDF"). (*See* Ex. A.) PCOF filed a claim for $7,308,124.21. ACDF filed a claim for $210,000. Notably, Mr. Terry's proof of claim form was submitted only for PCOF and ACDF and not other Summit entities for which he is receiver, and it did not suggest that combining receiverships or claims with DMP was appropriate.

From the get-go, the DMP Receiver had concerns about Summit's claims. Instead of waiting until proposing a plan of distribution that would potentially deny Summit's claims, the DMP Receiver quickly sought additional evidence from Mr. Terry about Summit's claims. Specifically, on January 22, 2015, the DMP Receiver wrote a letter to Mr. Terry. (*See* Ex. B.) The letter raises two significant issues: (1) that DMP paid more in the aggregate to Alleca-controlled entities and (2) that many investors in PCOF and ACDF likely filed individual claims in the DMP receivership, which would result in double recovery if their claims and the Summit entities' claims were accepted. The letter stated that the DMP Receiver was inclined to deny the Summit claims due to these concerns. The DMP Receiver communicated this to Mr. Terry to provide him with sufficient opportunity to

provide evidence to demonstrate that the Summit entities' claims should be accepted.

On February 11, 2015, Mr. Terry responded to the letter. (*See* Ex. C.) After receiving the letter, Mr. Terry and the DMP Receiver had additional communications. (*See* Ex. D.) In those communications, the DMP Receiver suggested sharing a list of the claimants in each receivership to determine overlap. This could have assisted the DMP Receiver with regard to the second issue listed above. Mr. Terry did not respond.

After DMP sold its 49% interest in Midwest Memorial Group, the DMP Receiver was in a position to start to wind up the DMP Receivership and distribute cash to DMP claimants. The DMP Receiver, however, recognized the Summit issues were still outstanding. Thus, on July 8, 2016, the DMP Receiver wrote a letter to Mr. Terry, following up on the prior communications. (*See* Ex. E.) The DMP Receiver wrote the letter to give Mr. Terry one more opportunity to provide evidence supporting the Summit entities' claims. Given the DMP Receiver sought to promptly wind up the DMP Receivership, the DMP Receiver requested a response by July 22, 2016.

In response to the letter, Mr. Terry had a call with Receiver on July 18, 2016. Mr. Terry communicated a proposal at a high level, which involved

combining claims of the receiverships. That proposal raised concerns with the DMP Receiver, so the DMP Receiver (1) asked for the proposal in writing so the DMP Receiver could carefully consider it, and (2) asked that the proposal address the DMP Receiver's main concerns, including in particular how to address DMP Claimants who had nothing to do with the Summit entities (*e.g.*, the DMP members), double counting of other claims, and that DMP sent more money in aggregate to Summit entities than DMP received. Mr. Terry stated he would submit a proposal by July 22, 2016.

Mr. Terry did not provide a proposal by that date. He emailed the Receiver on July 29, 2016, stating that he would send a proposal to the DMP Receiver on Monday, August 1, 2016. (*See* Ex. F.) Mr. Terry did not do so.

The first time the DMP Receiver saw a written proposal from Mr. Terry was in Mr. Terry's objection, which was filed after the DMP Receiver's significant efforts related to its motion to approve its distribution plan and only 11 days before the hearing on that motion.

ARGUMENT AND CITATION OF AUTHORITY

A. Response to "The DMP and Summit Funds are Inseparably Interrelated."

The DMP receiver acknowledges that there were transactions between DMP and Summit entities. That does not, however, mean that the DMP and Summit funds are therefore "inseparably interrelated."

The DMP Receiver has identified the monetary transactions between DMP and each Summit entity. In DMP's accounting, filed with this Court in February 2014, the DMP Receiver identified (i) who sent funds to DMP and received funds from DMP, (ii) the date funds were sent, and (iii) the amount of funds. [*See* Doc. 73-2 at 8, 9, 14-16.] It does not appear that Mr. Terry disputes DMP's accounting.

The DMP accounting shows that DMP transferred more money in aggregate to Alleca-controlled Summit entities than DMP received. (*See infra* at 5.) What Mr. Terry appears to argue, however, is that each Summit entity should be treated distinctly for purposes of the DMP receivership, and the funds should not be aggregated amongst Summit entities or netted out.

The DMP Receiver disagrees. First, the DMP Receiver has long had concerns that the Summit entities were inseparable and commingled the funds that DMP sent to them. The DMP Receiver sought evidence from Mr. Terry as to what happened to the DMP funds that were sent to Summit entities, so that the DMP

Receiver could determine if the Summit entities should be treated separately. Mr. Terry, however, has not provided that information.

Instead, it appears in his brief that Mr. Terry concedes that the Summit entities are inseparably interrelated and attempts to then group DMP with those entities. Mr. Terry should not be able to argue there is no separation between Summit entities, except when it comes to Summit's claims in the DMP Receivership.

The lack of an accounting of Summit funds is highly prejudicial to DMP. For example, it appears undisputed that DMP wired $4,590,138.64 to SIF the Summit Investment Fund, L.P. ("SIF"), an entity for which Mr. Terry is receiver. It further appears undisputed that DMP received no money in return from SIF. However, we do not know what happened to those funds. Mr. Terry's brief states that the funds sent by DMP to SIF were used for "SIF investment redemptions." (Br. at 8-9.)

That is not helpful information or for that matter evidence. We still do not know:

- Who received this money, including whether it is individuals or other Summit entities;
- Whether recipients of the money filed claims in either receivership;

- When the money was paid;
- Whether those funds directly or indirectly benefited PCOF; and
- Whether those funds directly or indirectly benefited ACDF.

With more information and evidence, we may be able to determine if the funds transferred from DMP to SIF could offset monies DMP would owe the Alleca-controlled entities if the entities are treated separately.

Without an accounting, however, we have no evidence to consider. We do not know if the money can even be tracked. If funds were commingled between Summit entities and cannot be tracked at this point, it may make the *Summit* entities inseparably interrelated. However, that does not make DMP and those Summit entities inseparably interrelated.

B. Response to "The Proposed Plan Would Result in Anomalous and Unfair Distributions to Many Claimants."

As an initial matter, without a Summit accounting and information about Summit's claims, it is difficult for the DMP Receiver to address the conclusions and statements in this section.

Based solely on Mr. Terry's brief, over 70% of claimants in the Summit receivership did not invest in DMP. (*See* Br. at 10). Specifically, the Summit Receivership received 375 claims of which 107 (28.5%) had investments in DMP.

(*Id*.) A majority of the "dollars" of Summit claims are also unrelated to DMP ($22,159,583 are unrelated to DMP versus $17,346,094 related to DMP).

Critically, the DMP Receiver has claims from "noteholders" in the DMP investment of approximately $20,000,000. This means that the DMP claims in the Summit Receivership are more than covered in the DMP receivership. **Thus, there should be little to no risk that someone who invested in DMP through Summit will be prejudiced if the receiverships are kept separate.**

In addition, keeping the receiverships separate will prevent persons who only invested in DMP without going through Summit from being unduly prejudiced. Specifically, we know the DMP members invested millions of dollars in DMP directly, including:

- Steve Kester who invested $1,206,459 directly with DMP;
- Aaron Shipper who invested $299,508 directly with DMP;
- David Shipper who invested $2,814,112 directly with DMP;
- Bruce Toll who invested $1,706,459 directly with DMP; and
- Doug Topkis who invested $568,820 directly with DMP.

The above five claimants invested a total of **$6,595,358** of money into DMP. Grouping the receiverships together would dilute claims of these DMP-only

investors who did not go through Summit. That would be a highly prejudicial outcome to those claimants.

For these reasons, there is no evidence that the proposed plan would be unfair to persons who invested in DMP. On the other hand, there is evidence that granting Mr. Terry's objection *would* be unfair to a subset of DMP investors.

C. Response to "Pooling of the Two Receivership Assets is Appropriate in this Case and Would Achieve the Most Equitable Result of the Largest Number of Investors."

Pooling the assets and combining receiverships is a simplistic answer to serious, unanswered questions involving the Summit entities. It does not address commingling amongst Summit entities. It does not address duplicative claims between the Summit and DMP receiverships. It also does not address, or treat fairly, DMP members who did not invest through Summit entities.

It also takes a narrow view of Summit's business. It treats the Summit entities as if their only business was with DMP. Of course, that was far from the case. DMP was only a very small part of the Summit entities dealings. While we cannot assess the totality of Summit's business without an accounting, we know the main business of Summit was not DMP. Indeed, most of the Summit Claimants do not have a DMP related claim.

Mr. Terry cites the *SEC v. Founding Partners* for the "good cause" test, and its three factors as support for pooling the receiverships. 2014 WL 2993780, *6 (M.D Fla. 2009). Those factors, however, do not support pooling here. We address them in turn.

Factor 1 – Unified scheme. There were some transactions with DMP and different Summit entities, but that does not mean there was a "unified scheme." While the SEC may be in the best position to opine on the schemes and differences between the two (as the DMP Receiver is not involved in the Summit lawsuit or receivership), the DMP Receiver understands that the frauds were separate in a few important respects.

Angelo Alleca appears to have perpetrated the Summit fraud by himself, with little or no help from Mark Morrow. Mr. Alleca lost millions of investor money being held by Summit entities, because he lost investor money in risky securities trading. On the other hand, Mr. Morrow primarily perpetrated the DMP fraud, controlled the DMP funds, and was the only person who knew the scheme involving DMP's business and operations.

The proceeds of each fraud were also held separately, as investor funds raised from the Summit fraud went to accounts controlled by Mr. Alleca and investor funds raised from the DMP fraud went to accounts controlled by Mr.

Morrow. As stated below in factor #3, any transfers between Summit entities and DMP have been identified and accounted for.

Factor 2 – Similarly situated investors. As explained above, the investors across the receiverships are not similarly situated. There are investors in the DMP receivership who invested millions of dollars in DMP who did not make their investments in DMP through a Summit entity. Those investors would be disproportionately harmed by pooling.[1] It also appears from Mr. Terry's brief that the Summit claimants who have DMP-specific claims filed claims in the DMP receivership, since the DMP has over $20,000,000 of DMP noteholder claims, while Summit has lower claims related to DMP. Thus, investors in DMP who invested through Summit will recover through the DMP receivership. They will not be harmed if the receiverships are not pooled.

Factor 3 – Funds were commingled among receivership entities. While there were some transfers between DMP and certain Summit entities, those are readily identifiable and have been accounted for in the DMP accounting. Most importantly, the transfers from DMP to Summit exceed transfers to the Summit

[1] The DMP Receiver raised this concern previously with Mr. Terry. Mr. Terry's proposal does not address the issue.

entities. Thus, if anything, the fund transfers between Summit and DMP *benefited* the Summit entities and thus the Summit receivership.

D. Response to "The Pooled Assets Should be Administered in the DMP Receivership."

The DMP Receiver respectfully states that he should not take over the Summit receivership. The Summit receivership has been ongoing for four years. The DMP receiver has had no involvement with the Summit entities and is not familiar with their internal workings. There is also no accounting of the Summit entities upon which the DMP Receiver may rely. Putting a new receiver in place will also add great additional cost at the expense of both receiverships. There is also potential for conflict between the Summit entities and their claimants and DMP, as evidenced by Mr. Terry's objection and the DMP Receiver's opposition to the objection.

E. Response to "In the Absence of Pooling, The Summit Receiver's Claims Should be Allowed."

Mr. Terry argues that the funds Summit entities received from DMP should not be aggregated because "some of the money was used for Alleca's own purposes, while some of it was used to re-pay investors." Specifically, he states that Summit Capital Holdings was merely a conduit to transfer funds. These are conclusory statements with no supporting *evidence* in the record. There is no

accounting. There is no evidence of how much money may have been used for Alleca's own purposes or where that money went. There is no evidence of how much was used to re-pay investors. Bottom line: There continues to be no evidentiary basis upon which to allow the Summit receiver's claims.

With regard to the assignment of any TD Ameritrade recovery by DMP claimants, that is likely a non-issue. The case has already been dismissed once and it appears unlikely, at least as of now, that there will be any recovery to be distributed or assigned. In any event, the DMP Receiver does not have an issue with the concept of DMP only receiving funds that are recovered that are related to DMP.

III. CONCLUSION

For the foregoing reasons, the objection by Mr. Terry on behalf of the Summit Receivership should be overruled.

Respectfully submitted this 17th day of October, 2016.

/s/ Jason S. Alloy
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Appointed Receiver for Defendant
Detroit Memorial Partners, LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONSE BY DETROIT MEMORIAL PARTNERS LLC RECEIVER TO OBJECTION FILED BY RECEIVER ROBERT D. TERRY TO MOTION TO APPROVE PLAN OF DISTRIBUTION** has been prepared with one of the font and point selections approved by the Court, and that it has been filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record. The foregoing was also personally served by email and U.S. Mail on Defendant Mark Morrow at his last known addresses.

Mark Morrow
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This 17th day of October, 2016.

/s/ Jason S. Alloy
Jason S. Alloy