

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION :
Plaintiff, :
 : 00 Civ 2685 (MGC)
v. :
 :
ENTERPRISES SOLUTIONS, INC. :
HERBERT S. CANNON :
DR. JOHN A. SOLOMON, :
 :
Defendants, :
And :
 :
ROWEN HOUSE, LTD, :
MONTVILLE, LTD., :
 :
Relief Defendants. :
 :

ORDER OVERRULING OBJECTION TO DISTRIBUTION PLAN

This cause comes on to be heard on the request of Phillip S. Stenger (the “RECEIVER”) in his status as Receiver pursuant to the “*Order for Appointment of Receiver and Administration of Fund*” entered by this Court on July 23, 2003 (the “APPOINTING ORDER”), by and through his attorneys, Stenger & Stenger, P.C., for an order of this Court overruling the objection of POTENTIALLY ELIGIBLE CLAIMANT Richard Jaszczak (Claim Number ESI 062) to the Plan of Distribution for the distribution of the FUND (the “DISTRIBUTION PLAN”) adopted by this Court on May 5, 2005.¹

BACKGROUND

The general background of this matter is set forth in this Court’s “*Opinion*” dated June 6, 2001, and its “*Order Approving Plan of Distribution and Providing for*

¹ Terms defined in the DISTRIBUTION PLAN shall have the same meanings when used herein as when used in the plan.

Implementation Thereof" dated May 5, 2005 (the "**DISTRIBUTION PLAN APPROVAL ORDER**").

The DISTRIBUTION PLAN and the DISTRIBUTION PLAN APPROVAL ORDER each provided POTENTIALLY ELIGIBLE CLAIMANTS the right to object to the provisions of the DISTRIBUTION PLAN ("**DISTRIBUTION PLAN OBJECTIONS**"). DISTRIBUTION PLAN, ¶II.(iv); DISTRIBUTION PLAN APPROVAL ORDER, ¶9.c, and Ordering Paragraphs C)-D). POTENTIALLY ELIGIBLE CLAIMANTS were notified of their rights by mail, publication and Internet posting; and the right to object to the DISTRIBUTION PLAN was set out in a DISTRIBUTION PLAN NOTICE and SUMMARIZING LETTER. DISTRIBUTION PLAN, ¶¶II.(i)-(ii); DISTRIBUTION PLAN APPROVAL ORDER, ¶9.c, Ordering Paragraph B), and Exhibits C and D.

Richard Jaszczak filed the sole DISTRIBUTION PLAN OBJECTION (the "**JASZCZAK OBJECTION**").² In his objection, Mr. Jaszczak argued that the "RELEVANT TIME PERIOD" established by the DISTRIBUTION PLAN should be expanded from a March 1, 1999 commencement date to a January 1, 1999 commencement date.³

² The JASZCZAK OBJECTION is attached as **Exhibit A** and incorporated by reference.

Mr. Jaszczak also filed a PROOF OF CLAIM FORM, seeking to qualify as an ELIGIBLE CLAIMANT. This claim was initially rejected by the RECEIVER on the basis that Mr. Jaszczak had no NET STOCK LOSS. However, following a request for reconsideration, this request was granted in part by the RECEIVER in his FINAL DETERMINATION NOTICE dated October 12, 2005; the reconsideration did not, however, result in Mr. Jaszczak being given any credit for his pre-March 1, 1999 stock purchases. Mr. Jaszczak did not appeal that FINAL DETERMINATION NOTICE.

³ Under the DISTRIBUTION PLAN, only ENTERPRISES stock purchased during the RELEVANT TIME PERIOD can be included in the calculation of a POTENTIALLY ELIGIBLE CLAIMANT'S "NET STOCK LOSS." (Distributions are to be shared among ELIGIBLE CLAIMANTS in the ratio of their APPROVED NET STOCK LOSSES and Mr. Jaszczak had substantial purchases of ENTERPRISES stock in January and February, 1999: see Exhibit A to Mr. Jaszczak's PROOF OF CLAIM FORM attached as **Exhibit B** to this Order and incorporated herein by reference.)

On October 10, 2005, the RECEIVER filed his “*Receiver’s Response to Objection to Distribution Plan*” (the “**RECEIVER’S RESPONSE**”), opposing the requested change.⁴ The RECEIVER has advised the Court that the NET STOCK LOSSES of POTENTIALLY ELIGIBLE CLAIMANTS that have been approved by RECEIVER significantly exceed the amount available for distribution to ELIGIBLE CLAIMANTS.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In determining relief in an equity receivership, this Court has “broad powers and wide discretion.” *SEC v. Elliott*, 953 F.2d 1560, 1566-67 (11th Cir. 1992). See also *SEC v. Forex Asset Management LLC*, 242 F.3d 325, 331 (5th Cir. 2001); *SEC v. Wang*, 944 F.2d 80, 83-88 (2nd Cir. 1991) (“*Wang*”); *SEC v. Hardy*, 803 F.2d 1034, 1037-39 (9th Cir. 1986). As a part of that discretion, payments may be made to certain groups of claimants and denied to others. *Wang*, 944 F.2d at 85-88; *SEC v. Levine*, 881 F.2d 1165, 1182 (2d Cir. 1989); see also *SEC v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 657, 660-61 (6th Cir. 2001). The DISTRIBUTION PLAN adopted by this Court, and the RELEVANT TIME PERIOD set by the plan, clearly fall within that discretion.

In his objection, Mr. Jaszczak states:

“I maintain that the stock brokers and agents involved at Global Financial, together with Herbert S. Canon [*sic*] conspired from well before these dates [March 1, 1999 through April 30, 2000] to defraud purchasers of the stock.”

The JASZCZAK OBJECTION then discusses the results of an NASD arbitration that lead to a 2002 “**Finding of Fact**” which, as quoted by Mr. Jaszczak, found that broker Global Financial and two of its agents “were guilty of fraudulent misrepresentation and

⁴ The RECEIVER’S RESPONSE is attached as **Exhibit C** and incorporated by reference.

theft in carrying out a scheme to ‘pump and dump’ securities in Claimants accounts.”⁵ Mr. Jaszczak then asserts that this finding of fact included shares purchased by him in January and February of 1999, since, Mr. Jaszczak further asserts, “The NASD Dispute Resolution board found that fraud was being committed with shares that were purchased during this revised period [*i.e.*, January 1, 1999 to April 30, 2000].”

Neither ENTERPRISES, CANNON nor Plaintiff Securities & Exchange Commission (the “SEC”) appears to have been a party to the arbitration, nor has Mr. Jaszczak provided the RECEIVER or this Court copies of any of the arbitration pleadings, a transcript of the proceedings or a copy of the arbitrators’ decision.

The “RELEVANT TIME PERIOD” was selected at the recommendation of the RECEIVER, in consultation with the SEC, to commence on March 1, 1999, since this was the date on which the extreme rise in the stock price of ENTERPRISES began.⁶ While earlier or later dates could have been selected, the spike in ENTERPRISES’ stock price gives a sound reason for the selection of that date. Thus, even assuming that Mr. Jaszczak’s assertions concerning the earlier commencement of the fraud are correct – as well they might be – the Court sees no reason to select some earlier date when there is a valid reason for selection of the March 1, 1999 commencement date. The Court

⁵ GLOBAL and its agents are “EXCLUDED PARTIES” who are not entitled to share in distributions of the FUND. DISTRIBUTION PLAN, ¶¶L.(xiv), (xvi), (xix), (xxviii).

⁶ Exhibit A to Mr. Jaszczak’s own PROOF OF CLAIM FORM (EX. B to this Order), illustrates this increase: Mr. Jaszczak’s purchases of ENTERPRISES stock in January and February, 1999 were at prices between \$7.50 and \$7.75 per share, while the per-share cost increased to \$12.25 in April, 1999 and \$15.00 in June, 1999.

considers it interesting to note that no other POTENTIALLY ELIGIBLE CLAIMANT has objected to the March 1, 1999 commencement date for the RELEVANT TIME PERIOD.⁷

An analogous situation was before the trial court and the Court of Appeals in *Wang*, 944 F.2d 80 (2nd Cir. 1991). In that case, the Second Circuit was called upon to determine the reasonableness of a distribution plan “to be proposed by the Commission and approved by the Court.”⁸ The plan recommended by the Commission and approved by the trial court drew dividing lines between various types of claimants.

In affirming the trial court, the Court of Appeals first held that “once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end.” 944 F.2d at 85. In sustaining the distinctions drawn by the plan among various classes of claimants, the Court of Appeals concluded:

“This kind of line-drawing--which inevitably leaves out some potential claimants--is, unless commanded otherwise by the terms of a consent decree, appropriately left to the experience and expertise of the SEC in the first instance.” 944 F.2d at 88.

This Court finds that the selection of a RELEVANT TIME PERIOD commencement date that reflects the beginning of the extreme rise in the ENTERPRISES stock price, as presently provided in the DISTRIBUTION PLAN, is fair and reasonable. Accordingly, the JASZCZAK OBJECTION is overruled.

⁷ The RECEIVER has advised the Court that 24 POTENTIALLY ELIGIBLE CLAIMANTS initially filed claims involving 29 purchases of stock prior to the commencement of the RELEVANT TIME PERIOD, which purchases were accordingly excluded by the RECEIVER in determining the claimants’ correct NET STOCK LOSSES. None of these claimants, other than Mr. Jaszczak, filed an objection to the DISTRIBUTION PLAN contesting the commencement date of the RELEVANT TIME PERIOD, or appealed the exclusion of those purchases from the calculation of the claimant’s NET STOCK LOSS.

⁸ In the present case, the plan was to be proposed by the RECEIVER, following consultation with the SEC. APPOINTING ORDER, ¶4.

WHEREFORE, IT IS HEREBY ORDERED AND DIRECTED that:

- A) The JASZCZAK OBJECTION is overruled.
- B) The Court finding no just cause for delay, this Order is hereby entered as a final, appealable order.

SO ORDERED this 29th day of March, 2006.

Miriam Goldman Cedarbaum
HONORABLE MIRIAM GOLDMAN CEDARBAUM
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK