

STENGER & STENGER

A PROFESSIONAL LAW CORPORATION

PHILLIP S. STENGER
LEWIS G. MOSBURG, JR.*
KAY GRIFFITH HAMMOND
SARA E.D. FAZIO
HEATHER A. ADAMS**
SCOTT A. NOTO
JOSEPH S. SCHAEFER***

OF COUNSEL
LEE T. SILVER
DOUGLAS W. VAN ESSEN

4095 EMBASSY DRIVE, S.E.
SUITE A
GRAND RAPIDS, MICHIGAN 49546

WEB SITE: stengerlaw.com

TELEPHONE (616) 940-1190

FACSIMILE (616) 940-1192

INDIANA OFFICE
5514 NORTH TACOMA AVENUE
SUITE 105
INDIANAPOLIS, INDIANA 49220
TELEPHONE (317) 536-6196
FACSIMILE (317) 536-6211

*ALSO ADMITTED IN OKLAHOMA

**ALSO ADMITTED IN WISCONSIN

***ONLY ADMITTED IN INDIANA

PLEASE REPLY TO GRAND RAPIDS

February 17, 2006

VIA FEDERAL EXPRESS

The Honorable Miriam Goldman Cedarbaum
United States District Court
Southern District of New York
United States Courthouse, Suite 1330
500 Pearl Street
New York, NY 10007-1312

Re: *Securities and Exchange Commission v. Enterprises Solutions, Inc., et al.*
Case No. 00-cv-2685 (MGC) (S.D.N.Y.)

Dear Judge Cedarbaum:

By “*Order for Appointment of Receiver and Administration of Fund*” dated July 21, 2003 (the “APPOINTING ORDER”),¹ your honor appointed the undersigned as “Receiver” to effectuate the distribution of monies disgorged in the captioned securities fraud case (the “FUND”). Pursuant to the APPOINTING ORDER, the Receiver diligently pursued identifying potential claimants to the FUND; and, in consultation with the Plaintiff Securities and Exchange Commission (the “SEC”), developed a plan of distribution for the FUND (the “DISTRIBUTION PLAN”)² that was approved by this Court by its “*Order Approving Plan of Distribution and Providing for Implementation Thereof*” dated May 5, 2005 (the “PLAN ORDER”).³

The PLAN ORDER established a detailed procedure through which “POTENTIALLY ELIGIBLE CLAIMANTS” could present their claims against the FUND. Some 131 claims were filed with and processed by the Receiver. Only three matters remain to be resolved before the Receiver can present the Court with a request for distribution of the FUND:

1. Resolution of the Objection of Richard Jaszczak to the DISTRIBUTION PLAN itself;

¹ The APPOINTING ORDER is included as **Exhibit A** in the “EXHIBITS BOOK” being separately provided to the Court.

² The DISTRIBUTION PLAN is included as **Exhibit B** in the EXHIBITS BOOK.

³ The PLAN ORDER is included as **Exhibit C** in the EXHIBITS BOOK.

2. Resolution of the claims of putative claimants Kenneth Martin and his law firm, Martin & Associates.
3. Confirmation of the Receiver's action concerning the claim of putative claimant David Shor *et al.*

Jaszczak Objection

The DISTRIBUTION PLAN and the PLAN ORDER gave potential claimants the right to file objections to the proposed DISTRIBUTION PLAN. Claimant Richard Jaszczak filed the only such objection,⁴ arguing that the "Relevant Time Period" established by the DISTRIBUTION PLAN should be expanded from a commencement date of March 1, 1999, to a commencement date of January 1, 1999.⁵

Mr. Jaszczak's objection argued that the ENTERPRISES fraud commenced at an earlier date.⁶ However, as stated in the "*Receiver's Response to Objection to Distribution Plan*" filed by the Receiver with this Court,⁷ the commencement date of March 1, 1999 had been selected "since it was then that the extreme rise in the ENTERPRISES stock price began."⁸

This Court has not as yet ruled on Mr. Jaszczak's objection. The Receiver respectfully request that such a ruling be made. It is the Receiver's recommendation, for the reasons stated in his Receiver's Response, that Mr. Jaszczak's objection to the DISTRIBUTION PLAN be denied. A copy of a proposed Order, with a more complete discussion of the bases on which Mr. Jaszczak's objection should be denied, is attached.⁹

Martin Claims

Kenneth A. Martin and his law firm, Martin & Associates, have filed Proofs of Claim asserting Net Stock Losses of \$17,635 and \$275,009, respectively. Martin and his firm are former corporate counsel for ENTERPRISES.

⁴ Mr. Jaszczak's objection is included as **Exhibit D** in the EXHIBITS BOOK.

⁵ "Eligible Claimants" will share in distributions in the ratio of their "Approved Net Stock Losses." However, under the DISTRIBUTION PLAN, the calculation of "Net Stock Loss" only includes purchases made during the "Relevant Time Period."

⁶ Mr. Jaszczak had made substantial purchases of stock during January and February of 1999.

As provided in the DISTRIBUTION PLAN, Mr. Jaszczak also sought redetermination of his claim as initially determined by the Receiver. However, Mr. Jaszczak did not appeal the Receiver's final determination of his claim.

⁷ The Receiver's response is included as **Exhibit E** in the EXHIBITS BOOK.

⁸ This Court has tremendous flexibility and discretion in crafting a plan of distribution for disgorged funds and may include certain classes of investors and exclude others. *SEC v. Wang*, 944 F.2d 80, 83-88 (2nd Cir. 1991).

The response also pointed out that no other purchasers of ENTERPRISES stock had objected to the March 1, 1999 commencement date and that there were due process issues in selecting the date requested by Mr. Jaszczak. See the *Receiver's Response to Objection to Distribution Plan* in the EXHIBITS BOOK (EX. E).

⁹ The proposed Order is included as **Exhibit F** in the EXHIBITS BOOK. An additional copy has also been attached to this letter.

On October 12, 2005, the Receiver issued his Receiver's Determinations denying the claims of both Martin and Martin & Associates on the basis that the claimants were entities "who knew or with the exercise of reasonable diligence could have known of the fraudulent nature of the scheme." As such, claimants would be characterized as "EXCLUDED PARTIES" and thus, under the terms of the DISTRIBUTION PLAN, excluded from sharing in the distribution of the FUND.

On November 1, 2005, both Martin and Martin & Associates requested that the Receiver reconsider his Determinations, as authorized by the DISTRIBUTION PLAN. The Receiver on February 15, 2006 issued his Receiver's Final Determinations, reiterating his initial determinations.

Under the Distribution Plan, Martin and Martin & Associates have twenty days in which to appeal the Receiver's Final Determinations to the Court.

Shor Claim

David H. Shor cooperated with the SEC in providing files that were of importance in establishing the fraudulent nature of the Enterprises scheme and has inquired of the Receiver in the hopes of sharing in distributions from the FUND.

On September 1, 2005, the Receiver notified Mr. Shor that he had not filed a Proof of Claim Form with the Receiver as required by the DISTRIBUTION PLAN; the Receiver concurrently provided the appropriate form to Mr. Shor.

The Proof of Claim filed by Mr. Shor on behalf of himself and his wife, asserting a Net Stock Loss of \$129,000, not only was improperly documented, but also showed that the investments were not made during the Relevant Time Period.¹⁰ Furthermore, the alleged purchase price paid for the shares was only \$1.00 per share; "Net Stock Loss," under the DISTRIBUTION PLAN, is the amount paid *in excess of \$2.00 per share*. Accordingly, on October 25, 2005, the Receiver issued his Receiver's Determination denying the Shor claim.¹¹

Mr. Shor did not contest the determination.¹²

To avoid Mr. Shor later arguing that his claim was not fully adjudicated, the Receiver requests that the Court issue an order ruling that: (i) Mr. Shor has waived any

¹⁰ Three of the investments were made in 1997; no date is given for the fourth investment.

¹¹ A copy of the Receiver's Determination concerning the Shor claim is included as Exhibit G in the EXHIBITS BOOK.

¹² Under the DISTRIBUTION PLAN, Mr. Shor had 20 days from October 25, 2005 in which to request redetermination; this was clearly spelled out not only in the DISTRIBUTION PLAN but also in the Receiver's Determination mailed to Mr. Shor. As provided in the DISTRIBUTION PLAN, "A failure to properly and timely seek reconsideration of a RECEIVER'S DETERMINATION as reflected in the relevant DETERMINATION NOTICE shall permanently waive the POTENTIALLY ELIGIBLE CLAIMANT'S right to object to or contest the RECEIVER'S DETERMINATION."

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right to object to the Receiver's Determination by failing to seek a redetermination as provided in the DISTRIBUTION PLAN; and that (ii) the claim is further denied on the merits, for the reasons set forth in the Receiver's Determination.¹³

* * * * *

As soon as these three matters are resolved, the Receiver will be in a position to petition the Court for authority to distribute the FUND among the ELIGIBLE CLAIMANTS.

We are separately submitting our compensation and expense reimbursement request, which has been reviewed by the SEC; the SEC has indicated that it has no objection thereto.


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¹³ A proposed Order, with a more complete discussion of the bases on which the Shor claim should be denied, is included as **Exhibit H** in the EXHIBITS BOOK. An additional copy has also been attached to this letter.

Should you have any questions concerning this matter or require additional information, please do not hesitate to contact me. Thank you for your time and consideration of this matter.

Respectfully submitted,

STENGER & STENGER, P.C.



Phillip S. Stenger

Attachments:

Proposed Order (Jaszczak)

Proposed Order (Shor)

EXHIBITS BOOK:

Exhibit A: APPOINTING ORDER
Exhibit B: DISTRIBUTION PLAN
Exhibit C: PLAN ORDER
Exhibit D: Jaszczak Objection
Exhibit E: Receiver's Response to Objection (Jaszczak)
Exhibit F: Proposed Order (Jaszczak)
Exhibit G: Receiver's Determination (Shor)
Exhibit H: Proposed Order (Shor)

Copy to:

Service List (without EXHIBITS BOOK) ¹⁴	Martin & Associates
Charles Stodghill	David H. Shor
Richard Jaszczak	Judi Shor
Kenneth A. Martin	

¹⁴ The Receiver will provide a copy of the EXHIBITS BOOK, or any specific exhibit, to any person so requesting. The SEC has been provided a copy of the EXHIBITS BOOK, as have Messrs Jaszczak, Martin, and Shor, Martin & Associates and Judi Shor.