

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

W FINANCIAL GROUP, LLC, *et al.*,

Defendants.

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Civil Action No. 3:08-CV-0499-N

ORDER

This Order addresses Vernon T. Jones’s (the “WFG receiver”) emergency motion to approve a compromise with the bankruptcy estates of various entities (the “A&O entities”) [297]. The Defendants did not respond to the Receiver’s motion. Because the Court finds that the compromise is fair and equitable and in the best interest of the receivership, it grants the motion.¹

I. THE STATUS OF THE CASE AND THE COMPROMISE

This case arises out of the Defendants’ fraudulent offer and sale of over \$14 million in “secured debt obligations” to 182 investors in W Financial Group, LLC (“WFG”).² The

¹The Court denies as moot the WFG receiver’s motion to expedite [298].

²After a hearing, this Court granted summary judgment in favor of the Securities Exchange Commission (the “Commission”) and held that the Commission was entitled to a judgment directing the Defendants to pay disgorgement of profits, prejudgment interest, and civil penalties. Order of Oct. 19, 2009 [296] at 1-3. The Court has yet to issue a final judgment in accordance with its summary judgment order.

court-appointed receiver in this case is currently engaged in the process of identifying, securing, recovering, maintaining, preserving, and liquidating the receivership assets of the WFG estate for the benefit of its investors. Order of Nov. 14, 2008 [131] at 1-2. As a part of this process, the WFG receiver seeks approval of a compromise that would release a broad swath of claims that the A&O entities assert against the WFG receivership estate.

One of the defendants in this case, Adley Abdulwahab (“A. Abdulwahab”), allegedly defrauded an additional group of investors (the “A&O investors”) in a complex life settlement scheme. The A&O entities are now in bankruptcy proceedings in the United States Bankruptcy Court for the Northern District of Illinois, Chicago Division. As a part of this proceeding, the chapter 11 trustee (the “A&O trustee”) informed the WFG Receiver that A. Abdulwahab allegedly used funds obtained from the A&O investors to acquire some of the assets currently held by the WFG receivership. Accordingly, the A&O investors assert various claims of ownership to certain assets in the WFG receivership.

The WFG receiver and the A&O trustee reached a compromise to settle these claims. Upon approval from this Court and the Illinois bankruptcy court, the compromise would require the WFG receiver to: (a) distribute \$2 million of funds on hand to the WFG investors; (b) reserve \$365,000 of funds on hand to be paid to the A&O Trustee; (c) pay the A&O trustee 35% of any funds received from the offshore account currently frozen at HSBC/Jersey in Jersey, Channel Islands; (d) pay the A&O trustee 35% of the net sale proceeds from the sale of the home at 5606 White Birch Run in Spring, Texas; (e) allow the A&O trustee to assert claims against the WFG receivership of up to 20% of the value of any future assets it

collects or recovers, excluding various specified assets; and (f) enter into a global mutual release of any and all claims between the parties. The receiver's motion to approve the compromise provides the details and terms of the agreement in full. *See* Receiver's Mot. to Approve Compromise [297].

II. THE COMPROMISE IS FAIR AND EQUITABLE AND IN THE BEST INTEREST OF THE RECEIVERSHIP

Approval of a compromise settlement lies within the discretion of the trial court. *See Matter of Foster Mortgage Corp.*, 68 F.3d 914, 917 (5th Cir. 1995) (citing *In re Jackson Brewing Co.*, 624 F.2d 599, 602-03 (5th Cir. 1980)). In assessing whether the compromise is in the best interest of the receivership estate, the Court looks to three factors: "(1) the probability of success in litigation, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and (3) all other factors bearing on the wisdom of the compromise." *Jackson Brewing*, 624 F.2d at 602.

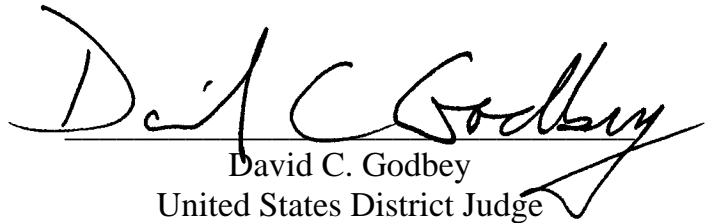
In this case, all three factors point to approval of the WFG receiver's compromise with the A&O trustee. First, the A&O investors' claims pose a risk of loss to the WFG investors if the controversy goes to trial. *See* Receiver's Mot. to Approve Compromise at 8. Because A. Abdulwahab allegedly used funds obtained from the A&O investors to purchase assets now in the WFG receivership, the A&O trustee may be able to trace and recover A&O funds, thereby reducing the recovery of the WFG investors. Second, litigation of the controversy would be relatively complex, particularly considering the tracing and offset issues in play. *See id.* at 8. Finally, numerous other considerations favor settlement. The compromise will

spare the WFG receivership the significant costs associated with discovery, expert and fact witnesses and trial preparation. Moreover, settlement of the A&O investors' claims will allow for prompt and efficient administration of the receivership, allowing the receiver to distribute funds and resolve the case in a timely manner. Because all of the *Jackson Brewing* factors favor approval of the compromise, the Court grants the WFG receiver's motion.

CONCLUSION

For the reasons provided above, the Court grants the WFG receiver's motion to approve a compromise with the A&O entities. The WFG receiver has authority to execute all documents necessary and to take all other actions required in order to consummate the terms of the compromise.

Signed January 22, 2010.


David C. Godbey
United States District Judge