

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

V.

**ABC VIATICALS, INC.,
C. KEITH LAMONDA,
and JESSE W. LAMONDA, JR.**

Defendant.

Civil Action No. 3:06-CV-2136-P

ORDER

Pursuant to the District Court's *Order of Reference*, filed July 9, 2008, *Receiver's Motion to Sell all Insurance Policies and Approve Purchase and Sale Agreement and Request for Evidentiary Hearing*, filed June 30, 2008, has been referred to this Court for hearing, if necessary, and for determination.¹

The Court conducted an evidentiary hearing on September 23-24, 2008. After consideration of the relevant filings, testimony, evidence, oral argument, post-hearing proposed findings of fact and conclusions of law, and applicable law, the Court now finds and concludes as follows:

II. FINDINGS OF FACT

1. This action was filed by the Securities and Exchange Commission (“SEC”) on November 17, 2006, against ABC Viaticals, Inc., C. Keith LaMonda, Jesse W. LaMonda, Jr., and related and affiliated entities. The SEC contended that the LaMonda brothers had engaged in a scheme to fraudulently offer and sell securities through their life settlement company, Accelerated Benefits Corporation (“Accelerated Benefits”) in Florida, and that after the Florida Department of Insurance revoked Accelerated Benefit’s license to operate as a viatical settlement provider, they moved their operation to Texas and continued to sell

¹No party contends that this motion is dispositive of the case or that the Magistrate Judge must issue a recommendation rather than make a determination concerning the issues in this case.

investments under the name of ABC Viaticals, Inc. ("ABC"). The SEC moved for appointment of a receiver and a preliminary injunction against the defendants.

2. By Orders dated November 17, 2006, and December 1, 2006, this Court appointed Michael J. Quilling as the Receiver for ABC Viaticals, Inc. and various related and affiliated entities, including various trusts (collectively, "ABC") [Dkt. Nos. 8 and 19] and charged the Receiver with the duties and obligations to hold, manage and dispose of various assets ("Receivership").
3. Quilling has been an attorney since 1982 and is licensed to practice law in the State of Texas. He is AB rated and board certified in business bankruptcy law and in civil trial. He has 26 years of experience as a receiver, and has primarily acted as a receiver for the past ten years. His practice is international, and he has been appointed in numerous fraud cases. He has prior experience as a receiver in viatical cases. Since 2003, almost 90 percent of his receivership practice has been dedicated to viatical businesses.
4. ABC is the successor entity to Accelerated Benefits Corporation, which operated out of Florida under the direction of the LaMondas. Florida regulators shut down Accelerated Benefits and instituted criminal proceedings against the LaMondas and trustee of the complany. Subsequently, the LaMondas continued their business in Texas under the name ABC.
5. In the viatical industry, brokers buy life insurance policies from the insureds. The brokers then sell the policies to viatical companies or life settlement companies for a profit.
6. ABC would buy policies from brokers. It then sold fractionalized shares in the policies to over 4000 investors worldwide. ABC would pay commissions to the agents who recruited investors.
7. ABC represented to investors that it would escrow funds with a third party to pay premiums on the policies during the estimated life expectancy of the insured or longer, and that investors would obtain returns of 20 to 150 percent. ABC also represented that it had purchased bonds from two bonding companies that would pay the face value of the policy if the insured did not die by the projected date of death.
8. At the time the Receiver was appointed, among ABC's assets were 55 insurance policies with a combined death benefit face value of \$236,240,033.00 ("Policies").
9. The Receiver filed an unopposed motion to appoint Steven A. Harr as Examiner based on the approximately 4000 domestic and foreign investors in ABC, and the Court granted the motion on November 30, 2006. The Examiner was to monitor the activities of the Receiver, report to the Court, communicate with investors, and voice their collective interests in response to the Receiver's actions.
10. With the approval of the Court, the Receiver instituted a claims procedure plan with an approved form. The claims forms and instructions were translated into Chinese and

Spanish and posted on the Receiver's website. As of September 17, 2008, there were 3,867 active claims. These claims total in excess of \$119 million.

11. The Receiver conducted an analysis of the use and allocation of investors funds raised by ABC. Of the money raised, \$60 million was used to buy the Policies, \$16 million was used to pay premiums, \$ 7 million was used to pay for the bonds, \$30 million was paid to agents who recruited investors, almost \$1 million was paid to the trustees, and \$19 million was diverted for the LaMondas' personal use. The use of the money was inconsistent with the representations to investors. In particular, the amount to be paid or set aside for premiums was approximately \$ 19 million less than what was represented.
12. The Receiver's investigation revealed that ABC had been paying the premiums on the Policies with new investor funds, and that it only had approximately \$4.9 million in cash at the time of his appointment. On December 1, 2006, the Court granted the Receiver's unopposed motions to provide him with authority to enter into an agreement to obtain bank financing, to pool the receivership assets, and to use the pooled assets for the benefit of the receivership. The Receiver ultimately obtained a line of credit with a bank, which he used to pay the premiums on the Policies. The \$4.9 million dollars in the receivership estate has long since been exhausted.
13. In discharge of his duties, the Receiver has conducted an investigation of other assets that could be used to satisfy the claims of the investors.
14. With the approval of the Court, the Receiver entered into a settlement agreement with the LaMondas whereby the receivership obtained several physical assets which had been purchased with investor funds. The Receiver has liquidated those assets for the benefit of the receivership. The LaMondas agreed not to contest any action taken by the Receiver to return funds collected in the case back to the investors.
15. Keith and Jess LaMonda agreed to the entry of a permanent injunction against them in this case.
16. Keith and Jess LaMonda are both currently serving federal sentences of 240 and 160 months, respectively, in connection with their federal convictions in Florida arising out of their dealings with Accelerated Benefits, the predecessor of ABC. Based on these convictions, the government will not pursue further legal action against them in connection with ABC.
17. The Receiver has also filed suit against the trustee, Christopher Erwin, and his firm, Erwin & Johnson, on behalf of the receivership estate.
18. After meeting with the agents, the Receiver determined that they were also victims of fraud and should not be sued to recover the commissions paid to them, with the exception of one. Suit was filed against Donald Kaplan.
19. The Receiver investigated the two bonding companies which the LaMondas represented

would pay the investors if the life policies did not mature as estimated.

20. International Fidelity and Surety turned out to be a post office box on the island of Vanuatu and an accountant's office. The money to IFS was converted by the principals, who have now been indicted in California. The Receiver filed a lawsuit against IFS and obtained default judgments against a number of the principals' entities. The Receiver recovered \$3.2 million dollars for the receivership, and there are no further assets to be pursued.
21. The second company, Albatross, appears to only exist on a website. The Italian attorney who allegedly wrote a legal opinion regarding the legitimacy of the company claims the letter is a forgery. The alleged owner of the company has 14 prior convictions in Italy. The Receiver is in the process of filing legal proceedings in London to try to pursue recovery against the attorney's firm.
22. On February 1, 2008, the Receiver filed an Unopposed Motion to Solicit Bids for Purchase of Policies and Approve Bid Procedures ("Bid Motion") [Dkt. No. 114] which the Court approved by an Order dated February 4, 2008 ("Bid Order") [Dkt. No. 115]. This was done in order to establish bid procedures to determine the value of the portfolio. The Bid Motion set forth specific bid procedures to be established, including a requirement that potential purchasers sign a confidentiality agreement prior to receiving access to a website with due diligence materials; conditions for the submission of sealed bids on a cash basis; a determination of the highest bid and its acceptability; submission of a contract to purchase to the Court; a hearing where losing bidders and other parties could make higher bids during an auction. The approved procedure did not provide for more than one auction or a bifurcated auction procedure.
23. Pursuant to the Bid Order, the Receiver provided due diligence materials via a secure website to potential purchasers and solicited sealed bids to be delivered on or before April 30, 2008.
24. Although a number of entities contacted the Receiver to obtain access to the website, only three parties made written bids for the entire portfolio of Policies. The highest bid was for \$27,100,000.00 by Silver Point Capital Fund, L.P. ("Silver Point"). Despite the Receiver's invitation for bidders to only bid on portions of the Policies, none did so.
25. The Receiver notified Silver Point that he accepted the bid, negotiated a Purchase and Sale Agreement ("Silver Point Purchase Agreement") and filed the Sale Motion.
26. The Silver Point Purchase Agreement, in accordance with the Bid Motion and Bid Order, provided for an auction to be held and for overbids to occur.
27. On July 3, 2008, the Examiner posted a copy of the Sale Motion on the English and Chinese versions of a website that the Examiner has established to communicate with investors. The Receiver posted a copy of the Motion on the website maintained by the Receiver to provide updates and reports concerning the progress of the receivership proceedings. Additionally, in mid-August, the Receiver mailed copies of the Motion and

the Order setting an evidentiary hearing to all investors, potential bidders of which the Receiver was aware and other potentially interested parties [See, Dkt. No. 154]. Investors in Puerto Rico were sent copies translated into Spanish and investors in Taiwan were sent copies in Chinese. The Court finds that the notice of the sale, the sale hearing, the auction and the overbid process was due and proper and reasonably designed to apprise all interested parties of the sale, the sale hearing, the auction and the overbid process and no further or other notice is or shall be required.

28. The following formal responses in support of the Motion were received: Examiner's Report Regarding Motion to Sell Policies [Dkt. No. 161] and Response of the Securities and Exchange Commission to Receiver's Motion to Sell Insurance Policies and Approve Purchase and Sale Agreement and Request for Evidentiary Hearing [Dkt. No. 162].
29. The following formal objection to the Motion was received: Angelo Diaz Gonzalez and Agency's Objection to Receiver's Motion to Sell All Insurance Policies and Approve Purchase and Sale Agreement and Request for Evidentiary Hearing [Dkt. No. 165] ("Diaz Objection"). Mr. Diaz represents a group of approximately 400 primarily Puerto Rican investors. His objections was joined by a group of approximately 2700 investors from Taiwan. Other informal objections have been received by the Examiner and the Receiver (with the Diaz Objection, the "Objections"). The vast majority of investors oppose the sale of the portfolio; only two support it.
30. On September 23 and 24, 2008 the Court conducted a hearing with respect to the Sale Motion. The hearing began with the auction which was attended by three bidders, including Silver Point. After several rounds of bidding, the highest bid was made by Settlement Group, Inc. for \$33.5 million plus reimbursement of the Receiver for all premiums paid since July 1, 2008. The Court finds that the solicitation process utilized by the Receiver was designed to solicit the maximum sale price for the Policies. Subsequent to the conclusion of the hearing the Receiver and Settlement Group, Inc. negotiated and executed a Purchase Agreement ("Purchase Agreement"), a copy of which is attached to this Order as Exhibit 1.
31. Since he has been appointed, the Receiver has paid \$16.2 million in premiums on the Policies.
32. The Receiver projects that he will have to pay \$2.2 million in premiums through the end of 2008. He anticipates that he will pay \$4.39 million in premiums the first six months of 2009, and \$4.5 million the second half. The Receiver estimates that he will need \$11 million to cover the premiums for the next 18 months.
33. The Receiver currently has a credit line of \$20 million dollars. He has borrowed \$12 million on that line of credit. The remaining \$8 million of credit will allow him to pay premiums for approximately eight more months. The only source of money to repay the interest on the loan is the line of credit. So far, the Receiver has paid \$1 million of interest on the loan.

34. In the 18 months since the Receiver obtained the line of credit, no policies in the portfolio have matured.
35. Scott Gibson is an actuary and valuation expert, retained by Angelo Diaz on behalf of the Puerto Rican Investors. He has expertise and training as a consulting actuary and valuator of life settlement insurance policies and has worked in the life settlement industry for about the last five years.
36. In Mr. Gibson's opinion, conducting an abbreviated update of the life expectancies on all 55 policies in the portfolio would "with a fair amount of certainty" result in a higher valuation, and that the valuation "*may* attract more bidders." The cost of the proposed valuation is \$50,000. It would be paid by the receivership estate.
37. The potential buyers for the portfolio took the information from the confidential website and updated the life expectancies for purposes of valuing the portfolio. What they have done is very similar to what Mr. Gibson proposes to do in order to determine the value of the portfolio.
38. Although it is likely that updating the life estimates of all 55 policies in the portfolio would result in a higher valuation, this outcome is not certain. Furthermore, even if Mr. Gibson were to find that the value of the portfolio is higher than the current bid, such a higher valuation *might* attract new bidders. This outcome is also uncertain.
39. Both the Examiner and the SEC support the proposed sale as in the best interests of the investors but do not object to a three week continuance to allow Mr. Gibson to update the life estimates.
40. After considering the evidence of the amount of premiums that have to be paid to keep the policies current; the amount of credit that the Receiver has left to pay those premiums; the amount of interest and expenses paid to date by the Receiver in connection with the line of credit; the total amount paid for the portfolio by ABC in comparison to the current high bid; the fact that the current bidders have conducted their own valuations like the one proposed by the investors; the additional expense to the receivership of a new valuation; the number of potential buyers who initially expressed interest versus the number who actually submitted bids; the lack of bids for only portions of the portfolio; the existence of a current highest bid; the uncertainty that would be caused by any additional bidding not contemplated by the agreed and ordered bid procedures; and the lack of certainty that a higher valuation will result in more bids, the Court finds that the proposed sale is the only viable option and is in the best interests of the investors at this time.
41. This Court finds that: (i) the sale of the Policies in accordance with the Purchase Agreement is in the best interest of the Receivership Estate, the creditors thereof, the investors in ABC and all other persons and entities with an interest in the receivership proceedings; (ii) the sale procedures were designed to obtain the highest and best offer for the sale of the Policies and the sale to Settlement Group, Inc. on the terms of the Purchase Agreement constitutes the highest and best offer for the Policies; (iii) the consideration

being provided by Settlement Group, Inc. for the Policies, and the terms of the Purchase Agreement, are fair and reasonable, constitute the highest and best offer, and constitute reasonably equivalent value, and (iv) accordingly that the sale of the Policies to Settlement Group, Inc. pursuant to the Purchase Agreement should be authorized and approved.

42. This Court further finds that Settlement Group, Inc. has at all times acted without collusion and in good faith in bidding on, and negotiating the purchase of, the Policies and is a good faith purchaser and is entitled to all of the protections under law accorded to a party with such status. The Purchase Agreement was negotiated, proposed and entered into by the Receiver and Settlement Group, Inc. without collusion and in good faith, and is the end result of arms' length bargaining between the Receiver and Settlement Group, Inc..
43. This Court finds that the sale of the Policies to Settlement Group, Inc. pursuant to the Purchase Agreement is not a *de facto* merger or a consolidation of the business of Settlement Group, Inc. and ABC and Settlement Group, Inc.'s business is not a mere continuation of ABC's business. The transactions contemplated by the Purchase Agreement are not for the purpose of avoiding any liability of ABC.
44. The Receiver, acting for and on behalf of the receivership estate, has the sole and absolutely authority to convey all of the right, title and interest of the receivership estate to and under the Policies.

III. CONCLUSIONS OF LAW

The Court hereby concludes and ORDERS as follows:

1. The Objections which have not been withdrawn are hereby overruled on their merits.
2. The sale of the Policies to Settlement Group, Inc. in accordance with the terms of the Purchase Agreement attached hereto as Exhibit 1 is approved. The Purchase Agreement and all of the terms contained therein are approved and the Receiver is authorized and directed to consummate all of the transactions contemplated thereby. Without limiting the generality of the foregoing, the Receiver is authorized and directed to (i) execute and deliver, and is empowered to perform under, consummate and implement, the Purchase Agreement and any additional instruments or agreements or documents that may be reasonably necessary or desirable to implement the Purchase Agreement, (ii) take all further actions as may be requested by Settlement Group, Inc. for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser and its assigns and designees the Policies and (iii) timely comply with all of its obligations under the Purchase Agreement and any such additional instruments, agreements or documents.
3. Settlement Group, Inc. has acted in good faith and is a good faith purchaser of the Policies.

4. In determining whether or not to confirm a sale proposed by a receiver, even if a bid has been received and accepted by the receiver, the court is nevertheless at liberty to reject the bid as not being adequate or commensurate with the value of the property, and the court may accept a higher bid made subsequently to the one accepted by the receiver. *First National Bank of Cincinnati v. Flershem*, 290 U.S. 504 (1911).

5. The consideration for the Policies paid by Settlement Group, Inc. pursuant to the Purchase Agreement constitutes reasonably equivalent value and fair consideration under the laws of the United States, both state and federal.

6. The transfer of the Policies will be a legal, valid and effective transfer of the Policies and will vest Settlement Group, Inc. or its assignee or designee, if applicable, with good and valid title and all right, title and interest in and to the Policies. At the closing, Settlement Group, Inc. or its assignee or designee, if applicable, will be vested with all claims, options, privileges, right, title and interest in, to and under the Policies, free and clear of all encumbrances. Any person, including, without limitation, any creditor of or investor in ABC or the receivership estate and any insurance company or other entity which issued or is obligated under any of the Policies and the successors and assigns of any of the foregoing, asserting or having any encumbrance of any kind or nature against ABC, the receivership estate, the Receiver, the Policies arising out of, in connection with, or in any way relating to ABC, the receivership estate, the Policies, or the transfer thereof to Settlement Group, Inc. and its successors and assigns, shall be, and hereby are, forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such encumbrance against Settlement Group, Inc. and its successors and assigns or any subsequent owner of the Policies.

7. From and after the closing, Settlement Group, Inc. and any subsequent owner of any Policy shall have the right, from time to time (and at least annually), to obtain updated contact and medical information regarding each viator/insured under such Policy, including (A) pursuant to 45 C.F.R. § 164.512(e)(1)(i), all health care providers who are served with a copy of this Sale Order and a written request by Settlement Group, Inc. or any subsequent owner of such Policy shall be authorized and compelled to immediately release a copy to Settlement Group, Inc. or such subsequent owner of such Policy, as the case may be, of all records relative to the care, treatment and health of an insured/viator under such Policy so requested by Settlement Group, Inc. or such subsequent owner thereof, as the case may be, for the purpose of evaluating and predicting health and life expectancy and (B) each insured/viator under such Policy being required to provide Settlement Group, Inc. and any subsequent owner of such Policy with (I) current contact information for such insured/viator, (II) Health Insurance Portability and Accountability Act of 1996 compliant medical authorizations, (III) contact information for all physicians and other medical providers who have treated such insured/viator during the previous five-year period and (IV) any and all medical information generated during the previous five-year period pertaining to such insured's/viator's health and/or medical condition, and Settlement Group, Inc. and each subsequent owner of such Policy shall be entitled to seek enforcement of this paragraph as to any person, including by way of example, and not limitation, an application for a finding of contempt.

8. Settlement Group, Inc. shall not be deemed a successor of, and shall not acquire any successor liability for or any other liability of ABC as a result of any transaction contemplated by

the Purchase Agreement or otherwise. Each creditor of ABC shall be precluded and estopped from asserting, at law or in equity, that Settlement Group, Inc. is a successor of ABC. As of the closing, the receivership estate waives any and all claims that the receivership estate may have against Settlement Group, Inc. as the successor of ABC and/or any other claim based on any similar legal or equitable theory.

9. This Sale Order and the Purchase Agreement shall be binding in all respects upon all creditors of the Receivership, any investor in ABC, any insurance company or other entity which issued or is obligated under any of the Policies, and any other party in interest in the receivership proceeding and any of the successors or assigns of the foregoing.

10. The failure to specifically include or describe any particular provision of the Purchase Agreement in the Sale Motion or this Sale Order shall not impair or diminish the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement be authorized and approved in its entirety.

11. The Purchase Agreement and any related agreement, document or other instrument may be modified, amended or supplemented by parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further notice or order of this Court, provided that any such modification, amendment or supplement does not constitute a material modification of the Purchase Agreement.

12. The sale of the Policies is not precluded by or contrary to any prior order issued by this Court and no further consents by any person (including any governmental authority) are required to convey the Policies to Settlement Group, Inc. or to an assignee or designee thereof, if applicable, in accordance with the Purchase Agreement.

13. The sale, conveyance and transfer of the Policies to Settlement Group, Inc. pursuant to the Purchase Agreement shall not be subject to any sales tax, stamp tax, transfer or recording tax or other similar tax or fee of any governmental entity.

14. From and after the closing date, the receivership estate shall not be obligated to pay any premium on any Policy.

15. This Court retains jurisdiction to enforce and implement the terms of the Purchase Agreement, including to resolve any disputes arising under any Purchase Agreement, and to interpret, implement, and enforce the provisions of this Sale Order.

IV. CONCLUSION

For the foregoing reasons, *Receiver's Motion to Sell all Insurance Policies and Approve Purchase and Sale Agreement and Request for Evidentiary Hearing*, filed June 30, 2008, is hereby **GRANTED**. *Angelo Diaz Gonzalez and Agency's Objection to Receiver's Motion to Sell all*

Insurance Policies and Approve Purchase and Sale Agreement and Request for Evidentiary

Hearing, filed September 17, 2008, is hereby **OVERRULED**. The oral requests of the investors at the hearing for a three-week continuance to update the policies are hereby **DENIED**.

The Receiver is hereby ordered to serve a copy, or otherwise provide notice, of this *Order* on or to all interested parties, and to file with the Court a certificate attesting to such service or notice.

SO ORDERED on this 6th day of October, 2008.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE