

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
	§	
VS.	§	
	§	CIVIL ACTION NO.
ABC VIATICALS, INC.,	§	
C. KEITH LAMONDA,	§	3:06-CV-02136-P
and JESSE W. LAMONDA, JR.,	§	
	§	
Defendants,	§	MATTER
	§	PREVIOUSLY REFERRED TO
and	§	MAGISTRATE IRMA RAMIREZ
	§	UNDER 28 U.S.C. § 636(b)
LAMONDA MANAGEMENT FAMILY	§	
LIMITED PARTNERSHIP,	§	
STRUCTURED LIFE SETTLEMENTS,	§	
INC., BLUE WATER TRUST,	§	
and DESTINY TRUST,	§	
	§	
Relief Defendants.	§	
	§	

**AGENCY’S REPLY TO RECEIVER’S RESPONSE TO
AGENCY’S EMERGENCY MOTION TO STAY AND FOR
RECONSIDERATION OF MAGISTRATE’S SALE ORDER**

Summary of Reply

Let’s get this straight. The Receiver fails to update and effectively market the Portfolio for two years. The Agency asks the Magistrate to approve the funding of a two week update of the Portfolio to expose its value and attract higher bids (the “Proposal”). The Receiver objects and the Magistrate denies the Proposal. Now, the Receiver complains that stay relief should be denied because the Agency did not implement the very proposal which the Receiver blocked. The Receiver can’t have it both ways. First –

deny the investors the opportunity to implement the Proposal, and then deride them for not implementing the Proposal while the reconsideration motion and appeal are pending.

Reply

1. The Receiver's argument against stay relief is based upon faulty reasoning and is wrong on several fronts.

2. **The Receiver's Argument is Internally Inconsistent.** First, the Receiver argues that stay relief should be denied because the Agency did not implement the Proposal which the Court denied by Order, dated October 6, 2008, docket no. 179 (the "Sale Order"). This, the same Proposal which the Receiver objected to and successfully blocked. It is internally inconsistent for the Receiver to argue – first, to block implementation of the Proposal, and then, having succeeded in doing so, to deprive stay relief for failure to implement the Proposal. That is faulty reasoning.

3. Likewise, the Receiver asks "what happens if the current buyer walks the deal out of frustration?" Reply at p. 3, ¶ 9. The Receiver engages in his own speculation to justify denial of stay relief, while he simultaneously criticizes the Agency for not going far enough in finding "a party with interest in possibly submitting a bid for substantially more than the \$33.5 million dollar purchase price." Reply, at p. 3, ¶ 7. Again, faulty reasoning.

4. **The Receiver's Argument Requires Denial of the Sale Order.** Second, the Receiver's argument, in essence, seeks to penalize the Agency for honoring the Sale Order during the pendency of the motion for reconsideration and appeal. He derides the Agency for failing (i) to ignore the Sale Order, (ii) to implement the Proposal, and (iii) to

secure the guarantee of higher bids at a time when the Sale Order is on appeal and under reconsideration. That is not proper argument.

5. **The Receiver's Argument Imposes Improper Burden of Proof.** Third, the Receiver argues that stay relief should be denied because the Agency has failed to guarantee a higher bidder during the period of appeal and reconsideration. Equitable stay relief does not require the Agency, pending appeal and reconsideration of the Sale Order, to guarantee a higher bidder if stay relief is granted. Had the Receiver supported the Proposal in the first instance, instead of objecting out of fear of being sued, the Agency would have implemented the Proposal by now and a much higher bid probably would have already been made and received. In addition, had the Receiver done his job over the past two years and updated and effectively marketed the Portfolio, this would all be moot. But, unfortunately, he did not.

6. **The Receiver's Business Judgment and Argument Remains Tainted by Fear of Suit.** Having failed for two years to update and effectively market the Portfolio, the Receiver proceeded to add value to the investors by objecting to the Proposal; not based upon principle, but rather upon fear of being sued by the stalking horse bidder. Such fear permeated the Receiver's testimony at the Sale Hearing, and, unfortunately, continues in his current effort to deny stay relief to the investors. The Receiver argues that "based on current known facts, and not possibilities, the Receiver submits that the current sale which he is obligated to perform under a valid contract, is the smart thing to do." Reply, at p. 4, ¶ 10. The Receiver's inability to objectively and truthfully evaluate the Proposal and the current Emergency Motion because of his fear of

liability, has impaired his business judgment, and for that reason alone it should be rejected.

7. **The Receiver's Argument is Contrary to His Sworn Testimony.** In his argument, the Receiver asks “what happens if the current buyer walks the deal out of frustration?” Reply at p. 3, ¶ 9. The Receiver engages in his own speculation to justify denial of stay relief, while he simultaneously criticizes the Agency for not going far enough in finding “a party with interest in possibly submitting a bid for substantially more than the \$33.5 million dollar purchase price.” Reply, at p. 3, ¶ 7. What the Receiver fails to inform the Court is that he testified at the Sale Hearing that he did not believe the first hypothetical would occur. *See* Trans., Vol. 2, at p. 144, lines 12 – 24) (In response to the Court’s question of “What is the downside to me delaying my decision or recessing for 21 days,” the Receiver testified that “I believe that Mr. Lucent’s company, Settlement Group [SGI], will be around to actually close.”). For the Receiver to use such hypothetical now to justify denial of stay relief is wrong.

8. **The Receiver's Argument is Contrary to Existing Law.** The Receiver argues that “the market has spoken and the price has been established [for the Portfolio].” Reply, at p. 3, ¶ 8. The Receiver’s implication that the current high bid of \$33.5 million represents fair market value is contrary to existing law. Fair market value is defined as the amount an informed buyer under no compulsion to buy would pay an informed seller under no compulsion to sell. By the Receiver’s own admission at trial, (i) he failed to update the Portfolio, (ii) updating portfolios is a recognized tool in the life settlement industry for valuing life settlement portfolios, (iii) he failed to market the Portfolio in substantial newspapers because he did not think it was worth the cost, (iv) he decided

early on to sell the Portfolio in “as is” condition, (v) buyers will substantially discount their offers when bidding on “as is” assets, and (vi) both the stalking horse bid and the ultimate high bid were the result of such discounts. He further testified that he was under compulsion to sell because of his concern of the continued cost of the premiums. Thus, by his own admission, the current high bid does not represent fair market value. Contrary to the Receiver’s argument, the market has not yet spoken. And it has not spoken because the Receiver failed to do what was necessary to make it speak. And he now attempts to keep the market silent through the denial of stay relief and the consummation of the “below market” sale to SGI.

Conclusion

The Receiver’s argument against stay relief is internally inconsistent, requires denial of the Sale Order, imposes an improper burden of proof, reflects the Receiver’s tainted business judgment for fear of being sued, is contrary to his prior sworn testimony, and is contrary to existing law. Having failed to update and effectively market the Portfolio for the first two years of his tenure, the Receiver was the only party who objected to the investors’ efforts to cure this defect with the Proposal. He is now the only party who has objected to the Stay and Reconsideration Motion as well. From the investors’ standpoint, the Receiver’s actions are like pouring salt into the wound. He created the wound through his own inactions, and pours salt through his repeated efforts to deny any effort to cure the wound. Equity demands that the investors receive stay relief, that the Sale Order be reconsidered and set aside, and that the investors be allowed to implement the Proposal.

Dated: this 23rd day of October, 2008.

Respectfully submitted,

/s/ John S. Brannon

John S. Brannon

Texas Bar No. 0289550

Rachelle H. Glazer

Texas Bar No. 09785900

Will A. Pruitt

Texas Bar No. 24056165

THOMPSON & KNIGHT LLP

One Arts Plaza

1722 Routh Street, Suite 1500

Dallas, Texas 75201

(214) 969-1700 Telephone

(214) 969-1799 Facsimile

ATTORNEYS FOR ANGELO DIAZ
GONZALEZ AND AGENCY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties by fax and first class mail, postage prepaid on this 23rd day of October, 2008.

/s/ John S. Brannon

John S. Brannon

Michael J. Quilling
Quilling Selander Cummiskey
& Lownds
2001 Bryan St., Suite 1800
Dallas, Texas 75201
Fax: 214.871.2111
Email: mquilling@qsclpc.com
COURT APPOINTED RECEIVER

Bruce S. Kramer
Borod & Kramer, PLC
Brinkley Plaza
80 Monroe Ave., Suite G-1
Memphis, TN 38103
Fax: 901.523.0043
Email: bkramer@borodandkramer.com
SPECIAL COUNSEL FOR THE RECEIVER

D. Dee Raibourn, III
Quilling Selander Cummiskey
& Lownds
2001 Bryan St., Suite 1800
Dallas, Texas 75201
Fax: 214.871.2111
Email: draibourn@qsclpc.com
COUNSEL FOR THE RECEIVER

Harold R. Loftin, Jr.
U.S. Securities & Exchange Commission
Fort Worth Regional Office
801 Cherry St., Suite 1900
Fort Worth, Texas 6102
Fax: 817.978.4927
Email: loftinh@sec.gov
LEAD COUNSEL FOR THE
SECURITIES & EXCHANGE COMMISSION

Dennis L. Roossien
Munsch Hardt Kopf & Harr, P.C.
3800 Lincoln Plaza
500 N. Akard St.
Dallas, Texas 75201
Fax: 214.855.7584
Email: droossien@munsch.com
COUNSEL FOR THE EXAMINER

Steven A. Harr
Munsch Hardt Kopf & Harr, P.C.
3800 Lincoln Plaza
500 N. Akard Street
Dallas, Texas 75201-6659
Fax: 214.855.7584
Email: sharr@munsch.com
COURT APPOINTED EXAMINER