

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

SECURITIES AND EXCHANGE COMMISSION, §

Plaintiff, §

vs. §

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

ABC VIATICALS, INC., §

C. KEITH LAMONDA, §

and JESSE W. LAMONDA, JR., §

Defendants §

and §

LAMONDA MANAGEMENT FAMILY §

LIMITED PARTNERSHIP, §

STRUCTURED LIFE SETTLEMENTS, INC., §

BLUE WATER TRUST, §

and DESTINY TRUST, §

Relief Defendants. §

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**MOTION FOR SHOW CAUSE HEARING REGARDING  
COMMISSIONS PAID TO JASON SUN AND BRIEF IN SUPPORT**

TO THE HONORABLE JORGE A. SOLIS, UNITED STATES DISTRICT JUDGE:

Michael J. Quilling, as Receiver for ABC Viaticals, Inc., (“Receiver”) files this Motion for Show Cause Hearing Regarding Commissions paid to Jason Sun. The Receiver submits that Jason Sun must disgorge at least \$6,669,429.72 of commissions that he directed to various agents and entities in return for recruiting investors into a Ponzi scheme. In support, the Receiver would respectfully show the Court as follows:

## **I. INTRODUCTION**

It is the settled law of this district that commissions paid from a Ponzi scheme should be disgorged and returned to the receivership estate. Receivership records in this case clearly show that ABC Viaticals, Inc. was operated as a Ponzi scheme and that Jason Sun and others on his behalf received at least \$6,669,429.72 in commissions for recruiting investors into it. Therefore, as explained more fully below, the Receiver requests that Sun appear in this case and show cause why those funds should not be disgorged to the receivership estate.

## **II. BACKGROUND FACTS**

1. On November 17, 2006, the United States Securities and Exchange Commission (“SEC”) filed suit [Dkt. No. 1] against the Defendants and Relief Defendants in this case alleging, among other things, that ABC Viaticals, Inc. (“ABC”) fraudulently sold life settlement policies and made numerous misrepresentations to investors.

2. By Order of November 17, 2006 [Dkt. No. 8] this Court appointed Michael J. Quilling as Receiver for ABC and other entities named as Defendants and Relief Defendants in this case.

3. Before going into receivership, ABC operated a life settlement investment program under the direction and control of C. Keith LaMonda and Jesse W. LaMonda, Jr. (Quilling Decl., Ex. A at ¶ 2.) ABC purchased insurance policies on the lives of third-party insureds and then sold fractional interests in those policies to investors. (Id.) The investors expected to realize a return of 30% to 150% from benefits paid when the insured died. (Id.)

4. ABC represented to investors that their contributions were tied to a particular insurance policy and would only be used to cover that policy’s purchase price, premium

payments, and other related expenses. (Id. at ¶ 3.) Each policy was to have a separate escrow account that covered all premiums on that policy for the life of the investment. (Id.) ABC, however, never managed investor funds consistent with these representations. (Id.)

5. From the beginning, ABC commingled each investor's contribution and used it to pay premiums and expenses on numerous policies not assigned to that particular investor. (Id. at ¶ 4.) The commingled escrow accounts were also underfunded, meaning ABC had to solicit funds from later investors to cover its obligations to earlier investors. (Id.) Therefore, the Receiver submits that ABC was insolvent from its inception and operated as a Ponzi scheme. This is consistent with the Court's ruling in an ancillary case determining that "ABC was operated as a Ponzi scheme." *Quilling v. Int'l Fid. & Surety Ltd.*, Cause No. 3:07-CV-0421-P [Dkt. No. 82] at 5 (Jul. 10, 2008 N.D. Tex.).

6. Among those who benefited from the ABC investment program was Jason Sun (a.k.a. Tieh-Hann Sun) and various agents and entities that received payments on his behalf (collectively, "Sun"). Between 2002 and 2006, ABC paid at least \$6,669,429.72 in commissions to Sun. (Quilling Decl., Ex. A at ¶ 7; Partial Summary of ABC Transfers, Ex. B.) Those commissions compensated Sun for recruiting investors and other marketing agents to ABC. (Quilling Decl., Ex. A at ¶ 7.) The Receiver submits that those commissions were fraudulently transferred from a Ponzi scheme and, therefore, constitute assets of the receivership estate.

7. The Court's Order Appointing Receiver expressly directs that all Receivership Assets be surrendered to the receivership estate:

All persons, including Defendant and Relief Defendants and their officers, agents . . . brokers, facilitators . . . and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise . . . shall promptly deliver to the Receiver all Receivership Assets in the possession or under the control of any one or more of them . . .

Order Appointing Receiver [Dkt. No. 8] at ¶ 4. On January 19, 2009, the Receiver sent Sun a copy of the Order Appointing Receiver and demanded that he return all commissions paid by ABC. (Demand Letter, Ex. C.) To date, Sun has not tendered that amount to the Receiver. (Quilling Decl., Ex. A at ¶ 8.)

8. As explained more fully below, the law in this district views commissions paid from a Ponzi scheme as assets to be disgorged and surrendered to the receivership estate. This Court should, therefore, order Sun to appear at a show cause hearing to determine whether he ought to disgorge the \$6,669,429.72 under the Order Appointing Receiver.

9. Federal case law recognizes that a District Court may use summary procedures to determine whether assets should be disgorged for the benefit of a receivership estate. As explained more fully below, the Receiver submits that summary procedures are appropriate in this case to help the receivership estate recover funds.

### **III. BRIEF IN SUPPORT**

#### **A. SUN OUGHT TO DISGORGE ALL COMMISSIONS EARNED FROM ABC.**

##### **1. Commissions From A Ponzi Scheme Are Receivership Assets.**

All of ABC's transfers to Sun are voidable under the Texas Uniform Fraudulent Transfer Act ("UFTA") or the supplemental provisions of common law. In relevant part, that statute provides:

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor . . . if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud . . .

Tex. Bus. & Com. C. § 24.005. While a plaintiff must ordinarily prove fraudulent intent to recover under this provision of the UFTA, that element is automatically established for transfers out of a Ponzi scheme. *Quilling v. Gilliland*, Civil Cause No. 3:01-CV-1617 (N.D. Tex. Mar. 6, 2002); *S.E.C. v. Cook*, 2001 WL 256172, \*3 (N.D. Tex. Mar. 8, 2001); *see also In re Ramirez Rodriguez*, 209 B.R. 424, 434 (Bankr. S.D. Tex.1997); *In re Independent Clearing House Co.*, 77 B.R. 843 (Bankr. D. Utah 1987). This presumption is necessarily true because a Ponzi scheme is insolvent from inception. *Warfield v. Byron*, 2006 WL 118250, \*5 (5th Cir. Jan. 17, 2006), *citing Cunningham v. Brown*, 265 U.S. 1, 7-8 (1924). Accordingly, all payments from a Ponzi scheme—including commissions—are presumed fraudulent and must be disgorged and returned to the Receivership Estate. *See Cook*, 2001 WL 256172 at \*3, 4 (disgorging commissions paid from a Ponzi scheme); *see also Warfield*, 2006 WL 118250 at \*6-7 (disgorging commissions paid from a Ponzi scheme); *In re Alpha Telecom, Inc.*, 2004 WL 3142555, \*4 (D. Or. Aug. 18, 2004) (disgorging commissions for selling securities on behalf of a Ponzi scheme). Therefore, because this Court has already found that ABC was a Ponzi scheme, Sun has no legal basis to retain investor funds that he received as commissions.

**2. It Is Undisputed That Sun Received At Least \$6,669,429.72 As Commissions From ABC.**

Without question, ABC sent Sun at least \$6,669,429.72 as commissions. (Quilling Decl., Ex. A at ¶ 7.) The Receiver has reviewed ABC's account records, which show that between 2002 and 2006, ABC paid at least the following amounts to Sun for recruiting investors:

<u>Account Name</u>	<u>Amount</u>
Chen, Wen H.	1,469,383.37
Lih-Lian Ma	967,232.42
Toppoint Global Investment	4,070,790.53

Toppoint Global Investment Holding	162,023.58
<b>Total:</b>	<b>6,669,429.72</b>

(Partial Summary of ABC Transfers, Ex. B.)

ABC records show that Sun personally asked that his commissions be sent to those accounts. (Quilling Decl., Ex. A at ¶ 7.) It appears that Sun primarily acted as the intermediary between ABC and the other sales agents in Taiwan. (Id.)

In short, the Receiver intends to establish (1) that ABC operated a *Ponzi* scheme by diverting funds from new investors to pay the premiums on policies benefiting earlier investors and (2) that Respondent received at least \$6,669,429.72 as commissions for recruiting new investors. Therefore, under the settled law of this District and the UFTA, the Receiver is entitled to recover those commissions on behalf of the Receivership Estate.

**B. EXPEDITED CONSIDERATION BY SUMMARY PROCEEDINGS IS APPROPRIATE IN THIS CASE.**

This Court may order Sun to disgorge commissions following an expedited show cause hearing. Federal receivership law recognizes the use of such summary proceedings to resolve disputes to property claimed by a Receivership Estate. *SEC v. Basic Energy & Affiliated Resources*, 273 F.3d 657, 668 (6th Cir. 2001); *see also Commodity Futures Trading Comm'n v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1113 (9th Cir. 2000); *SEC v. Wencke*, 783 F.2d 829, 837-38 (9th Cir. 1986). It is well settled that Federal Courts have “broad powers and wide discretion” to fashion such relief in equitable receivership proceedings. *Basic Energy & Affiliated Resources*, 273 F.3d at 668. This discretion, which derives from the Court’s inherent equitable powers, makes abbreviated and summary proceedings possible without violating the interests of due process. *See id.* (allowing summary proceedings so long as they “permit parties to present evidence when the facts are in dispute and to make arguments regarding those facts”); *SEC v.*

*Elliott*, 953 F.2d 1560, 1571 (9th Cir. 1992). Therefore, as long as this Court gives him a meaningful opportunity to present his factual and legal contentions, summary proceedings are proper to determine whether Sun must disgorge the commissions that he received from ABC.

Furthermore, summary proceedings are favored in the context of federal receivership actions because they embrace the long-recognized policy of preserving and protecting assets for claimants of the Receivership Estate. *See Elliott*, 453 F.2d at 1566; *Wencke*, 783 F.2d at 837-38. Abbreviated procedures—including the use of a single receivership proceeding to resolve all claims—advance the government’s interest in judicial efficiency by “reducing the time needed to resolve disputes, decreasing the costs of litigation, and preventing the dissipation of the receiver’s assets.” *Basic Energy & Affiliated Resources*, 273 F.3d at 668; *Elliott*, 453 F.2d at 1566; *Wencke*, 783 F.2d at 837-38. Summary proceedings allow the Receiver to consolidate litigation before a single District Judge and “avoid formalities that would slow down the resolution of disputes.” *Wencke*, 783 F.2d at 837 n.9. This both promotes judicial efficiency and reduces litigation costs to the receivership. *Id.* (citing *Smith v. Am. Industrial Research Corp.*, 665 F.2d 397, 399 (1st Cir.1981)).

Finally, this Court has already determined that summary procedures are appropriate for a show cause motion addressing the Receiver’s claims to recover commissions. (Order [Dkt. No. 81] at 7.) The Receiver anticipates using those exact same procedures in this instance.

#### IV. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully requests as follows: (1) that this Court set a show cause hearing; (2) that it order Jason Sun to appear and respond to this motion; and (3) that, following a hearing on this motion, the Court order Sun to disgorge all commissions received from ABC. The Receiver also requests that the Court

expedite its consideration of this motion, adopt summary procedures, and grant the Receiver such other and further relief, general or special, at law or in equity, to which he might show himself otherwise entitled.

Respectfully submitted,

**QUILLING, SELANDER, CUMMISKEY  
& LOWNDS, P.C.**

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By: /s/ Michael J. Quilling

Michael J. Quilling  
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Brent Rodine  
State Bar No. 24048770

**ATTORNEYS FOR RECEIVER**

**CERTIFICATE OF SERVICE**

I hereby certify that on April 16, 2009, a true and correct copy of this document was served to the following by U.S. mail with first-class postage pre-paid:

Jason Sun  
13353 Jasper Court  
Fairfax, Virginia 22033

C. Keith LaMonda  
Butner LSCI  
P. O. Box 999  
Butner, NC 27509

A copy will also be posted on the Receiver's website at [www.secreceiver.com](http://www.secreceiver.com).

/s/ Michael J. Quilling  
Michael J. Quilling