

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, N. C.

FEB - 1 2005

U. S. DISTRICT COURT
W. DIST. OF N. C.

SECURITIES & EXCHANGE COMMISSION,)
Plaintiff,)
vs.)
FREDERICK J. GILLILAND,)
Defendant,)
and)
MM APMC BANQUE DE COMMERCE, INC.,)
Relief Defendant.)

CIVIL ACTION FILE
NO. 3:02CV128-DCK

RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT

TO THE HONORABLE DAVID C. KEESLER, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling, in his capacity as receiver in these proceedings ("Receiver") and files this his Motion to Approve Settlement Agreement, and in support of such would respectfully show unto the Court as follows:

1. The Receiver was appointed by Order of this Court on May 22, 2003. Since that time, the Receiver has been identifying claimants and analyzing claims. The Receiver believes he has claims against Maxine Gregory ("Gregory").

2. The Receiver was also appointed receiver by this Court in Civil Action 3:01CV205-DCK, *In re: All Funds on Deposit In Account Number 0006698729075 in The Bank of MM APMC Banque de Commerce, Inc., at NationsBank, N.A., Consisting of \$18,756,420.97, More or Less;* Civil Action No. 3:01CV205-DCK, *George and Dolores Rollar v. United States of America, et al.* ("Rollar Proceedings"). In those proceedings, on September 29, 2004, the Receiver filed his Second Motion to Disallow Filed Claims and Potential Claims, one of those claims being a claim filed by Gregory in the amount of \$100,000.00.

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3. In an effort to resolve the disputes between them, and without any admission of liability whatsoever, the Receiver and Gregory, through counsel, negotiated an overall settlement which is embodied in the Compromise and Settlement Agreement attached hereto as Exhibit "A" and incorporated by reference for all purposes.

4. In essence, with respect to these proceedings, the Settlement Agreement provides that Gregory will pay to the Receiver the sum of \$75,000.00 in full and complete satisfaction of any claims.

5. Although there is no statutory standard for approval of settlements in a federal equity proceeding, the Court has broad authority over estate administration. See, *i.e.*, *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). In addition, in many instances, Courts will look to bankruptcy law, which is founded on equitable principles, for guidance. In that instance, the compromise contained herein meets the standard set forth in *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. vs. Anderson*, 390 U.S. 414, *Reh'g denied*, 391 U.S. 909 (1968) ("*TMT Trailer Ferry*"). In *TMT Trailer Ferry*, the United States Supreme Court stated that the following factors are to be considered in determining the appropriateness of a compromise:

- a. The probabilities of ultimate success should the claim be litigated;
- b. An educated estimate of (i) the complexity, expense, and likely duration of such litigation; (ii) the possible difficulties of collecting on any judgment which might be obtained; and (iii) all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise; and
- c. The comparison of the terms of the compromise with likely rewards of litigation.

TMT Trailer Ferry, 390 U.S. at 424-25.

6. The compromise described herein clearly meets the standards established by the United States Supreme Court. Although the Receiver is confident of his ability to prevail with respect to his claims against Gregory, nothing is certain. Here, Gregory is paying a considerable sum to the Receiver and attorneys fees and costs will be avoided. Accordingly, the proposed Settlement Agreement should be approved.

7. The Receiver believes that this settlement is in the best interest of the receivership estate.

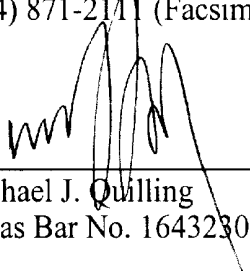
WHEREFORE, PREMISES CONSIDERED the Receiver prays that this Court authorize the Receiver to enter into the Settlement Agreement and that the Receiver be granted such other and further relief, general or special, at law or in equity, to which he may be justly entitled.

DATED this 31st day of January, 2005.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By:



Michael J. Quilling
Texas Bar No. 16432300

ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

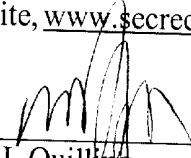
I hereby certify that on the 31st day of January, 2005 a true and correct copy of the foregoing document was sent via first class mail, postage prepaid, on the following:

Graham Loomis
Securities and Exchange Commission
3475 Lenox Road, Suite 1000
Atlanta, Georgia 30326

W. Robinson Deaton, Jr.
Deaton & Biggers, PLLC
402 East Graham Street
Shelby, North Carolina 28150

James D. Burgess
Fennemore Craig
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012

This Motion will also be posted on the Receiver's website, www.secreceiver.com, immediately after filing.



Michael J. Quilling

Exhibit "A"

FROM : GREGORY

PHONE NO. : 9058993

Jan. 23 2005 09:26AM P2

COMPROMISE AND SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into by and between Michael J. Quilling in his capacity as Receiver in the matters referenced below, on the one hand, and Maxine Gregory, on the other hand.

RECITALS

WHEREAS, Michael J. Quilling has been appointed Receiver ("Receiver") by the Court in the consolidated action bearing Cause No. 3:01-CV-205-McK, *In re: All Funds on Deposit In Account Number 0006698729075 in The Bank of MM APMC Banque de Commerce, Inc., at NationsBank, N.A., Consisting of \$18,756,420.97, More or Less* and C.A. No. 3:01-CV-205-McK, *George and Dolores Rollar v. United States of America, et al.* ("Rollar Proceedings"); and

WHEREAS, Michael J. Quilling has been appointed Receiver ("Gilliland Receiver") in Cause No. 3:02-CV-128-McK, *Securities and Exchange Commission v. Frederick J. Gilliland and MM APMC Banque de Commerce, Inc.* ("Gilliland Proceedings"); and

WHEREAS, Maxine Gregory ("Mrs. Gregory") has filed a claim in the amount of \$100,000.00 in the Rollar Proceedings ("Gregory Claim"); and

WHEREAS, the Receiver and the Gilliland Receiver have asserted various claims against Mrs. Gregory; and

WHEREAS, in order to buy peace and otherwise resolve this matter and in order to avoid the uncertainties and costs of litigation;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

FROM : GREGORY

PHONE NO. : 9058993

Jan. 23 2005 09:26AM P3

1. **Court Approval.** This Agreement is contingent on and subject to Court approval by the Court presiding over the Gilliland Proceedings and the Rollar Proceedings. Should the Court presiding over those proceedings refuse to approve this Settlement Agreement in its entirety, then it shall be void *ab initio*.
2. **No Admission of Liability.** It is understood and expressly agreed that nothing in this Agreement shall be construed as an admission of any liability or wrongdoing whatsoever on the part of Mrs. Gregory, by whom liability has always been and now is expressly denied. The parties acknowledge and agree that the settlement payment described below is made in compromise and settlement of disputed claims.
3. **Gregory Claim.** The Gregory Claim asserted in the Rollar Proceedings shall be withdrawn with prejudice and Mrs. Gregory shall assert no other claim or right to entitlement against the receivership estate in either the Rollar Proceedings or the Gilliland Proceedings.
4. **Payment by Gregory.** Mrs. Gregory shall, within 20 calendar days after final Court approval of this Agreement, pay to the Gilliland Receiver the sum of \$75,000.00 in full and complete satisfaction of any claims by the Gilliland Receiver and/or the Receiver against Mrs. Gregory.
5. **Release by Receiver.** Upon payment of the funds referenced in paragraph 4 above, the Receiver releases and forever discharges Mrs. Gregory from any claims, causes of action, debts or obligations of any nature whatsoever which the Receiver or the Gilliland Receiver could now or ever assert against Mrs. Gregory with respect to either the Rollar Proceedings or the Gilliland Proceedings.

FROM : GREGORY

PHONE NO. : 9058993

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6. Entire Agreement. This Agreement constitutes the entire integrated agreement between the Parties and supersedes any and all prior and/or contemporaneous agreements, promises, representations, negotiations, statements, and/or understandings of the Parties that are not explicitly included herein.
7. Modification and Waiver. No modification or amendment to this Agreement shall be effective unless in writing and executed by the party against whom enforcement of the waiver is sought.
8. Representations and Warranties. The Receiver represents and warrants that: (i) he has not sold, assigned, transferred, or pledged any causes of action, claims, debts or obligations released herein to a third party; (ii) except for the Court presiding over the Gilliland Proceedings and the Rollar Proceedings, the Receiver is not required to obtain any further consent from any person(s) or entities in order to enter into this binding agreement and release or for this release to be fully effective; and (iii) he does not possess any claims, rights, demands or other right to damages, monies, remuneration or compensation, in any capacity, against Mrs. Gregory other than those claims being released by this Agreement.
9. Materiality of Representations and Warranties. The Parties acknowledge and agree that all covenants, representations and warranties made herein are deemed to be material and to have been relied upon by the Parties. The Parties also acknowledge and agree that the representations and warranties set forth in Paragraph 3 of this Agreement are material to and are being relied upon by Mrs. Gregory as an inducement to entering into this Agreement.
10. Execution of Agreement. The Agreement may be executed in counterparts. The execution by all of the Parties hereto by each signing a counterpart of this instrument shall

FROM : GREGORY

PHONE NO. : 9058993

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constitute a valid execution. This instrument and all of its counterparts so executed shall be deemed for all purposes to be a single instrument.

SIGNED this 24 day of January, 2005.

Michael J. Quilling
Receiver for Gilliland Proceedings

Michael J. Quilling
Receiver for Rollar Proceedings

Maxine Gregory
Maxine Gregory