

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 21-61176-CIV-SINGHAL

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PROPERTY INCOME INVESTORS, LLC,
EQUINOX HOLDINGS, INC.
PROPERTY INCOME INVESTORS 26, LLC
PROPERTY INCOME INVESTORS 304, LLC,
PROPERTY INCOME INVESTORS 201, LLC,
PROPERTY INCOME INVESTORS 3504, LLC,
PROPERTY INCOME INVESTORS 1361, LLC,
PROPERTY INCOME INVESTORS 4020, LLC,
PROPERTY INCOME INVESTORS 9007, LLC,
PROPERTY INCOME INVESTORS 417, LLC,
PROPERTY INCOME INVESTORS 4450, LLC,
PROPERTY INCOME INVESTORS 3050, LLC,
LARRY B. BRODMAN and ANTHONY
NICOLOSI (f/k/a ANTHONY PELUSO),

Defendants.

_____ /

THE RECEIVER'S LIQUIDATION PLAN

Miranda L. Soto, Esq., solely in her capacity as Receiver (the "Receiver") for Defendants Property Income Investors, LLC; Equinox Holdings, Inc.; Property Income Investors 26, LLC; Property Income Investors 304, LLC; Property Income Investors 201, LLC; Property Income Investors 3504, LLC; Property Income Investors 1361, LLC; Property Income Investors 4020, LLC; Property Income Investors 9007, LLC; Property Income Investors 417, LLC; Property Income Investors 4450, LLC; and Property Income Investors 3050, LLC (collectively, the "Receivership Entities"), submits this Liquidation Plan (the "Plan") in accordance with Paragraph 47 of the Order Granting Plaintiff Securities and

Exchange Commission’s Motion for Appointment of Receiver, dated June 15, 2021 (the “Order Appointing Receiver”) (Doc. 10). The Plan is based on the work of the Receiver and her counsel, agents, and other retained professionals (the “Professionals”) and their investigation and findings to date. The Receiver reserves the right to modify, supplement, or otherwise revise the recommendations presented in this Plan based on her continuing investigation.

I. INTRODUCTION

On June 7, 2021, the Commission filed a complaint (Doc. 1) (the “Complaint”) in the United States District Court for the Southern District of Florida (the “Court”) alleging that Defendants Larry Brodman, Anthony Nicolosi f/k/a Anthony Peluso, and the Receivership Entities violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by engaging in a series of unregistered fraudulent securities offerings that ultimately raised at least \$9 million from investors. Doc. 1. The Complaint alleged that these offerings involved false or materially misleading representations to investors and that over \$2 million of investor funds were misused or misappropriated. *Id.*

According to the Complaint, the unregistered fraudulent securities offerings were conducted on behalf of 11 companies controlled by Receivership Entity Property Income Investors, LLC (“PII”) and Defendant Brodman. Those companies, whose names typically consisted of the phrase “Property Income Investors” and the street number of the property which was being purchased (i.e., Property Income Investors 1361, LLC), comprise the Receivership Entities along with PII. *Id.* ¶ 2. Investors were told that their funds would be used almost entirely to purchase “turnkey, multifamily properties” in South Florida which

would then be renovated, rented to tenants, and eventually sold. *Id.* ¶ 3. Defendants told prospective investors that they would be entitled to receive a portion of the rental income and any sale proceeds generated from the Property(ies) they were investing in. *Id.* Indeed, many investors were told that they could expect to receive annual returns of or around 7.5% which would be paid in quarterly distributions. *Id.* ¶ 44. In total, PII and Brodman raised at least \$9 million from January 2016 to September 2020 (the “Relevant Period”). *Id.* ¶ 2.

Although some investor funds were used to purchase various properties in the South Florida area, the Commission alleges that investor funds were frequently commingled with funds from other Receivership Entities. *Id.* ¶ 4. The Commission also alleges that PII and Brodman misused approximately \$1.2 million in investor funds by paying undisclosed sales commissions to unlicensed sales agents, including Defendant Nicolosi. *Id.* Brodman also allegedly diverted over \$1 million in investor funds to his personal account. *Id.* Finally, nearly \$500,000 in investor funds were used to make purported payments of profits or distributions to other investors. *Id.* ¶¶ 70-71.

On June 15, 2021, the Court granted the Commission’s Motion for Appointment of Receiver and entered the Order Appointing Receiver. Among other things, the Order froze the Receivership Entities’ assets and enjoined any further violations of federal securities laws. Upon her appointment, the Receiver immediately began her efforts to marshal and secure assets pursuant to the Order Appointing Receiver. As of the date of this Plan, the Receiver has successfully secured and frozen approximately \$1.14 million in net cash proceeds in bank accounts owned and opened by the Receivership Entities. Pursuant to the Order Appointing

Receiver, the Receiver established fiduciary bank accounts at ServisFirst Bank for each Receivership Entity.

Further information on the Receiver's efforts to date is available in the Receiver's Interim Report filed on July 30, 2021 (Doc. 20) and available on the Receiver's website at www.propertyreceivership.com.

II. LIQUIDATION PLAN

The Order Appointing Receiver directs the Receiver to “develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property” and to file her Liquidation Plan within 90 days of the entry of the Order Appointing Receiver. Doc. 10 ¶¶ 46-47. The Receiver presents the following Liquidation Plan.

A. Recovered, Remaining, and Recoverable Receivership Real Property

i. Assets On Hand And Potentially Recoverable

Upon her appointment, the Receiver identified and successfully secured seven multi-family residential properties in the South Florida area (collectively, the “Properties”). A list of the properties is below:

- 1361 SE 4th St., Deerfield Beach, FL 33441;
- 3775 NW 116th Terrace, Coral Springs, FL 33065;
- 4020 NW 81st Ave. (Riverside), Coral Springs, FL 33065;
- 4450 Coral Springs Drive, Coral Springs, FL 33065;
- 3050 Coral Springs Drive, Coral Springs, FL 33065;
- 201 E. 30th St., Riviera Beach, FL 33404; and
- 530 NE 34th St., Pompano Beach, FL 33064.

The Receiver and her counsel immediately took steps to determine the status and condition of each of the Properties, including communicating with current tenants about their

continuing obligation to comply with their lease requirements. The Properties generally appear to be in good physical condition, have current property and casualty insurance (which has been renewed where applicable), and the Receiver has not seen any evidence of any significant impairments or existing problems with the Properties.¹ The Receiver received Court approval to retain Keyes Property Management (“Keyes”) to provide property management services for the Properties, including the collection of tenant rent payments and handling maintenance and service requests. (Doc. 15).

The Receiver’s investigation also identified several liens and encumbrances on the Properties. First, the Receivership Entities were delinquent in paying property taxes owed on several of the Properties for the 2019 and/or 2020 tax years, which resulted in the taxing authority’s sale of tax certificates in an attempt to recoup the delinquent amounts.² The Receiver’s investigation showed that there are currently outstanding tax certificates for five of the Properties collectively representing over \$70,000 in delinquent and owing property taxes. *See* Doc. 20 pp. 27-28. The Receiver also discovered that two of the Properties had outstanding mortgages as of the Receiver’s appointment. *Id.* pp. 25-27. Specifically, it appears that there are existing mortgages on the Properties located at (i) 3775 NW 116th Terrace, Coral Springs, FL 33065 (the “3775 Property”), and (ii) 4020 NW 81st Ave., Coral Springs, FL 33065 (the “4020 Property”). Based on payoff figures as of August 3, 2021 that

¹ The Receiver’s investigation did show that no windstorm insurance coverage was in place for the Properties, and the Receiver is in the process of ensuring that this coverage is in place for all Properties as soon as possible.

² These outstanding tax certificates each represent an interest-bearing first lien. If a tax certificate remains outstanding and unpaid for two years, the owner of the certificate may apply for a tax deed and ultimately seek to foreclose and even acquire the property.

were provided by counsel for the mortgage lender, the mortgage on the 4020 Property had a balance of \$377,836.83, and the mortgage on the 3775 Property had an balance of \$403,417.77.

The Receiver is still in the process of investigating the status of the outstanding tax certificates and mortgages, but presently anticipates that such liens or encumbrances will be satisfied using the sale proceeds generated by the sale of the corresponding property as described below. If the Receiver is unable to achieve a sale of the corresponding property by January 1, 2023, the Receiver will proceed to pay the property tax arrearages. Going forward, the Receiver plans to pay all property taxes when due.

Other than the real property discussed above, the Receiver's initial investigation has not uncovered any other potential instances where real property was purchased with or otherwise traceable to investor funds. The Receiver will update the Court as her investigation continues.

ii. Contemplated Liquidation Procedure

Paragraphs 32 and 33 of the Order Appointing Receiver govern the Receiver's sale of any real property:

32. Subject to Paragraph 33 immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

33. Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates.

Doc. 10 ¶¶ 32-33. As referenced by Paragraph 33, public and private sales of real property in a receivership are governed by 28 U.S.C. § 2001 (“**Section 2001**”). Section 2001(a) sets forth procedures applicable to public sales of receivership real property (such as auctions), while Section 2001(b) provides procedures for private sales of receivership real estate. Both public and private sales of receivership real estate are subject to various marketing, notice, and appraisal requirements. *See, e.g.*, 28 U.S.C. § 2001. Although the Receiver presently intends to comply with these requirements, she also notes that Florida courts have recognized their authority to deviate from or otherwise modify these requirements as necessary.³

Pursuant to the Order Appointing Receiver and relevant statutory guidance, the Receiver has consulted with real estate professionals as to the potential market and marketability of the Properties. Through these consultations, the Receiver has determined that a private sale is the most feasible and appropriate method of liquidating the Properties and is also most likely to generate an optimal recovery for the receivership estate.

Accordingly, and after obtaining Court approval for Keyes to manage the Properties in the interim, the Receiver began soliciting proposals from interested real estate brokers to market and liquidate the Properties in one or more private sales using commercially available methods for marketing the Properties to potential buyers (e.g., real estate listings, direct marketing, social media, etc.). The Receiver ultimately received proposals from four interested real estate brokers. After reviewing those proposals and interviewing each of the

³ *See, e.g., SEC v. Billion Coupons, Inc.*, 2009 WL 2143531 at *3 (D. Hawaii 2009) (authorizing private sale without any appraisals); *SEC v. Patrick Kirkland et al.*, 2009 WL 1439087 (M.D. Fla. 2009) (authorizing private sale based on one appraisal).

brokers, the Receiver determined to engage Daniel Otten with LOCAL Real Estate Co. With Mr. Otten's assistance, as well as his experience in marketing and liquidating distressed properties, the Receiver will use commercially reasonable efforts to market each property to as many potential buyers as possible and will also include any relevant information on her website at www.propertyreceivership.com. The Receiver anticipates that the Properties will be listed for sale in the near future both as individual listings and also as a portfolio listing.

To the extent the Receiver receives a purchase offer for any of the Properties which she believes is appropriate to accept, she will then seek Court approval of the proposed purchase agreement and sale. As required by Section 2001, the Receiver intends to obtain three broker price opinions for each of the Properties prior to seeking the Court's approval. Upon the Court's approval and the satisfaction of any other requirements pursuant to Section 2001, the Receiver will complete the sale and deposit any net proceeds into the appropriate Receivership Entity bank account.⁴

B. Recovered, Remaining, and Recoverable Receivership Personal Property

i. Assets On Hand And Potentially Recoverable

Upon her appointment, the Receiver identified, secured, and obtained possession of \$1,125,513.37 that was being held in trust by a law firm for the benefit of one or more Receivership Entities. The Receiver has also identified, frozen, and obtained possession of a total of \$16,335.50 that was being held in various bank accounts maintained by the

⁴ The Receiver has seen evidence that the Receivership Entities did not segregate or otherwise maintain tenant security deposits as required pursuant to Fla. Stats. § 83.001 *et seq.* Thus, the Receiver anticipates that a portion of the sale proceeds for such property(ies) will be used to correct and bring current any security deposit obligations.

Receivership Entities at Chase Bank. Those funds, along with deposits from Keyes generated by their management of the Properties, are being held in fiduciary accounts established by the Receiver at ServisFirst Bank.

The Receiver has also secured and recovered various items of tangible personal property pursuant to the Order Appointing Receiver, which to date consist solely of the contents of a storage unit located in Coconut Creek, Florida, which is believed to be contents of a previous office used by one or more Receivership Entities. The contents of the storage unit largely consist of various pieces of office equipment, furniture, electronics, and other furnishings. The Receiver has taken custody of various documents located in the storage unit as well as computers for forensic imaging and preservation.

Of note, the Receiver has been contacted by counsel for Defendant Brodman who has requested the return of two pieces of furniture that may have no material resale value (subject to verification) but which are represented to have sentimental value to Mr. Brodman. The Receiver is currently evaluating this request. Other than the two items referenced by Mr. Brodman, it does not appear that the remaining contents of the storage unit have any significant resale value. The Receiver is currently incurring the unit's monthly rental cost.

The Receiver continues to investigate whether any other personal property is traceable, but has not been turned over, to the Receivership Estate.

ii. Contemplated Liquidation Procedure

The Receiver understands the necessity of managing the Receivership Estate in an efficient and cost-effective matter. Paragraph 31 of the Order Appointing Receiver provides the Receiver with authority to sell any personal property without obtaining Court approval:

The Receiver may, without further Order of the Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

Doc. 10 ¶ 31. For the contents of the storage unit, which appear to have little to no commercial value and are likely collectively worth less than the required cost of securing and/or storing those assets, following confirmation that no other assets or documents of the Receivership Entities are contained in the furnishings, the Receiver intends to proceed under Paragraph 31 in attempting to donate or otherwise dispose of that property as soon as possible to avoid further incurring any storage costs.

In the event that any additional personal property is located and recovered, the Receiver intends to proceed pursuant to Paragraph 31. The Receiver might also seek the Court's approval to abandon or donate any assets if the circumstances warrant.

C. Potential Litigation Claims

The Receiver's main priorities since her appointment have been securing known assets and investigating the Receivership Entities' various business operations. In carrying out her initial investigation, the Receiver has also started to analyze the existence and viability of potential claims against third parties that may have received payments or transfers to which they were not entitled to receive or persons or entities that provided services to or otherwise improperly benefitted from their affiliation with the Receivership Entities.

It is too early to estimate whether or not the Receiver will bring any such claims or whether any claims will result in any recovery to the Receivership Estate. In proceeding with these determinations, the Receiver intends to consider a number of factors, including the cost-

benefit analysis of any potential claim. Thus, the Receiver is not yet able to predict the likelihood, amount or effectiveness of any particular claim or the claims as a whole. The Receiver may, however, plan to first offer those who are required to return money to the Receivership Estate the opportunity to do so voluntarily in an effort to avoid costly litigation for all involved. In the event that these pre-suit settlements are unsuccessful, the Receiver will seek Court approval before instituting any formal litigation.

D. Claims Proceedings And Distribution Of Proceeds

In the short time since her appointment, the Receiver and her Professionals have made significant progress in understanding the complex businesses operated by the various Receivership Entities that appear to have been financially and organizationally intertwined. From preliminary observations, it appears that investor funds were regularly commingled among a number of Receivership Entity bank accounts and that it was a regular practice for funds from one Receivership Entity's bank account to be used (or "loaned") for the benefit of another Receivership Entity in order to satisfy pressing obligations or other purpose. The Receiver has been in communication with many of the investors in the Receivership Entities and has appreciated their cooperation and assistance.

The Receiver continues to work with her legal and forensic professionals to investigate and understand the claims of potential creditors. One of the principal priorities for the Receiver and her forensic accounting professionals is to understand the flow of investor funds. Specifically, in formulating the procedures and framework for a claims process subject to the Court's approval, the Receiver will need to make a determination as to whether it is practical

(or even possible) to treat the Receivership Entities separately rather than treating the various entities as a single common enterprise.

Another priority for the Receiver is to understand the relationship between Receivership Entity Equinox Holdings and the remainder of the Receivership Entities relating to Property Income Investors. As detailed in the Receiver's Interim Report, Equinox Holdings was formed in 2012 – approximately four years before Property Income Investors, LLC was formed – and it appears that Equinox Holdings has raised funds from investors since at or shortly after its formation to as recently as August 2020. *See, e.g.,* Doc. 20.

Apart from the secured mortgage and tax lien holders, the Receiver anticipates that there will be at least two general categories of potential creditors: (1) individuals who invested in one or more of the Receivership Entities; and (2) employees and other general trade creditors of the Receivership Entities. At this preliminary stage, the Receiver is unable to determine whether she will recover sufficient assets to cover the universe of claims that are expected to be filed. The Receiver intends to work with her legal and accounting professionals to formulate a claims process and procedure for the Court's approval that will allow for the orderly, efficient and equitable distribution of assets while also minimizing any delays and administrative costs.

The Receiver anticipates presenting the proposed claims process for the Court's approval **by the end of this calendar year – i.e., by December 31, 2021** (the "Claims Motion"). The Claims Motion will seek (i) approval of the claims submission process, (ii) approval of the noticing procedures to be used in providing notice of the date by which claims must be filed against the Receivership Entities (the "Bar Date") and the claims submission

process; and (iii) establishment of the Bar Date. As soon as practicable following the filing of the Claims Motion, the Receiver plans to provide electronic and written notice of the claims submission process to all interested parties. If and when the Court approves the Claims Motion, the Receiver will then proceed to notify all interested parties of the Bar Date by which any claim must be submitted to the Receiver.

III. CONCLUSION

The Receiver continues to finalize her plan for liquidating all remaining, recovered and recoverable Receivership Property and urges all interested parties to visit the Receiver's website at www.propertyreceivership.com for further information.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to the following counsel of record:

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I further certify that on September 13, 2021, a true and correct copy of the foregoing was sent via electronic mail to the following:

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