

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:21-cv-61176-AHS

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.

**PLAINTIFF'S UNOPPOSED MOTION FOR PARTIAL RELIEF FROM ORDER
AND LOCAL RULE REGARDING ATTENDANCE AT MEDIATION**

Plaintiff Securities and Exchange Commission moves the Court for an order relieving it of the requirement of Southern District of Florida Local Rule 16.2(e) that all parties must be present at mediation "with full authority to negotiate a settlement."

The rules and regulations governing the Securities and Exchange Commission as well as the Commission's policies require the five-member Commission to review and approve any settlement of litigation the Commission has commenced. Accordingly, we are unable to comply

with the Local Rule absent having the five-member Commission present for mediation. Consequently, the Commission requests the Court to allow undersigned trial counsel Alice Sum and either the Regional Trial Counsel or the Associate Director of the Enforcement Division for the Miami Regional Office to attend mediation on April 5, 2022 on behalf of the Commission. We will have full authority to negotiate a settlement to recommend to the Commission for approval.

The Commission consists of five Commissioners, appointed by the President with the advice and consent of the Senate. *See* Section 4(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §78d(a). Only the five Commissioners may authorize commencement of a securities enforcement action such as this one. Exchange Act § 21(d)(1), 15 U.S.C. § 78u(d)(1). Just as only the Commissioners may authorize an enforcement action, only the Commissioners, and not their staff, have authority to settle such an action. *See* 17 C.F. R. § 202.50(f) (“In the course of the Commission’s investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may *discuss* with persons involved the disposition of such matters by consent, by settlement, or in some other manner”) (emphasis added).

Because only the five Commissioners acting as a body may approve a settlement, it is impossible for the Commission to have a representative with binding authority to settle the case present at mediation. Both the Federal Rules of Civil Procedure and the federal courts have recognized the unique position that agencies of the federal government occupy when it comes to having a representative with binding authority present at settlement conferences. For example, the Advisory Committee Notes to the 1993 Amendments to Rule 16 of the Federal Rules of Civil Procedure discuss the status of government agencies attending pretrial conferences at which settlement may be discussed:

The amendment of paragraph (9) should be read in conjunction with the sentence added to the end of subdivision (c), authorizing the court to direct that, in appropriate cases, a

responsible representative of the parties be present or available by telephone during a conference in order to discuss possible settlement of the case. The sentence refers to participation by a party or its representative. Whether this would be the individual party, an officer of a corporate party, a representative from an insurance carrier or someone else would depend on the circumstances. *Particularly in litigation in which governmental agencies or large amounts of money are involved, there may be no one with on-the-spot settlement authority, and the most that should be expected is a recommendation to the body or board with ultimate decision making responsibility.* The selection of appropriate representative should ordinarily be left to the party and its counsel.

Advisory Committee Notes to 1993 Amendments to Rule 16 of the Federal Rules of Civil Procedure (emphasis added).

Clearly, the Federal Rules contemplate the exact situation the Commission faces here – the inability to have a person with “on-the-spot” settlement authority present. Furthermore, federal courts considering the issue have held that it is not always possible for federal government agencies to have a representative with binding authority present at settlement conferences. In *In re Stone*, 986 F.2d 898 (5th Cir. 1993), the Fifth Circuit held a standing district court order requiring federal government agencies to have representatives with full settlement authority present at all settlement conferences was an abuse of discretion. While finding that the district court had the inherent power to manage its own docket and require the government to have a representative with full settlement authority “at least reasonably and promptly accessible” at pre-trial conferences, the Fifth Circuit also stated that “a district court must consider the unique position of the government as a litigant in determining whether to exercise its discretion in favor of issuing such an order.” *Id.* at 903 (footnote omitted).

In *Stone*, the U.S. Attorney General’s Office objected to the district court order because, as the Commission does, it had regulations requiring that only certain officers (such as the Deputy Attorney General) could approve a settlement. The *Stone* court found that the goal of centralized and consistent decision-making justified the regulations, and “given the insignificant interference

with the operation of the courts, the district court abused its discretion in not respecting those regulations.” *Id.* at 904. The court also found that the district court should have considered “less drastic” alternatives prior to “as a last resort” requiring persons with authority to settle to attend a pre-trial conference. *Id.* at 905.

Because only the five Commissioners may approve any settlement of this case, the Commission is in a different posture than an individual party. It cannot have a person with full settlement authority present. That is not to say that the Commission cannot or will not attend mediation and attempt to negotiate in good faith. The fact that the Commission is willing to send a senior officer in the Miami Regional Office – the office responsible for this litigation – shows the Commission takes this matter seriously.

For all of the aforementioned reasons, the Commission respectfully requests that it be permitted to attend mediation through the trial counsel assigned to this case and either the Regional Trial Counsel or the Associate Director of Enforcement, who will have full authority to negotiate a settlement to recommend to the Commission for approval.

RULE 7.1.A.3 CERTIFICATE OF CONFERRAL

Pursuant to Southern District of Florida Local Rule 7.1.A.3, undersigned counsel has conferred with Defendant Anthony Nicolosi, Defendant Larry Brodman, and counsel for Receiver Miranda L. Soto, who do not oppose this motion.

Respectfully submitted,

By: Alice Sum

Alice Sum, Esq.

Trial Counsel

Fla Bar No.: 354510

Phone: (305) 416-6293

Email: sumal@sec.gov

Attorney for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

801 Brickell Avenue, Suite 1950

Miami, Florida 33131

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on March 29, 2022, I electronically filed the foregoing document using CM/ECF. I also certify that the foregoing document is being served this day on all counsel and parties of record in the manner denoted below.

Alice Sum

Alice Sum, Esq.

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TEXT OF PROPOSED ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:21-cv-61776-AHS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PROPERTY INCOME INVESTORS LLC,
EQUINOX HOLDINGS INC.,
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PROPERTY INCOME INVESTORS 3050 LLC,
LARRY B. BRODMAN, AND
ANTHONY NICOLosi (F/K/A ANTHONY
PELUSO)

Defendants.

**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR PARTIAL RELIEF
FROM ORDER AND LOCAL RULE REGARDING ATTENDANCE AT MEDIATION**

THIS MATTER is before the Court on the Plaintiff's Unopposed Motion for Partial Relief from Order and Local Rule Regarding Attendance at Mediation (D.E. # ____). Having reviewed the motion and the record in this case, it is:

ORDERED AND ADJUDGED that the motion is **GRANTED**. Plaintiff Securities and Exchange Commission shall be permitted to attend mediation through Alice Sum, Trial Counsel, and Teresa Verges, Regional Trial Counsel of the Miami Regional Office, who shall attend

mediation with the full authority to negotiate a settlement to recommend to the Commission for approval.

DONE AND ORDERED this ____ day of _____ 2022, at Ft. Lauderdale, Florida.

RAAG SINGHAL
United States District Judge

Copies furnished to counsel via CM/ECF