

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

CASE NO.: 21-61176-CIV-SINGHAL

v.

PROPERTY INCOME INVESTORS, LLC, et. al.,

Defendants.

**RECEIVER’S UNOPPOSED MOTION TO APPROVE SECOND INTERIM
DISTRIBUTION AND FOR AUTHORITY TO AMEND CUSTODIAN
OF MIDLAND TRUST CLAIMS**

Miranda L. Soto, Esq., solely in her capacity as Receiver (the “Receiver”) in the above-styled Receivership and pursuant to this Court’s Order granting the Receiver’s Motion to (i) Approve Determination of Claims; (ii) Pool Receivership Assets and Liabilities; (iii) Establish Objection Procedure; and (iv) Approve Plan of Distribution (the “Claims Determination Order”) (Doc. 117) files this Unopposed Motion seeking an Order approving a Second Interim Distribution of one million dollars (\$1,000,000.00), as set forth in this Motion, in **Exhibit A** and in the proposed order provided as **Exhibit B**, and for authority to amend the custodian of Midland Trust Claims and states as follows:

I. Executive Summary of Relief Requested

The Receiver requests authority to distribute a Second Interim Distribution of One Million Dollars (\$1,000,000.00), which represents at 14.5% recovery of the Allowed Amount of Investor Claims. The Receiver previously distributed a First Interim

Distribution of **\$2,860,00.00**, representing a recovery of **41.5%** of the Allowed Amounts of Investor Claims. After the Second Interim Distribution has been effectuated, the Receiver will have returned a **56%** of Allowed Investor Claims.

II. Second Interim Distribution

The proposed Second Interim Distribution of **\$1,000,000.00** represents a recovery of **14.5%** of the Allowed Amounts of Investor Claims. As set forth in the Claims Determination Motion, the Receiver determined that 109 investors were appropriate Claimants for distribution of the funds collected in this Receivership. At present, the Receiver believes a Second Interim Distribution is in the best interest of the approved Claimants for this Receivership.

III. The Court's Order Granting the Claims Determination Motion, the Objection Period, the Receiver's Outreach to Claimants, and the First Interim Distribution to Claimants

Throughout the claims process, the Receiver has been in regular communication with interested parties. In addition to posting Court filings on her website, the Receiver has also sent communications to all Claimants and entities that submitted an approved Proof of Claim Form. Specifically, on October 11, 2023, the Receiver and her team mailed a letter giving notice of the Claims Determination Motion to all Claimants to the mailing addresses provided on their respective submitted Proof of Claim Forms. The letter advised each Claimant of their respective claim number and indicated that the Receiver's recommended determination of each claim was set forth in the Exhibits attached to the Claims Determination Motion and addressed in the body of the Motion. The letter further

informed the Claimants that the Claims Determination Motion was available on the Receiver's website or, upon request, from the Receiver's office. Claimants were then able to cross-reference their respective claim number with the Exhibits attached to the Claims Determination Motion to learn the Receiver's determination of the corresponding claim. The Receiver assigned a "claim number" to ensure a degree of anonymity to Claimants.

On October 25, 2023, the Court entered an Order granting the Claims Determination Motion in its entirety, including the proposed objection procedure for any Claimant that disagreed with the Receiver's determination of their claim (the "Claims Determination Order") (Doc. 117). The objection procedure proposed by the Receiver in the Claims Determination Motion, and adopted by the Court, provided that the Receiver would furnish each Claimant with written notice of the entry of the Claims Determination Order. Any Claimant that was dissatisfied with the Receiver's determination of their claim, or the anticipated plan of distribution, was required to serve the Receiver with a written objection within forty-five (45) days from the date of the written notice sent by the Receiver (i.e. December 26, 2023).

On November 8, 2023, the Receiver mailed out written notices to all Claimants notifying them of the Claims Determination Order and advising them of their approved Claim amount and assigned claim number. After approval of the Claims Determination Motion, the Claimants were required to state any objection to the Receiver by December 26, 2023. The Receiver received no objections during or after the objection period.

On February 13, 2024, the Receiver filed her Unopposed Motion to Approve First Interim Distribution of \$2,860,000, which constituted a recovery of **41.5%** of the Allowed Amounts of Investor Claims. (Doc. 130.). On February 21, 2024, this Court granted the Motion to Approve First Interim Distribution (Doc. 136), allowing the Receiver to promptly issue checks to Claimants for the \$2,860,000. As of July 2024, all claimants had negotiated the First Interim Distribution checks. At present, the Receiver believes a Second Interim Distribution in in the best interest of the claimants.

IV. Proposed Distribution of 14.5% of the Allowed Amounts of Investor Claims

In the Claims Determination Order, the Court approved the Receiver's plan of distribution set forth in the Claims Determination Motion. This plan of distribution provided that a first interim distribution (and any subsequent distributions based on available funds) will be made on a *pro rata* basis subject to applicable exceptions, priorities, and other parameters discussed in the Claims Determination Motion. Based on the current balance of the Receivership bank accounts, the Receiver seeks leave to make a Second Interim Distribution of **\$1,000,000.00** to Claimants with approved claims as specified in **Exhibit A**. This distribution will result in an approximate **14.5% recovery** of the Allowed Amounts of investor claims. After the Second Interim Distribution is effectuated, the Receiver will have paid out a **56% recovery** of the Allowed Amounts of investor claims in this Receivership. Although the Receiver anticipates making a future distribution as warranted by the amount of funds on hand and the status of the Receivership, it is highly unlikely that Investor Claims will ever be paid in full.

The distribution plan approved by the Court provides that Claimants receive a fixed percentage of their Allowed Amount from the aggregate amount distributed to Claimants in any particular distribution based upon the following formula, which achieves a *pro rata* distribution: each Claim's Allowed Amount divided by the total Allowed Amount of all allowed claims multiplied by the aggregate distribution amount. The amount each Investor Claim would receive based on this formula as part of a first interim distribution is specified in **Exhibit A**.

As of the filing of this Motion, the total balance of all Receivership accounts is **\$1,783,660.78**. The Receiver believes that by making a Second Interim Distribution totaling **\$1,000,000.00**, she will be able to provide a significant amount of money to Claimants now while still maintaining adequate funds to cover the expenses of (1) administering the Receivership, (2) potential anticipated litigation and handling of third-party claims, and (3) paying the Receiver's professionals for services already provided and yet to be paid.

V. Request for Authority to Amend Custodian for Midland Trust Claims

Throughout this Receivership process, the Receiver and her team have been made aware that several claimants have IRA Accounts currently held at Midland Trust, a company owned by Equity Trust Company and located in Fort Myers, Florida. Midland Trust is in the process of converting fully to Equity Trust Company, a change that will require all current "Midland Trust" claimants to incur a transfer fee on their accounts. The Receiver requests authority to administratively change the IRA Custodian from "Midland

Trust” to a new custodian, if a Claimant chooses not to proceed with a Midland Trust/Equity Trust Company account. The Receiver will request verification from the Claimant’s IRA Custodian to ensure the funds are being deposited as IRA funds. The administrative changing of “Midland Trust” to a different custodian for the Claimants will not change the Receiver’s indication that the funds are “for the benefit of” the Approved Claimant. If approved by the court, the Receiver and her team will work with the Midland Trust Claimants to facilitate the issuance of their funds to their current account custodian.

VI. Legal Argument for Distribution

This Court has wide latitude in exercising its inherent equitable power in approving a plan of distribution of receivership funds. *SEC v. Forex Asset Mgmt.*, 242 F.3d 325, 331 (5th Cir. 2001) (affirming district court’s approval of plan of distribution because court used its discretion in “a logical way to divide the money”); *CFTC v. Levy*, 541 F.3d 1102, 1110 (11th Cir. 2008) (“Appellate Courts will ‘not disturb the district court's choice of an equitable remedy except for abuse of discretion.’”); *Quilling v. Trade Partners, Inc.*, 2007 WL 107669, *1 (W.D. Mich. Jan. 9, 2007) (“In ruling on a plan of distribution, the standard is simply that the district court must use its discretion in a logical way to divide the money” (internal quotations omitted)). In approving a plan of distribution in a receivership, “the district court, acting as a court of equity, is afforded the discretion to determine the most equitable remedy.” *Forex*, 242 F.3d at 332. This Court may adopt any plan of distribution that is logical, fair, and reasonable. *SEC v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 657, 671 (6th Cir. 2011); *Trade Partners*,

2007 WL 107669 at *1. “Therefore, ‘[a]ny action by a trial court in supervising an equity receivership is committed to his sound discretion and will not be disturbed unless there is a clear showing of abuse.’” *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982) (quoting *SEC v. Ark. Loan & Thrift Corp.*, 427 F.2d 1171, 1172 (8th Cir. 1970)).

Consistent with the features of the scheme, “courts have favored pro rata distribution of assets where, as here, the funds of defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders.” *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88 (2d Cir. 2002). A logical, fair, and reasonable distribution plan may provide for reimbursement to certain claimants while excluding others. *See Wang*, 944 F.2d at 84; *Basic Energy*, 273 F.3d at 660-61. The Receiver’s Proposed Plan of Distribution is (i) in the best interest of the Receivership and the Claimants as a whole; (ii) is fair, reasonable, and equitable; and (iii) satisfies due process. As previously noted in our Claims Determination Motion, the Receiver should be allowed to move forward with her pro rata amounts as illustrated in **Exhibit A**.

WHEREFORE, Miranda L. Soto, Esq, as Receiver, respectfully requests the Court enter an order substantially in the same form as **Exhibit B**: (1) authorizing a Second Interim distribution in the total amount of one million dollars (**\$1,000,000.00**) as set forth above and in **Exhibit A**; (2) authorizing the Receiver to administratively change the custodian naming for Midland Trust Approved Claimants, if requested ; and (3) for any further relief this Court deems just and proper.

LOCAL RULE 7.1(a)(3) CERTIFICATION

Pursuant to Local Rule 7.1(a)(3), the undersigned certifies that counsel for the Receiver reached out to counsel for the Commission and counsel for Defendants Anthony Nicolosi and Larry Brodman prior to filing this Motion. Counsel for the Commission has no objection to the relief requested. The Defendants take no position regarding this Motion.

Respectfully submitted,
BUCHANAN, INGERSOLL, ROONEY PC

/s/Raquel A. Rodriguez

Raquel A. Rodriguez, Esq.

Florida Bar No. 511439

Lauren V. Humphries, Esq.

Florida Bar No. 117517

lauren.humphries@bipc.com

One Biscayne Tower

2 S. Biscayne Blvd, Suite 1500

Miami, FL 33131-1822

T: 305-347-4080

F: 305-347-4089

raquel.rodriguez@bipc.com

Attorneys for Receiver Miranda L. Soto

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2024, 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:

Alice Sum, Esq.

Securities and Exchange Commission

801 Brickell Avenue, Suite 1950

Miami, Florida 33131

Counsel for Plaintiff, Securities and Exchange Commission

Mark C. Perry, Esq.
2400 East Commercial Blvd., Ste 201
Fort Lauderdale, Florida 33308
Counsel for Defendant, Anthony Nicolosi, f/k/a Anthony Peluso

I further certify that on January 25, 2024, a true and correct copy of the foregoing
was sent via electronic mail to the following:

Barry S. Mittelberg, Esq.
Florida Bar No.: 396567
Barry@mittelberglaw.com
Lizzie M Ramos, Esq.
Florida Bar No. 1019278
Lizzie@mittelberglaw.com
BARRY S. MITTELBERG, PA
*Counsel for Movants Richard Bentley,
Joseph Alexander and P&E Properties, LP*

Larry Brodman
Larrybro58@gmail.com

Signed,

/s/ Raquel A. Rodriguez

Raquel A. Rodriguez, Esq.

SEC vs. Kinetic Investment Group, LLC, et al
CASE NO.: 8:20-cv-394

EXHIBIT "A"

Investor Number	Claim Amount Allowed	2nd Interim Distribution (\$1MM)
1	\$ 4,515.00	\$ 655.39
2	\$ 10,746.00	\$ 1,559.88
3	\$ 5,253.00	\$ 762.52
4	\$ 9,436.40	\$ 1,369.78
5	\$ 42,728.00	\$ 6,202.35
6	\$ 17,323.00	\$ 2,514.59
7	\$ 78,303.00	\$ 11,366.38
8	\$ 18,417.00	\$ 2,673.39
9	\$ 11,273.75	\$ 1,636.49
10	\$ 12,387.00	\$ 1,798.08
11	\$ 8,968.00	\$ 1,301.79
12	\$ 90,943.20	\$ 13,201.22
13	\$ 17,675.00	\$ 2,565.69
14	\$ 102,272.02	\$ 14,845.70
15	\$ 1,864.95	\$ 270.71
16	\$ 132,109.60	\$ 19,176.90
17	\$ 27,176.00	\$ 3,944.84
18	\$ 14,783.00	\$ 2,145.89
19	\$ 50,000.00	\$ 7,257.95
20	\$ 4,223.00	\$ 613.01
21	\$ 50,620.40	\$ 7,348.01
22	\$ 5,061.49	\$ 734.72
23	\$ 16,516.00	\$ 2,397.45
24	\$ 88,700.00	\$ 12,875.60
25	\$ 1,706.00	\$ 247.64
26	\$ 15,970.00	\$ 2,318.19
27	\$ 1,733.00	\$ 251.56
28	\$ 17,354.40	\$ 2,519.15
29	\$ 132,840.00	\$ 19,282.92
30	\$ 13,053.81	\$ 1,894.88
31	\$ 372,724.00	\$ 54,104.24
32	\$ 38,816.00	\$ 5,634.49
33	\$ 10,000.00	\$ 1,451.59
34	\$ 55,728.00	\$ 8,089.42
35	\$ 91,717.35	\$ 13,313.60
36	\$ 3,515.00	\$ 510.23
37	\$ 121,278.00	\$ 17,604.59
38	\$ 30,067.00	\$ 4,364.50
39	\$ 43,064.40	\$ 6,251.18

40	\$	2,301.00	\$	334.01
41	\$	142,213.07	\$	20,643.51
42	\$	4,129.00	\$	599.36
43	\$	70,900.00	\$	10,291.77
44	\$	18,573.00	\$	2,696.04
45	\$	17,724.00	\$	2,572.80
46	\$	412,715.07	\$	59,909.30
47	\$	22,420.00	\$	3,254.46
48	\$	4,466.00	\$	648.28
49	\$	17,585.20	\$	2,552.65
50	\$	2,500.00	\$	362.90
51	\$	23,312.02	\$	3,383.95
52	\$	84,800.00	\$	12,309.48
53	\$	88,585.66	\$	12,859.00
54	\$	1,670.00	\$	242.42
55	\$	73,432.48	\$	10,659.38
56	\$	11,609.00	\$	1,685.15
57	\$	2,134.00	\$	309.77
58	\$	50,000.00	\$	7,257.95
59	\$	22,930.40	\$	3,328.55
60	\$	4,100.00	\$	595.15
61	\$	22,987.30	\$	3,336.81
62	\$	107,097.05	\$	15,546.10
63	\$	5,000.00	\$	725.79
64	\$	38,000.00	\$	5,516.04
65	\$	26,500.00	\$	3,846.71
66	\$	3,111.06	\$	451.60
67	\$	12,387.00	\$	1,798.08
68	\$	35,350.00	\$	5,131.37
69	\$	127,575.02	\$	18,518.66
70	\$	10,000.00	\$	1,451.59
71	\$	13,053.81	\$	1,894.88
72	\$	41,177.00	\$	5,977.21
73	\$	7,468.00	\$	1,084.05
74	\$	26,560.00	\$	3,855.42
75	\$	1,879.00	\$	272.75
76	\$	28,067.00	\$	4,074.18
77	\$	3,754.00	\$	544.93
78	\$	2,331.16	\$	338.39
79	\$	2,480.00	\$	359.99
80	\$	32,624.00	\$	4,735.67
81	\$	239,156.00	\$	34,715.64
82	\$	294,194.00	\$	42,704.90
83	\$	56,068.62	\$	8,138.86
84	\$	116,812.02	\$	16,956.31
85	\$	193,252.00	\$	28,052.26

86	\$	4,662.40	\$	676.79
87	\$	24,116.40	\$	3,500.71
88	\$	8,603.00	\$	1,248.80
89	\$	21,624.81	\$	3,139.04
90	\$	8,644.00	\$	1,254.75
91	\$	13,446.40	\$	1,951.87
92	\$	4,341.00	\$	630.14
93	\$	239,766.00	\$	34,804.19
94	\$	90,524.61	\$	13,140.46
95	\$	1,217,000.00	\$	176,658.49
96	\$	413,000.00	\$	59,950.66
97	\$	6,500.00	\$	943.53
98	\$	25,318.00	\$	3,675.14
99	\$	13,722.00	\$	1,991.87
100	\$	47,402.74	\$	6,880.93
101	\$	91,359.00	\$	13,261.58
102	\$	9,085.00	\$	1,318.77
103	\$	4,175.00	\$	606.04
104	\$	213,338.00	\$	30,967.93
105	\$	13,987.21	\$	2,030.37
106	\$	30,000.00	\$	4,354.77
117	\$	19,169.51	\$	2,782.63
118	\$	56,050.40	\$	8,136.22
119	\$	17,317.00	\$	2,513.72
		\$6,888,998.19	\$	1,000,000.00
			\$	1,000,000.00

SEC vs. Kinetic Investment Group, LLC, et al
CASE NO.: 8:20-cv-394

EXHIBIT "B"

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, et al.

Defendants.

ORDER ON SECOND INTERIM DISTRIBUTION

This cause comes before the Court for consideration of the Unopposed Motion to Approve Second Interim Distribution and for Authority to Amend Custodian of Midland Trust Claims (the “Motion”) (Doc. ____). The Securities and Exchange Commission does not oppose the granting of the relief sought.

Having considered the Motion, and being otherwise fully advised, it is **ORDERED AND ADJUDGED** that the Receiver’s Motion is **GRANTED**. The Court finds that the interim distribution plan as set forth in the Motion and in its Exhibit is fair and reasonable and is consistent with the distribution plan previously approved by this Court. Accordingly,

1. The Receiver is authorized to conduct a Second Interim Distribution in the total amount of one million dollars (**\$1,000,000.00**) as set forth in the Motion and in Exhibit A attached to the Motion.

2. The Receiver is authorized to amend the custodian of Midland Trust claims.

DONE AND ORDERED at Tampa, Florida, on September ____, 2024.

UNITED STATES DISTRICT JUDGE

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