

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.

**RECEIVER'S MOTION FOR APPROVAL TO PURSUE CLAIMS AGAINST
THIRD-PARTIES KELLEY & GRANT, P.A. AND JERRON KELLEY**

Miranda L. Soto, 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"), and pursuant to the Order Granting Plaintiff Securities and Exchange Commission's (the "Commission") Motion for Appointing Receiver, dated June 15, 2021 (Doc.

10), hereby files this motion seeking this Court’s approval to pursue claims against third parties Kelley & Grant and Jerron Kelley. In support, the Receiver states as follows:

I. RELEVANT BACKGROUND

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”) against Defendants Larry Brodman, Anthony Nicolosi f/k/a Anthony Peluso, and the Receivership Entities. The Commission alleged that Defendant Brodman and the Receivership Entities raised at least \$9 million from over 150 investors who 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. Investors were also told that they would be entitled to receive a portion of the rental income and any sale proceeds generated from the Properties they were investing in.

Although a portion of investor funds was used to purchase various properties in the South Florida area, the Commission alleged that Defendant Brodman and the Receivership Entities misappropriated and diverted over \$2 million in investor funds, extensively commingled investor funds, and in some instances used investor funds to make purported “profit” payments and distributions to other investors. (Doc. 10 ¶¶ 4, 70-71.) The Commission also alleged that, despite statements in the offering materials that commissions would only be paid to licensed brokers, Property Income Investors, LLC (“PII”) and Brodman used at least \$1.2 million in investor funds to pay undisclosed sales commissions to unlicensed sales agents including Defendant Nicolosi. *Id.* ¶¶ 68-69.

On June 15, 2021, the Court granted the Commission’s Motion for Appointment of Receiver and entered an Order appointing Miranda L. Soto as the Receiver over the Receivership

Entities (“Order Appointing Receiver”) (Doc. 10) directing her to, among other things, identify, secure and marshal the Receivership Entities’ assets for the benefit of defrauded victims.

Paragraph 37 of the Order Appointing Receiver provides that:

Subject to Receiver’s obligation to expend receivership funds in a reasonable and cost- effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trust, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other the relief from this Court as may be necessary to enforce this Order.

Doc. 10 ¶ 37.

The Receiver has made significant progress in securing and marshalling assets for the benefit of victims. The Receiver previously distributed a First Interim Distribution of \$2,860,000, representing a recovery of 41.5% of the Allowed Amounts of Investor Claims, and a Second Interim Distribution of an additional \$1,000,000, resulting in a 56% total recovery for investors. The Receiver continues to focus on and prioritize any remaining avenues of recovery to benefit investors.

A. The Receiver’s Investigation

Prospective investors in the Receivership Entities were told that they would receive quarterly distributions generated by the rental income received from the property owned by the entity they invested with. Although it appears that many investors simply received identical quarterly distributions that equated to an annual return ranging from 6% to 7%, the investment documents signed by each investor specified that any distributions paid to investors would be made from a percentage of the “Net Cash From Operations” with the remainder going to Mr. Brodman. However, it appears that at least several of the Receivership Entities did not generate sufficient

cash flow from operations to pay the quarterly distributions made to investors, and those entities instead depended on transfers (or “loans” which were not documented and do not appear to have ever been repaid) from other Receivership Entities to pay the distributions.

A significant percentage of funds raised from investors were paid to company insiders – including Mr. Brodman. According to Equinox Holdings payroll records from ADP, Mr. Brodman received at least \$1,206,302 in Form 1099 compensation from 2014 to 2020. The Receiver has also seen evidence that Mr. Brodman made significant withdrawals from various bank accounts belonging to the Receivership Entities in the year preceding the Receivership. Mr. Brodman also granted generous pay raises and bonuses to the Companies’ primary administrative employee, Cindy Lieberman, amounting to nearly \$500,000 in salary during the same period – including a salary of \$93,900 in 2019 and \$107,000 in 2020. Based on the Receiver’s review of records and Ms. Lieberman’s deposition testimony, we do not believe her acceptance of this compensation was inappropriate. Her knowledge of the operations of the entities and the responsibilities placed upon her (for which she had no prior formal training) satisfied the Receiver that she provided the services for which she was being compensated but lacked sufficient knowledge and financial sophistication to understand that Mr. Brodman, his associate and their sales agents were defrauding investors. This is reinforced by the fact that she relied on the accounting firm Coleman & Cohen, LLC, which routinely collected company records for reconciliation of company accounts.

A preliminary analysis conducted by the Receiver’s forensic accountants indicates that approximately \$9 million was raised from at least 150 investors during the relevant time period. The Receiver has seen significant evidence that investor funds were routinely commingled between the Receivership Entities’ bank accounts for no apparent legitimate or business purpose; rather, it appears that corporate formalities were frequently disregarded and that a Receivership

Entity facing a shortfall in currently available funds would regularly use funds from other Receivership Entities as needed. The Receiver has also seen bank statements showing how an investor's funds would be wired into one entity and would, almost immediately or shortly thereafter, be wired to another entity.

Bank records also demonstrate how funds were transferred to entities whose bank funds were running low to the point of insolvency from other entities. No formal loan documentation, company resolutions or meeting minutes were produced, despite the accounting firm's subsequent characterization of these transfers as "inter-company" loans. Nor do the financial statements or tax returns evidence payment of any actual or imputed interest from one entity to another for these "loans." Moreover, based on the financial records reviewed and the Receiver's analysis of the way in which Brodman managed the Receivership Entities, it is apparent that corporate formalities were ignored and misused, transfers were made between companies without valid consideration, these transfers rendered the transferor company insolvent on either a balance sheet or going concern basis, and the entities were part of a coordinated scheme to defraud. The Receiver has also seen a troubling pattern of investor funds being routinely misused or misappropriated as early as 2018 (and perhaps earlier), and that unlicensed sales agents were used to solicit investments using high-pressure sales tactics.

B. The Receiver Has Identified Potential Claims against Third-Parties Kelley & Grant, P.A. and Jerron Kelley

Kelley & Grant, P.A. ("Kelley & Grant") and one of its principals, Jerron Kelley, served as the closing agent for the purchase of multiple properties by the Receivership Entities, and counseled Mr. Brodman on various real estate-related legal issues, including at least one prospective personal purchase for himself and his wife.

In January 2021, Kelley & Grant was to act as settlement agent for Property Income Investors, LLC (“PII”) in purchase of a single-family residential property containing a horse barn and stalls, located in Parkland, Florida (the “Horse Farm”). The Receiver subsequently learned that Mr. Brodman initially had sought to buy this property for his wife, who had two horses. One of the Receivership Entities, Property Income Investors 26, LLC, (“PII 26”) wired \$55,000 to Kelley & Grant to be used a deposit for the purchase.

Mr. Brodman decided that this property would be purchased by PII using a loan that would be collateralized both by the Horse Farm and another property (“3050 Property”) that Property Income Investors 304, LLC (“PII 304”) had recently purchased in August 2019, and that PII 304 would be the ultimate purchaser. The 3050 Property was an eight-unit multifamily housing complex located in Coral Springs, Florida that had been purchased free-and-clear, and this cross-collateralization would have significantly encumbered the property and thus diminished the value of any PII 304 investments. In addition, the purchase of a single-family residential property (with a horse barn and stables) is inconsistent with the representations to investors that PII would use their funds to purchase residential multi-family properties for renovation, leasing, and resale. It was an obvious and significant departure from the business plans as represented by Broadman.

The day before the transaction was scheduled to close, Brodman decided not to close on the transaction. As a result, the \$55,000.00 in investor funds that were being held as a deposit were forfeited to the seller and thus lost.

A closing agent owes a duty to all parties to the transaction to properly supervise the closing in a reasonably prudent manner, which was certainly not done here as set forth clearly above. *Askew v. Allstate Title & Abstract Co.*, 603 So. 2d 29 (Fla. 2d DCA 1992). But Kelley and the Firm were more than just the PII Entities’ closing and title attorneys, they represented the

PII Entities in other aspects of the transaction as well. For example, the Firm also assisted Brodman in extending time to provide a loan commitment in relation to the Second Parkland Property as a result of having allegedly contracted coronavirus.

The Receiver has reason to believe that Kelly and the Firm, despite being lawyers for PII (and multiple PII entities), had knowledge that Brodman was using PII's money for personal gain. In July 2024 the Receiver negotiated a Tolling Agreement of the Statute of Limitations for legal malpractice for Kelley & Grant, P.A. in order to explore the possibility of a resolution of the Receiver's potential claims against Kelley & Grant and Mr. Kelley. This Tolling Agreement expires January 1, 2025. Despite the Receiver's efforts, the Receiver was unable to negotiate a resolution with Kelley & Grant, P.A. or Mr. Kelley. The Receiver therefore seeks Court approval to move forward with full litigation against Kelley & Grant and Mr. Kelley. Due to the timing of the expiration of the tolling agreement, the Receiver will take any and all steps to preserve the Receiver's claim, including filing the lawsuit against these third parties with the Receivership Entities' valid claims. The authority to move forward with said litigation rests with the Order Appointing Receiver entered by this Court.¹ However, given the cost of litigation, the Receiver wishes to seek approval from the Court before further fees are expended beyond preparation of the Complaint and summons.

¹ Pursuant to the Order Appointing Receiver [Doc. 10], the Receiver has the authority "[t]o bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging Receiver's duties," and "to pursue . . . all suits, actions, claims and demands which may now be pending or which may be brought by . . . the Receivership Estates." The Receiver, in her due diligence, is taking all action to preserve the Receivership's claims against Kelley & Grant, PA and Mr. Kelley, including filing a lawsuit to pursue those claims.

II. ARGUMENT

A. **The Requested Relief Is Consistent with The Court's Broad Discretion And Equitable Powers**

The Receiver's proposed pursuit of legal action against potentially responsible third parties. In the event the Receiver is able to resolve the claims by agreement, she will apply to the Court for approval of such resolution. The Motion does not seek Court approval of any determination of ultimate fact or law. Federal courts have broad powers and wide discretion to determine relief in an equity receivership, including the authority to determine the appropriate actions to be taken in the administration of the Receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See SEC v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *SEC v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980).

The court may enter such orders as may be appropriate and necessary for a receiver to fulfill their duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See U.S. v. Branch Coal*, 390 F.2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court

overseeing equity receivership enjoys “wide discretionary power” related to its “concern for orderly administration”) (citations omitted).

III. CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court approve the Receiver’s request to pursue litigation against Kelly & Grant, P.A. and Jerron Kelley, should present negotiations fail, to allow the recovery of additional funds for the benefit of the Receivership Estate.

LOCAL RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 7.1(a)(3), the undersigned certifies that counsel for the Receiver reached out to counsel for the Commission prior to filing this Motion, and the undersigned has not received a response from the Commission at the time of filing.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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CERTIFICATE OF SERVICE

I hereby certify that on December 31, 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:

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