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 Stephen E. Anderson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO

SECURITIES AND EXCHANGE
 COMMISSION,

Plaintiff

v.

ANTHONY VASSALLO, et al,

Defendants.

Case No. CV 09-000665 LKK-DAD

**STIPULATION AND ORDER PLACING
 EIMT PROPERTIES, LLC UNDER
 RECEIVER'S AUTHORITY**

Judge Lawrence K. Karlton

RECITALS

Pursuant to orders dated April 30, 2009 and July 31, 2009, the Court appointed Stephen E. Anderson ("Receiver") as Receiver over Defendant Equity Investment Management Trading, Inc. ("EIMT").

The Court has empowered Receiver to "take all steps the receiver deems necessary to secure and protect the assets and property of EIMT...." Order Appointing Temporary Receiver for Equity Investment Management and Trading, Inc. and Order to Show Cause for Appointment of Permanent Receiver dated April 30, 2009 ("OAR"), ¶ III B.

Receiver's investigation into the affairs of EIMT has revealed an entity was formed called EIMT Properties, LLC in or around July 2007. Receiver believes that EIMT was the sole member of EIMT Properties, LLC at the time it was formed. EIMT investor funds were used to purchase a property located at 3788 Century Drive, Island Park, Idaho 83429 (the "Idaho

Property”) in the name of EIMT Properties, LLC. Of the \$2,750,000 paid for the Idaho Property, \$500,000 was returned to the purchaser from the seller in escrow at the time of purchase, and the seller holds a \$1,000,000 note and deed of trust on the property. Receiver believes that the \$500,000 in cash returned to the purchaser was invested in the name of EIMT Properties, LLC. Receiver believes all assets in the name of EIMT Properties, LLC were purchased with EIMT investor funds.

Defendant Kenneth Kenitzer is the Trustee for the Kenitzer Family Foundation. Prior to November 4, 2008, the Kenitzer Family Foundation was a fifty percent (50%) member of Tracy Clover 22, LLC, which was a business entity formed in California in 2002, before the fraudulent activity alleged in the complaint in this action. Tracy Clover 22, LLC owns an interest in a Tracy, California shopping center (the “Tracy Shopping Center”).

On November 4, 2008, EIMT, acting through Defendant Anthony Vassallo, and the Kenitzer Family Foundation, acting through Defendant Kenneth Kenitzer, entered into an “Exchange Agreement” and an “Assignment of Interests” through which EIMT purported to transfer its membership interest in EIMT Properties, LLC to the Kenitzer Family Foundation in exchange for the Kenitzer Family Foundation’s fifty percent (50%) membership interest in Tracy Clover 22, LLC (the “Membership Transfer”). The purported Membership Transfer had the effect of transferring ownership of the Idaho Property and investment funds held in the name of EIMT Properties, LLC to the Kenitzer Family Foundation and the fifty percent (50%) interest in Tracy Clover 22, LLC (and its interest in the Tracy Shopping Center) to EIMT.

Receiver does not believe that the purported Membership Transfer conveyed fair and adequate value to the EIMT investors.

Defendant Kenneth Kenitzer, on behalf of the Kenitzer Family Foundation, is willing to stipulate and agree that the assets held by EIMT Properties, LLC belong to EIMT and further stipulate and agree that EIMT Properties, LLC be placed under authority of Receiver under the same terms and conditions as in the OAR and the July 31, 2009 Order permanently appointing Receiver. Defendant Kenneth Kenitzer represents that he is authorized to make this stipulation on behalf of the Kenitzer Family Foundation.

Receiver believes that EIMT has no interest in Tracy Clover 22, LLC, and has been unable to identify any EIMT investor funds that were used in connection with any assets held by Tracy Clover 22, LLC. Accordingly, Receiver shall file a noticed motion seeking Court authorization to unwind the purported transfer of the Kenitzer Family Foundation's fifty percent (50%) membership interest in Tracy Clover 22, LLC to EIMT, in exchange for EIMT's membership interest in EIMT Properties, LLC, and relinquishing all claim of EIMT to any interest in Tracy Clover 22, LLC, which will restore the Kenitzer Family Foundation's ownership interest in Tracy Clover 22, LLC.

STIPULATION

NOW, THEREFORE, Receiver, on behalf of EIMT, through his counsel of record, and Defendant Kenneth Kenitzer, as Trustee for the Kenitzer Family Foundation, HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. EIMT is the sole owner of any and all membership interests in EIMT Properties, LLC.

2. Receiver Stephen E. Anderson shall be appointed Receiver over EIMT Properties, LLC with all of the same rights, duties, powers and obligations for EIMT Properties, LLC as he has over EIMT as set forth in the OAR dated April 30, 2009, and the July 31, 2009 order making Receiver a permanent Receiver.

3. Receiver shall file a noticed motion seeking Court authorization to unwind the purported transfer of the Kenitzer Family Foundation's fifty percent (50%) membership interest in Tracy Clover 22, LLC to EIMT, in exchange for EIMT's membership interest in EIMT Properties, LLC, and relinquishing all claim of EIMT to any interest in Tracy Clover 22, LLC, which will restore the Kenitzer Family Foundation's ownership interest in Tracy Clover 22, LLC.

IT IS SO STIPULATED AND AGREED.

Dated: September 1, 2009

FUTTERMAN DUPREE DODD CROLEY
MAIER LLP

By: Jamie L. Dupree
Jamie L. Dupree
Attorneys for Receiver Stephen E. Anderson

1 Dated: September 1, 2009

KENITZER FAMILY FOUNDATION

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3 By: Kenneth L. Kenitzer
Kenneth Kenitzer, Trustee

4 **[PROPOSED] ORDER**

5 Having reviewed the parties' Stipulation and Proposed Order Placing EIMT Properties,
6 LLC under Receiver's Authority, and for good cause shown,

7 **THE COURT FINDS AND ORDERS:**


8 1. EIMT is the sole owner of any and all membership interests in EIMT Properties,
9 LLC.

10 2. Receiver Stephen E. Anderson is hereby appointed Receiver over EIMT
11 Properties, LLC with all of the same rights, duties, powers and obligations for EIMT Properties,
12 LLC as he has over EIMT as set forth in the OAR dated April 30, 2009, and the July 31, 2009
13 order making Receiver a permanent Receiver. No further bond shall be required of Receiver.

14 3. If he has not already done so, Receiver shall file a noticed motion seeking Court
15 authorization to unwind the purported transfer of the Kenitzer Family Foundation's fifty percent
16 (50%) membership interest in Tracy Clover 22, LLC to EIMT, in exchange for EIMT's
17 membership interest in EIMT Properties, LLC, and relinquishing all claim of EIMT to any interest
18 in Tracy Clover 22, LLC, which will restore the Kenitzer Family Foundation's ownership interest
19 in Tracy Clover 22, LLC.

20 **IT IS SO ORDERED.**

21
22 Dated: September 3, 2009

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25 LAWRENCE K. KARLTON
26 SENIOR JUDGE
27 UNITED STATES DISTRICT COURT
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