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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

LOUIS V. SCHOOLER and FIRST
FINANCIAL PLANNING
CORPORATION, dba Western
Financial Planning Corporation,

Defendants.

Case No. 3:12-cv-2164-GPC-JMA

**ORDER DENYING MOTION FOR
PARTIAL RECONSIDERATION**

(ECF NO. 476)

This is a civil enforcement action initiated by the Securities and Exchange Commission (“SEC”), in which the SEC alleges defendants Louis V. Schooler (“Schooler”) and First Financial Planning Corporation d/b/a Western Financial Planning Corporation (“Western”) defrauded investors through the sale of unregistered securities tied to interests in real property.

More specifically, the SEC alleges that, since 2007, Defendants have defrauded thousands of investors by offering and selling approximately \$50 million worth of general partnership units (“GP units”)—i.e., interests in general partnerships organized by Defendants—without disclosing material facts regarding the true value of the underlying land, the mortgages encumbering the properties, and when ownership of the

1 underlying land was actually transferred from Defendants to the general partnerships
2 (“GPs”).

3 The Court has entered a preliminary injunction and appointed Thomas C.
4 Hebrank (“Receiver”) as permanent receiver to operate and manage the affairs of
5 Western, its subsidiaries, and the several GPs that Western formed in connection with
6 the sale of the aforementioned interests in real property.

7 On August 16, 2013, the Court granted in part and denied in part Defendants’
8 Motion to Modify Preliminary Injunction Order, in which Defendants requested that
9 the Court remove the GPs from the receivership estate. (ECF No. 470.) In ordering
10 that the GPs should be removed from the receivership estate, the Court imposed certain
11 equitable conditions on their removal, including the following condition:

12 [T]he Court first orders a pro rata reduction of Western’s equity interests
13 in the GPs according to the properties’ current fair market value as set
14 forth in the appraisals obtained by the Receiver. To the extent a GP
15 account has a zero balance or insufficient funds to meet an obligation due
16 within ninety days from the date of the reduction of Western’s interests,
17 such interests shall nonetheless be formally liquidated with no payment
18 to Western. Before the GPs are released from the receivership, all of
19 Western’s equity interests in the GPs shall be liquidated to ensure that
20 Western will have no future responsibility for any liability incurred by the
21 GPs. Additionally, given the enormous disparity between the purchase
22 prices of the GP properties and the funds Western raised from the GPs,
23 the Court finds it equitable to preclude Western from receiving a share of
24 any proceeds received from any future sale of the GP properties.

19 (ECF No. 470 at 25-26.)

20 Before the Court is Defendants’ Motion for Partial Reconsideration of the Order
21 Granting in Part and Denying in Part Defendants’ Motion to Modify Preliminary
22 Injunction Order (“Motion for Reconsideration”). (ECF No. 474.) The Court set an
23 expedited briefing schedule and hearing on the Motion for Reconsideration. (ECF No.
24 483.) On September 9, 2013, both the SEC and the Receiver filed responses in
25 opposition to the Motion for Reconsideration. (ECF Nos. 485, 486.) On September
26 16, 2013, Defendants filed a reply. (ECF No. 490.) Despite Defendants’ request for
27 oral argument, the Court deems the Motion for Reconsideration suitable for disposition
28 without oral argument. See CivLR 7.1.d.1.

1 Defendants assert that Federal Rules of Civil Procedure 59(e) and 60 govern
2 their motion for reconsideration. Rules 59(e) and 60, however, apply only to motions
3 attacking final, appealable orders. United States v. Martin, 226 F.3d 1042, 1048 n.8
4 (9th Cir. 2000). And Defendants have provided no authority to support their
5 contention that the Court’s condition—that certain assets held in the receivership estate
6 be sold—constitutes a final, appealable order.

7 Thus, Defendants’ Motion for Reconsideration is more appropriately considered
8 under Rule 54(b), which provides in part that,

9 any order other decision, however designated, that adjudicates fewer than
10 all the claims or the rights and liabilities of fewer than all the parties does
11 not end the action as to any of the claims or parties and may be revised at
any time before the entry of a judgment adjudicating all the claims and all
the parties’ rights and liabilities.

12 Rule 54(b) reflects a district court’s “inherent jurisdiction to modify, alter, or revoke”
13 its own orders before they become final. Martin, 226 F.3d at 1049.

14 A motion for reconsideration should be granted if: (1) the movant presents the
15 court with newly discovered evidence; (2) the court committed clear error or the initial
16 decision was manifestly unjust; or (3) there is an intervening change in controlling law.
17 Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th
18 Cir.1993); see also CivLR 7.1.i.1 (requiring motions for reconsideration to be filed
19 “within twenty-eight (28) days after the entry of the ruling, order or judgment sought
20 to be reconsidered”). Whether to grant or deny a motion for reconsideration is within
21 the sound discretion of the district court. Navajo Nation v. Norris, 331 F.3d 1041,
22 1046 (9th Cir.2003) (citing Kona Enter., Inc. v. Estate of Bishop, 229 F.3d 887, 883
23 (9th Cir.2000)).

24 Defendants base their Motion for Reconsideration on their contention that the
25 Court’s condition that Western’s interests in the GPs be liquidated constitutes clear
26 error and is manifestly unjust. “[T]he clearly erroneous standard is significantly
27 deferential, requiring a definite and firm conviction that a mistake has been
28 committed.” Concrete Pipe & Prods. v. Constr. Laborers Pension Trust, 508 U.S. 602,

1 623 (1993) (internal quotation marks omitted).

2 Defendants argue the Court’s condition deprives Western of \$11 million worth
3 of assets without due process because Western has not yet been found liable on any of
4 the SEC’s underlying claims. In addition to their due process argument, Defendants
5 attack the Court’s bases for imposing these conditions.

6 As to the Court’s intention to protect Western from any future liability incurred
7 by the GPs, Defendants argue that “the operative documents governing the GPs already
8 define the respective relationships and burdens of all relevant parties,” and that the
9 Court’s concern “can be adequately addressed through clear notice to the investors of
10 the fact that . . . [while, Western owns interests in the GPs purportedly worth \$11
11 million,] Western is not responsible for any liability incurred by the GPs.”

12 Regarding the Court’s intention to preclude Western from taking even more
13 money from investors in the event the GPs decide to sell their properties, Defendants
14 argue they are entitled to a trial to determine whether investors paid a fair price for their
15 property interests.

16 Defendants then argue on behalf of the GPs—without any indication that counsel
17 for Defendants also represents the GPs—that the Court’s condition alters the structure
18 of the GP entities in a way that increases “the ongoing pro rata burden each investor
19 will have going forward.”

20 “The Power of a district court to impose a receivership or grant other forms of
21 ancillary relief . . . derives from the inherent power of a court of equity to fashion
22 effective relief.” SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980). The “primary
23 purpose of equity receiverships is to promote orderly and efficient administration of the
24 estate by the district court for the benefit of creditors.” SEC v. Hardy, 803. F.2d 1034,
25 1038 (9th Cir. 1986). The court may therefore employ “reasonable procedures” to
26 serve this purpose. Id.

27 “Congress has authorized federal receivers to exercise broad powers in
28 administering, retrieving, and disposing of assets belonging to the receivership.” SEC

1 v. Ross, 504 F.3d 1130, 1145 (9th Cir. 2007) (emphasis added). Indeed, “the power
2 of sale is within the scope of a receiver’s ‘complete control’ over receivership assets.”
3 SEC v. Am. Capital Invs., Inc., 98 F.3d 1133, 1144 (9th Cir. 1996), abrogated on other
4 grounds by Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83 (1998).

5 “A district court’s power to supervise an equity receivership and to determine
6 the appropriate action to be taken in the administration of the receivership is extremely
7 broad.” SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). A
8 district court’s supervisory decisions are reviewed for an abuse of discretion. Id.

9 Defendants have fervently argued that the GPs are completely independent from
10 Western and thus should never have been included in the receivership estate. Now
11 Defendants argue that Western should remain tied to the GPs because Western
12 maintains interests in the GPs purportedly worth \$11 million. In the first place,
13 Defendants provide no support for their contention that their interests in the GPs
14 amount to \$11 million. In the second place, Defendants apparently forget that they
15 themselves structured the GPs in a way that requires a liquidation of Western’s
16 interests in the GPs to fully separate Western from the GPs. Recognizing this, the
17 Court sought the most equitable way to remove the GPs from the receivership estate
18 in a way that would, on one hand, ensure the GPs’ actual independence from Western
19 and, on the other hand, protect the remaining receivership estate (i.e., Western) from
20 any future risk of liability incurred by the GPs. In short, Defendants cannot have it
21 both ways.

22 The Court is not convinced by Defendants’ conclusory assertion that Western
23 would bear no responsibility for any liabilities incurred by the GPs. First, Defendants
24 provide no documentation to support their position. And second, Defendants’ assertion
25 runs counter to the general rule that each interest holder in a general partnership is
26 jointly and severally liable for the debts and liabilities of the general partnership. See,
27 e.g., Rappaport v. Gelfand, 197 Cal. App. 4th 1213, 1231 n.14 (2011) (“Under the rules
28 applicable to general partnerships, ‘all partners are liable jointly and severally for all

1 obligations of the partnership.””).

2 Neither is the Court convinced that the fact that Defendants have not yet been
3 found liable mandates reconsideration of the Court’s concern that the GPs may be
4 required to pay even more money to Western. Once removed from the receivership
5 estate, some GPs may decide to sell their properties, and if Western maintains an
6 interest in the GPs, it is undisputed that investors would be required to share their
7 recovery with Western despite the undisputed fact that they have already paid Western
8 approximately 500% of what Western initially paid for the properties.


9 This is not the first time the Court has considered Defendants’ arguments against
10 liquidation of Western’s interests in the GPs, as the Court also considered Defendants’
11 arguments in opposition to the Receiver’s Valuation Report and Recommendation,
12 which recommended that Western’s interests be liquidated in any GP that voted to
13 leave the receivership estate.

14 Moreover, it is not as if the Court is ordering that Western merely give away its
15 interests. Rather, to protect investors and the receivership estate, the Court has ordered
16 that Western’s interests be sold back to the GPs according to the current fair market
17 value of Western’s interests as provided by the most reliable information currently
18 before the Court—the appraisals obtained by the Receiver, an officer of the Court. See
19 In re San Vicente Med. Partners Ltd., 962 F.2d 1402, 1409 (9th Cir. 1992).

20 Based on the foregoing, the Court is not left with “a definite and firm conviction
21 that a mistake has been committed.” See Concrete Pipe & Prods., 508 U.S. at 623.
22 Nor is the Court convinced that its decision was manifestly unjust. Accordingly,
23 Defendants’ Motion for Reconsideration is **DENIED**. The hearing on the Motion for
24 Reconsideration, currently set for September 27, 2013, is **VACATED**.

25 **IT IS SO ORDERED.**

26 DATED: September 19, 2013

27 
28 HON. GONZALO P. CURIEL
United States District Judge