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MANAGEMENT, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

No. 3:16-cv-00438-PK

RECEIVER'S MOTIONS FOR AN ORDER
(1) APPROVING SETTLEMENT

Page 1 - RECEIVER'S MOTIONS FOR AN ORDER (1) APPROVING
SETTLEMENT BETWEEN ASPEN GROVE EQUITY
SOLUTIONS AND PRIVATE ADVISORY GROUP, AND (2)
AUTHORIZING TRANSFER OF ESTATE PROPERTY

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v.

AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;
AEQUITAS COMMERCIAL FINANCE,
LLC; AEQUITAS CAPITAL
MANAGEMENT, INC.; AEQUITAS
INVESTMENT MANAGEMENT, LLC;
ROBERT J. JESENİK, BRIAN A. OLIVER;
and N. SCOTT GILLIS,

Defendants.

AGREEMENT BETWEEN ASPEN GROVE
EQUITY SOLUTIONS AND PRIVATE
ADVISORY GROUP, and (2)
AUTHORIZING TRANSFER OF ESTATE
PROPERTY

LR 7-1 CERTIFICATION

On November 1, 2017, the undersigned circulated to the approximately 76 counsel of record, via email, a version of this motion (and supporting declaration and proposed form of order) that is substantially the same as this filed version. The conferral requested that counsel respond by 12:00 noon (Pacific Time) on November 8, 2017, as to whether their clients object or consent to the motion. As of the time of filing this motion the undersigned had received one consent and no objections.

MOTION

Ronald F. Greenspan, the duly appointed Receiver (“Receiver”) for Aspen Grove Equity Solutions, LLC (“AGES”), hereby moves (the “Motion”) this Court for the entry of an order (1) approving a settlement agreement between AGES and Private Advisory Group LLC (“PAG”) and, (2) authorizing the transfer of AGES’s equity interests in PAG to PAG pursuant to the terms of the settlement.

This Motion is supported by the Declaration of Brad Foster (“Foster Decl.”) submitted herewith, and the following memorandum.

I. Procedural and Factual Background.

A. Appointment of the Receiver.

1. On March 10, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint in this Court against the Receivership Defendants¹ and three individuals, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

2. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on an interim basis (the “Interim Receivership Order”). [Dkt. 30]. On April 14, 2016, pursuant to the Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on a final basis (the “Final Receivership Order”) [Dkt. 156]. (Foster Decl., ¶ 2).

B. The Receivership Entity, AGES, and PAG.

3. Pursuant to the Interim Receivership Order and the Final Receivership Order the Receiver has, among other things, undertaken to determine the nature, location and value of all Receivership Property. Although PAG is not included within the Receivership Entity, Receivership Property includes AGES’s ownership of 68.2% of the membership units of PAG (the “Units”). (Foster Decl., ¶ 3).

4. PAG is an investment advisory firm whose clients made substantial investments in Aequitas entities. PAG has or may assert claims against AGES, including but not limited to claims (a) arising from AGES’s alleged failure to participate in financing PAG’s purchase of a wealth management business from Enviso Capital Group, LLC, and (b) for reimbursement of attorneys’ fees and costs incurred by PAG (the “Claims”). (Foster Decl., ¶ 4).

C. The Proposed Settlement Agreement.

5. To settle PAG’s Claims and consistent with the cooperative efforts to facilitate

¹ Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed to them in the Final Receivership Order.

resolution of investor class action claims against PAG and other parties, PAG and AGES have entered into a Settlement and Unit Transfer Agreement (the “Settlement Agreement”). The principal terms of the Settlement Agreement, which is conditioned on approval of this Court, are as follows:

A. AGES shall transfer the Units to PAG;

B. PAG, and its Class A Common Unit members (other than AGES) (together, “Other Members”) shall provide the following to AGES in exchange for the Units:

(i) Defense and indemnification from any claims asserted or that could be asserted against AGES or any other entity included in the Receivership Entity, by Enviso Capital Group LLC and holders of PAG Class B Common Units;

(ii) Full satisfaction of all professional fees incurred as of the Closing Date (as that term is defined in the Settlement Agreement) by PAG, including but not limited to \$298,894 in fees and costs from the Ryan Swanson law firm and \$61,767 in fees and costs from the Romero Park P.S. law firm, all of which have and/or will be paid for by PAG (or its insurers); and

(iii) A release of any and all claims against AGES by PAG (including the Claims) and all Other Members. (Foster Decl., ¶ 5, and Exhibit 1, at ¶¶ 1-2).

6. The Settlement Agreement also provides that if, within two years following the date of the Settlement Agreement, PAG or its Class A Common Unit members receive value for the Units or admit additional members in exchange for anything of value, then the Receivership Entity is to receive 68.2% of the net value received by the advantaged party. (Settlement Agreement, ¶ 2.D).

C. Business Judgment Supports the Settlement Agreement.

7. There is substantial business justification for the Settlement Agreement. First, the

Receiver believes that the Units have little or no value to the Receivership Entity, that there is little or no market for the Units, and therefore the Units are unlikely to generate any material return for the Receivership Estate, and its creditors and investors. However, if within two years PAG or its Class A Common Unit members do realize value on Class A Common Units, they are obligated pay the Receivership Entity on account of its 68.2% interest. (Foster Decl., ¶ 7).

8. Secondly, AGES will be fully indemnified for claims asserted or that could be asserted by Enviso or other holders of PAG Class B Common Units. (*Id.*, ¶ 8)

9. Additionally, AGES will have no liability for PAG's attorneys' fees incurred through the Closing Date. (*Id.*, ¶ 9).

10. Finally, in light of the above, the Receiver believes in the exercise of his business judgment and discretion that it is in the best interests of AGES and the Receivership Entity to enter the Settlement Agreement. (*Id.*, ¶ 10).

II. Points and Authorities.

11. Upon entry of the Final Receivership Order, the minority members of AGES were dismissed and their powers were suspended. (Final Receivership Order, ¶ 4). The Receiver possesses the "powers, authorities, rights and privileges" of the members of AGES. (*See* Final Receivership Order, ¶ 3).

12. Pursuant to the Final Receivership Order, the Receiver may "without further Order of this Court, transfer, compromise, abandon or otherwise dispose of any Receivership Property...in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Entity and with due regard to the realization of the true and proper value of such Receivership Property." (Final Receivership Order, ¶ 26). The Receiver may also sell assets outside of the ordinary course of business "only with Court approval after reasonable notice under the circumstances and an opportunity for interested parties to be heard." (*Id.*). Here, the proposed Settlement Agreement includes the transfer of the Units to PAG in

exchange for the consideration described above, and as detailed in the Settlement Agreement, and such transfer is outside the ordinary course of business. Consequently, this Court's approval of the Receivership Entity's entering and performing the Settlement Agreement is required.

13. Here, for the reasons set forth in Section 1.C above, there is substantial business justification for the Settlement Agreement. The Receiver believes, in the exercise of his reasonable business judgment, that the Settlement Agreement is in the best interests of the Receivership Entity, its creditors, and the Aequitas investors.

14. Viewed in its entirety, the Settlement Agreement is comparable to a bankruptcy trustee's compromise of claims in a bankruptcy proceeding under Federal Rule of Bankruptcy Procedure 9019. That rule authorizes a bankruptcy trustee to seek court approval of a settlement, after notice and a hearing. FRBP 9019(a). A trustee is entrusted to "proceed in settling [an estate's] accounts on whatever grounds he, in his informed discretion, believes will net the maximum return for the creditors." *In re Mailman Steam Carpet Cleaning Corp.*, 212 F3d 632, 635 (1st Cir.), *cert. denied*, 531 US 960, 120 SCt 2661 (2000). Here, for the reasons set forth above, the Receiver believes, in the exercise of his discretion, that receiving PAG's indemnification from claims, PAG's agreement to pay its own attorneys' fees and costs, and its release of claims, represent a fair compromise in exchange for transfer of the Units to PAG, and that the Settlement Agreement is in the best interests of the Receivership Entity and its creditors.

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III. Conclusion.

For the foregoing reasons, the court should enter an order (1) approving the Settlement Agreement, and, (2) authorizing the transfer of the Units to PAG pursuant to the terms of the Settlement Agreement.

A proposed form of order is submitted herewith.

Dated this 8th day of November, 2017.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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