

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Case No. 2:09-cv-229-FtM-29DNF

FOUNDING PARTNERS CAPITAL MANAGEMENT
CO., WILLIAM L. GUNLICKS and PAMELA
L. GUNLICKS,

Defendants,

ORDER

This matter comes before the Court on review of the file. On December 1, 2011, the Court issued an Opinion and Order (Doc. #321) deferring Mr. Gunlicks' Rule 60(b) Motion (Doc. #309) pending appeal, indicating that the motion would be denied if the matter was remanded, staying the case pending appeal, denying leave to withdraw, and deferring the remaining motions. On March 12, 2012, the Eleventh Circuit Court of Appeals dismissed the appeal for lack of jurisdiction. (Doc. #336.) Therefore, the stay is lifted and the Rule 60(b) Motion will be denied. The remaining motions are resolved as provided below.

William Gunlicks and his family members, who are also purported investors (the Gunlickses), have responded and objected to the Receiver's Fourth Interim Application for Allowance and Payment of Fees and Expenses (Doc. #295). (Doc. #298.) The

Gunlickses seek to intervene as of right under Rule 24(a). The Receiver filed a Memorandum in Opposition (Doc. #303) arguing that the shareholder interests are actually fraudulent transfers by William L. Gunlicks and the children are beneficiaries of a trust created by Mr. Gunlicks with each trust being a minority shareholder. The request for intervention was raised and rejected in a related case. See 2:09-cv-445-FTM-29SPC, Docs. #229, #236. The Court finds that the Gunlickses do not qualify to intervene as of right in this case for the same reasons. The Gunlickses do not have a viable interest in the payments of fees and expenses to the Receiver. The Court further finds that permissive intervention, to the extent requested, should also be denied because the objections are regarding the Receiver's duties and have no bearing on the Interim Application. The Gunlicks Family Investors' Motion to Intervene and Defendant William L. Gunlicks and Gunlicks Family Investors' Objection to Receiver's Fourth Interim Application, Request for Hearing and Oral Argument (Doc. #298) will be denied in its entirety.

The Receiver has filed a Fourth Interim Application for Allowance and Payment of Fees and Expenses (Doc. #295) for the interim period of April 1, 2010 through September 30, 2010. The Receiver seeks authorization to pay its primary counsel, the accountants, Huron Consulting Group, Texas counsel, and Bermuda counsel, with some accepting only 70% of the fees accrued pursuant

to an agreement with the Securities and Exchange Commission, however payment is only sought for the Receiver's counsel (Broad and Cassel), the accountants (Berkowitz Dick Pollack & Brant), Texas counsel (Greg Whittmore, Esq.), and Bermuda counsel (Attride-Sterling & Woloniecki). The Court previously granted the First Interim Application and granted in part the Second Interim Application, except as to Huron Consulting Group. (Docs. ## 238.) The Court also granted the Third Interim Application and approved payment to the Receiver's Financial Advisor Catalyst Financial, LLC. (Doc. #282.) Upon review, the motion will be granted in the requested amounts. (Doc. #295, p. 13.)

The Receiver has filed a motion seeking approval to conduct a public auction of furniture and equipment inventoried and removed from the former Naples and Chicago offices of the Founding Partners. The items are currently being stored in 5 storage units at a cost of \$1,140.00 per month and have an approximate auction value of \$8,000 to \$13,000. The auction itself will cost \$7,250.00. Counsel for William L. Gunlicks, who was permitted to withdraw¹, filed a Corrected Response (Doc. #308) arguing that some of the pieces have emotional value and the taking of "ANY" property would be a due process violation. Upon review, without need to consider any due process arguments, because of the costs of the storage and low value associated with the sale of the items, the

¹See Doc. #322.

Receiver's Motion for an Order Approving Auction of the Receivership Entities' Furniture and Equipment (Doc. #304) will be denied. The Receiver shall terminate the leases for the storage of the items, and either donate or turnover the furniture and equipment as best serves the interests of the receivership.

The Receiver seeks to end the monthly disbursement of \$3,000.00 to William L. Gunlicks because "despite his representations to this Court, Gunlicks has access to funds he uses to pay multiple sets of attorneys (in Illinois and Florida)" to file on his behalf. William L. Gunlicks filed a Memorandum of Law in Opposition (Doc. #312) disputing that any funds were paid to counsel. Regardless, the Court has resolved the motions for reconsideration and the Eleventh Circuit has dismissed the interlocutory appeal regarding the disgorgement, interest, and civil penalty. The case has otherwise concluded as to William L. Gunlicks. (Doc. #292.) Therefore, the Court finds that the monthly disbursement should be terminated. The Receiver's Motion to End Monthly Disbursement of \$3,000 to Defendant Gunlicks (Doc. #305) will be granted.

The Receiver seeks permission to have employed the firm of Vanasco Genelly & Miller as Illinois counsel to appear and file necessary objections to protect the Receivership entities' interests. Upon review, the Receiver's Motion to Employ Legal Counsel in Illinois *Nunc Pro Tunc* (Doc. #323) will be granted.

Regions Bank seeks clarification or modification of the freeze on assets to exercise its foreclosure and other rights under the Note and Mortgage on real property located at 12355 Collier Boulevard, Unit B, Naples, Florida. An Affidavit in Support (Doc. #332) has been filed. The Receiver and the SEC filed a Joint Response (Doc. #335) indicating consent to the motion if certain conditions are attached, as the Court previously provided in its September 13, 2010 Order (Doc. #247). The Court will grant the motion, subject to conditions, except that it shall be subject to Florida law as this particular property is located in Florida. Regions Bank's Motion for Clarification and/or to Modify the Temporary Asset Freeze (Doc. #331) will be granted.

The Receiver seeks permission to retain Catalyst Financial, LLC for another one year term pursuant to the terms of the Original Agreement. Upon review, the Receiver's Motion for Entry of an Order Extending Receiver's Retention of Catalyst Financial, LLC (Doc. #334) will be granted.

Accordingly, it is now

ORDERED:

1. Defendant William Gunlicks' Rule 60(b) Motion, Motion to Vacate the Court's Opinion and Order and Vacate the Supplemental Judgment and Strike Underlying Motion to Set Disgorgement and Pre-[sic]Judgment Interest and Impose a Civil Penalty Against Defendant (Doc. #309) is **DENIED**.

2. The Gunlicks Family Investors' Motion to Intervene and Defendant William L. Gunlicks and Gunlicks Family Investors' Objection to Receiver's Fourth Interim Application, Request for Hearing and Oral Argument (Doc. #298) is **DENIED**.

3. The Receiver's Fourth Interim Application for Allowance and Payment of Fees and Expenses (Doc. #295) is **GRANTED** and the Receiver is authorized to pay \$393,195.40 to Broad and Cassel; \$89,897.30 to Berkowitz Dick Pollack & Brant; \$1,175.63 to Greg Whittmore, Esq.; and \$14,547.26 to Attride-Sterling & Woloniecki.

4. The Receiver's Motion for an Order Approving Auction of the Receivership Entities' Furniture and Equipment (Doc. #304) is **DENIED**. The Receiver shall either donate the furniture and equipment to charity for the tax incentive, or turnover any requested furniture and equipment to Mr. Gunlicks. The Receiver is further directed to terminate the leases for the storage of the items forthwith.

5. The Receiver's Motion to End Monthly Disbursement of \$3,000 to Defendant Gunlicks (Doc. #305) is **GRANTED** and Mr. Gunlicks will no longer receive monthly disbursements.

6. The Receiver's Motion to Employ Legal Counsel in Illinois *Nunc Pro Tunc* (Doc. #323) is **GRANTED**, *nunc pro tunc* to the appearance in the Illinois case.

7. Regions Bank's Motion for Clarification and/or to Modify the Temporary Asset Freeze (Doc. #331) is **GRANTED** and Regions Bank

may foreclose on real property located at 12355 Collier Boulevard, Unit B, Naples, Florida. The Securities and Exchange Commission and the Receiver shall be added to the service list for the foreclosure proceeding, who may pursue any surplus for the foreclosure sale, subject to Florida law.

8. The Receiver's Motion for Entry of an Order Extending Receiver's Retention of Catalyst Financial, LLC (Doc. #334) is **GRANTED**.

9. The Receiver's Motion for Approval of Claims Process (Doc. #337) is **DENIED** in light of the amended filing.

DONE AND ORDERED at Fort Myers, Florida, this 22nd day of May, 2012.



JOHN E. STEELE
United States District Judge

Copies:
Counsel of record
Mr. Gunlicks