UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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

Defendants,

FOUNDING PARTNERS STABLE-VALUE FUND, L.P., FOUNDING PARTNERS STABLE-VALUE FUND II, L.P., FOUNDING PARTNERS GLOBAL FUND, LTD., and FOUNDING PARTNERS HYBRID-VALUE FUND, L.P.,

Relief Defendants.

_____/

RECEIVER'S COURT-ORDERED SUBMISSION CONCERNING DEFENDANT WILLIAM L. GUNLICKS' RENEWED EMERGENCY MOTION TO MODIFY THE ASSET FREEZE

Pursuant to the Court's Order dated June 17, 2009 [D.E. 93], Daniel S. Newman, not individually, but solely in his capacity as receiver (the "Receiver") for Defendant Founding Partners Capital Management, Co. and Relief Defendants Founding Partners Stable-Value Fund, L.P., Founding Partners Stable-Value Fund II L.P., Founding Partners Global Fund Ltd., and Founding Partners Hybrid-Value Fund L.P. (collectively, "Founding Partners"), by and through his attorneys, Broad and Cassel, respectfully files his Submission Concerning Defendant William L. Gunlicks' Renewed Emergency Motion To Modify The Asset Freeze.

The Receiver opposes Gunlicks' Renewed Emergency Motion To Modify The Asset Freeze (the "Motion") because:

(i) The Receiver has been unable to get any cooperation from Mr. Gunlicks to assist the Receiver in locating the investors' money and understanding the Sun relationship;

(ii) Granting the Motion will improperly reward Mr. Gunlicks for refusing to cooperate with the Receiver and will harm the investors by removing any incentive for Mr. Gunlicks to cooperate;

(iii) Mr. Gunlicks has not met his burden of proving that he is offering to pledge assets sufficient to cover a disgorgement order; and

(iv) Mr. Gunlicks has not met his burden of proving that modifying the freeze is necessary to preserve the overall value of his assets.

I. GRANTING THE MOTION WILL IMPROPERLY REWARD MR. GUNLICKS FOR REFUSING TO COOPERATE WITH THE RECEIVER AND WILL HARM THE INVESTORS BY REMOVING ANY INCENTIVE FOR MR. GUNLICKS TO COOPERATE

In view of his court-ordered duties, the Receiver opposes the release of any frozen funds for the benefit of Mr. Gunlicks.

Since his appointment, the Receiver has sought Mr. Gunlicks' cooperation in the Receiver's efforts to locate and secure assets for the benefit of investors and to provide information to the Receiver concerning third parties who may have liability to Founding Partners and from whom funds may be recovered for the benefit of investors.

It became clear, however, that Mr. Gunlicks sought to have the SEC agree to certain specific funding commitments ***before*** providing any cooperation or assistance. Properly, the SEC was unwilling to commit to such advances without first being able to assess the value of the cooperation. Mr. Gunlicks, however, refused to divulge his information under these circumstances.

In the context of these discussions between Mr. Gunlicks' counsel and the SEC, the Receiver urged Mr. Gunlicks to begin cooperating, without any preconditions, and thus enhance Mr. Gunlicks' arguments for relief from the freeze order.

Mr. Gunlicks has nothing to lose and everything to gain by cooperation. If his cooperation materially assists the Receiver's collection efforts, Mr. Gunlicks might obtain the SEC's consent to a partial lifting of the asset freeze. Even if the SEC continued to oppose a modification of the asset freeze after Mr. Gunlicks had provided effective cooperation, Mr. Gunlicks would nonetheless have a stronger case to make unilaterally to the Court for the release of some of the frozen assets.

The Receiver and his legal team (and the SEC and the prior Receiver) have expended significant resources through Mr. Gunlicks' counsel to obtain Mr. Gunlicks' cooperation. At one point, it appeared these efforts would be successful to benefit the investors. On Friday evening, June 19, 2009, Mr. Gunlicks' counsel called to inform the Receiver's counsel that Mr. Gunlicks was finally ready to cooperate without any preconditions and would be available for a telephone interview the following Monday morning, June 22.

However, on Sunday, June 21, counsel for Mr. Gunlicks wrote to the Receiver's counsel cancelling that telephone interview of her client, stating:

> [Mr. Gunlicks] will not be ready to speak to you tomorrow. He is still going to cooperate, he just won't be ready tomorrow. We can talk tomorrow.

See Exhibit A. In a follow-up telephone call, Mr. Gunlicks' counsel provided the Receiver no information on when, if ever, Mr. Gunlicks would begin cooperating with the Receiver's efforts to locate and collect the Founding Partners' assets.

Based on the recent court filings, it is clear that Mr. Gunlicks is looking to the Court for relief with no intention of providing any level of cooperation to assist the Receiver in recovering assets for the investors if the Court grants such relief. Mr. Gunlicks seeks the maximum consideration from the Court to use funds that should remain available to compensate investors while providing ***nothing*** in return to the investors he has victimized.

In his Reply In Support of the Motion (the "Reply Brief"), Mr. Gunlicks advances the baseless argument that Mr. Gunlicks' cooperation has no value to the Receiver:

> While Mr. Gunlicks has offered to assist the Receiver and the SEC, Mr. Gunlicks is inherently prejudiced under this scenario because Mr. Gunlicks is not alleged to have, nor has he, secreted FP assets. All the money coming in and out of FP was well documented in audits, financial statements, and the company books. Accordingly, the Receiver does not need Mr. Gunlicks' help in identifying and recovering assets of FP.

Reply Brief [D. E. 97] at 8.

It is not Mr. Gunlicks' place to decide what and what does not have value to the Receiver. Mr. Gunlicks has information about the disposition of the investors' money that no one else has.

Until the filing of his Reply Brief, Mr. Gunlicks' counsel had never taken the position that he had nothing to offer. To the contrary, counsel to Mr. Gunlicks repeatedly asserted that Mr. Gunlicks could provide information that would assist the Receiver in recovering at least $6 to $8 million in Founding Partners assets. The SEC and the Receiver repeatedly urged Mr. Gunlicks' counsel to provide the Receiver with a list of the $6 to $8 million in assets. [1] In a telephone conference, Mr. Gunlicks' counsel began

[1] Moreover, Mr. Gunlicks' argument that the funds going in and out of Founding Partners were subject to audits is misleading at best. The last completed audit that the Receiver has been able to locate was for

to disclose some of the sources of funds, but then cut off the discussion, apparently because Mr. Gunlicks was still trying to extract agreement to specific funding commitments to which the SEC must consent before providing real cooperation. Mr. Gunlicks should provide immediate, complete, and meaningful cooperation to the Receiver, instead of falsely insisting that the Receiver has no need for his cooperation.[2]

In addition, Mr. Gunlicks' Reply Brief fails to address the value of Mr. Gunlicks' cooperation to the Receiver to assist with the most significant avenue of recovery for investors, *i.e.*, recovery of the investors' funds from Sun Capital, Inc. and Sun Capital Healthcare, Inc. (collectively, the "Sun Entities"). As the Court knows, Mr. Gunlicks arranged for the transfer of approximately half a billion dollars of investor funds to the Sun Entities, which the Sun Entities are withholding from Founding Partners and, thus, from the investors. Mr. Gunlicks argues that "it is clear to everyone, but the SEC, that the $550 million is not 'a thing of quantity that is lost.'" Reply Brief [D.E. 97] at 3. To

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fiscal year 2006 (an unexecuted draft audit was found for fiscal year 2007), and at this juncture there is no assurance that the completed audits were accurate and complete.

[2] In addition, it was originally anticipated that Mr. Gunlicks could assist the Receiver in recovering additional funds held in Bermuda that are subject to competing claims by a liquidator appointed in the Cayman Islands and by others. Concerning the Bermuda funds, Mr. Gunlicks' Reply Brief asserts:

> Further, while Mr. Gunlicks' [sic] could have provided assistance to the Receiver in repatriating funds from Bermuda that belonged to one of the funds identified in this action . . . because of the strong-arm tactics of the SEC and the conflicted predecessor receiver's inability to act, this avenue of marshalling assets is no longer available. Apparently, as a result of the delay in contacting the banks in the Caribbean, the Cayman Islands has appointed a liquidator over the funds.

Reply Brief at 8. In fact, there was no delay in contacting Bermuda by the SEC, by the prior Receiver, or by the current Receiver. *See, e.g.,* correspondence included in Composite Exhibit B. Further, contrary to Mr. Gunlicks' assertion, no one has ever prevented Mr. Gunlicks from cooperating and assisting the prior or current Receiver in collecting Bermuda funds. Mr. Gunlicks has been free to cooperate since the SEC first filed suit (and before), and he is free to cooperate now. Had he cooperated earlier, instead of refusing unless undeserved concessions were agreed to, Mr. Gunlicks might have been able to assist the Receiver in the recovery of Bermuda funds and would be able to argue to the Court that he had provided substantial assistance in the recovery of investor funds. Instead, he now seeks the release of funds while providing nothing to assist the Receiver and investors.

the contrary, it is clear to the Receiver and investors that have contacted the Receiver that those investor funds are indeed "lost," unless and until the Receiver is able to recover those funds from the Sun Entities (and affiliated companies and principals), either through negotiation or litigation.

Mr. Gunlicks also argues all investor funds given to the Sun Entities are subject to perfected security interests in favor of Founding Partners "as contemplated … in … the offering documents." [D.E. 97] at 3. The Receiver and his counsel are currently reviewing the security interests provided for the funding to the Sun Entities. One thing is clear, however, notwithstanding the representations in the offering documents, substantial sums obtained by the Sun Entities were utilized by the Sun Entities and its principals – Mr. Peter Baronoff, Mr. Howard Koslow, and Mr. Lawrence Leder – to purchase hospitals beneficially owned by these same three principals through holding companies.

Without Mr. Gunlicks' cooperation, the Receiver cannot determine whether Mr. Gunlicks purported to give consent for this use of the funds, what the Sun Entities told him, what knowledge the Sun Entities had, and whether the actions of Mr. Gunlicks and the Sun Entities were part of a conspiracy. Mr. Gunlicks' claim that there is no possible value to his cooperation with the Receiver, even though he was the primary person communicating with the Sun Entities, is ludicrous. This is especially true because, to date, the Sun Entities have provided no substantive cooperation or information to the Receiver in connection with the Receiver's attempts to identify, locate, and obtain the return of a half-billion dollars of investor funds. Mr. Gunlicks' argument that he has nothing of value to provide to the Receiver is obviously fallacious and should be rejected by the Court.

As the Court is aware through the Sun Entities' Motion for Modification of Order Appointing Replacement Receiver, filed June 26, 2009 [D.E. 98], the Sun Entities have not returned any of the investor funds they received, and the Sun Entities want to sue the Receiver to prevent the Receiver from recovering any of the investors' assets loaned to the Sun Entities. Specifically, the Sun Entities take the frivolous position that they are somehow "excused" from their "obligation to pay interest or otherwise perform under the [Credit and Security Agreement]," based on Mr. Gunlicks' purported acts or omissions. [D.E. 98] ¶ 4. Mr. Gunlicks' cooperation is critically necessary to assist the Receiver in refuting the Sun Entities' potential claims against the Receiver based on Mr. Gunlicks' actions and to provide critical information to assist the Receiver in his recovery of $550 million of investor money.

Mr. Gunlicks' Reply Brief also ignores the fact that he can provide assistance to the Receiver to identify claims the Receiver may have against third parties and to provide information to evaluate the strength of such claims.

In summary, before Mr. Gunlicks is granted any relief requested in the Motion, he should freely cooperate with the Receiver to assist investors and to demonstrate his good faith to the Court. Absent assistance of any kind, Mr. Gunlicks should not be granted a modification of the asset freeze to release funds to him when investors who have lost millions of dollars have no such option. *See, e.g., Securities and Exchange Commission v. Forte*, 598, F.Supp.2d 689, 693 (E.D. Pa. 2009) (holding that before a district court "will unfreeze assets, the defendant must 'establish that [the] modification is in the best interests of the defrauded investors.'") (quoting *Securities and Exchange Commission v. Grossman*, 887 F.Supp. 649, 661 (S.D.N.Y 1995)).

The Receiver believes that if Mr. Gunlicks' Motion is granted, it will be impossible for the Receiver to obtain information and cooperation from Mr. Gunlicks. If the Motion is denied, Mr. Gunlicks will have an incentive to cooperate with the Receiver and assist in obtaining the recovery of investors' funds.

II. MR. GUNLICKS HAS NOT MET HIS BURDEN OF DEMONSTRATING THAT HE HAS PLEDGED SUFFICIENT ASSETS TO COVER A DISGORGEMENT ORDER

The Receiver opposes Mr. Gunlicks' Motion because he has not met his burden of demonstrating that he can pledge assets sufficient to cover a disgorgement order.

Based on the Receiver's investigation to date, the Receiver has no reason to dispute the SEC's assessment that the ultimate disgorgement order against Mr. Gunlicks will be far in excess of $5,912,500.

Assuming the disgorgement order is limited to $5,912,500 (the figure Mr. Gunlicks relies on), Mr. Gunlicks has failed to demonstrate that the assets he lists are valued anywhere close to his subjective valuations and, thus, sufficient to cover any disgorgement order. The values of most of the assets Mr. Gunlicks is offering as sufficient to cover a disgorgement order are based on Mr. Gunlicks' subjective assessment of the value of his investments in the Founding Partners funds and in a capital account, as well as an unsecured note from Promise Healthcare, Inc., a company owned by the same principals as the Sun Entities.[3] Mr. Gunlicks' Asset Aff. [D.E. 72] ¶¶ 6-11. Mr. Gunlicks has provided no independent professional valuation of these assets. The value of these assets is clearly open to dispute, given that they are investments in a

[3] Contrary to Mr. Gunlicks' argument, he would not be assisted by access to records of Founding Partners because those records do not provide a reliable indicator of the true value of holdings in Founding Partners. Moreover, Mr. Gunlicks has failed to assert or provide evidence to the Court that he provided value for these positions. At this juncture, the Receiver is unable to confirm or refute that such value was provided.

company under SEC receivership and in a note which is unlikely ever to be repaid, especially given the statements made by the Sun Entities in various court filings.

Insofar as the disgorgement order is intended to compensate the victims of Mr. Gunlicks' fraud and breaches of fiduciary duty in connection with Founding Partners and the Sun Entities, it will be cold comfort to the investors to be rewarded with an even greater stake in these entities, instead of available cash.

III. MR. GUNLICKS HAS NOT MET HIS BURDEN OF PROVING THAT MODIFYING THE FREEZE IS NECESSARY TO PRESERVE THE OVERALL VALUE OF HIS ASSETS

For the reasons described below, the Receiver's position is that the interests of the investors will be maximized by preserving cash and not by further investing in Mr. Gunlicks' real estate holdings (the "Properties"), for which the Court has no independent professional appraisal.

The Receiver believes that it is in the best interest of the investors to preserve the value of Mr. Gunlicks' assets, where appropriate, for eventual recovery by the SEC and the Receiver. Mr. Gunlicks cannot prove that investing cash in the Properties, the value of which is unknown, especially in the current market, is in the best interests of the investors. Mr. Gunlicks' Motion states that that "he [Gunlicks] needs $21,693.35 a month to preserve his real estate properties" (Motion [D.E. 72] at 3), but that figure apparently does not include insurance and numerous other costs (*e.g.*, routine repair and maintenance) necessary to preserve the value of the Properties. The real cost is greater.

Even using Mr. Gunlicks' low projected monthly costs, the amount of cash claimed by Mr. Gunlicks to be necessary to maintain the Properties seems exorbitant. Mr. Gunlicks argues that the Properties are near foreclosure, which means that Mr.

Gunlicks is already several months delinquent. An initial outlay of at least $40,000 (more with late fees)[4] may be required to bring the Properties' mortgages current. Thereafter, Mr. Gunlicks is asking the Court to approve the continued expenditure of at least $20,000 a month. The Court could be approving more than $240,000 per year (the Receiver suspects the amount to be greater) in carrying costs to maintain the Properties without proof that Mr. Gunlicks has any equity in the Properties. Without sufficient equity in the Properties, the approval of spending $240,000 on the Properties would be uncalled for. Given the large amounts of cash investment requested, Mr. Gunlicks must provide independent professional evidence of the value of the Properties and Mr. Gunlicks' equity therein. Mr. Gunlicks has not met his burden for his requested relief. Tax valuations are based on prior year's tax value and are no proof of the actual current value of the Properties. Mr. Gunlicks' "good faith" estimates are not evidence of the value of the Properties, and the Receiver and the investors should not be subject to risk that the Properties have no substantial equity.

Mr. Gunlicks argues that he has no money for appraisals. Mr. Gunlicks apparently has relatives and friends with funds at Mr. Gunlicks' disposal,[5] and there are other ways of supporting market value estimates, including real estate broker opinions and comparables, that are less expensive or free.

In addition, websites, such as www.zillow.com ("Zillow"), provide free estimated real estate market values, which, although far from perfect, can be useful to provide an

[4] This figure is based on Mr. Gunlicks' estimated need for $20,000 per month and his claim that he has made no payments since April.

[5] Mr. Gunlicks' counsel had indicated that Mr. Gunlicks' children were willing to pay the carrying costs of the Presque Isle property for the summer because they intended to use the property for summer vacation. Moreover, Mr. Gunlicks' Motion fails to acknowledge whether or not he is seeking similar personal use of the Properties (other than his primary residence) if funds are released to maintain the Properties.

estimated ceiling, since they rely, however imperfectly, on past comparable sales in a market still moving downward. For the Court's convenience, the Receiver attaches printouts from Zillow for all the relevant properties that are available on the website. *See* Exhibit C.

First, with respect to 341 Sheridan Street, Winnetka, Illinois, Mr. Gunlicks states that he purchased this property in 2008 for $1,860,000 (Mr. Gunlicks' Asset Aff. [D.E. 72] ¶16), but the exhibit attached to the affidavit demonstrates that he purchased this property in 2005, *i.e.*, close to the height of the real estate market. *Id.*, Exh. 11. Mr. Gunlicks "good faith" estimate of the value of this property is $2,500,000 (although the tax authorities value the property at $1,168,000). *Id.* ¶16. This valuation is not credible; it is highly unlikely that this property appreciated by 45% during the worst real estate collapse in recent history. Zillow estimates that the property is worth $1,220,000, which is at least consistent with the downward trend of the real estate market. *See* Exhibit C. This property is subject to a mortgage of $1,400,000. *Id.* ¶16. Using Zillow as a ceiling for the estimated value of the property, the property is "upside-down," that is, the outstanding mortgage balance exceeds its estimated market value by approximately $200,000. Based on this information, using Mr. Gunlicks' cash to pay the mortgage and other costs of this property would constitute a wasting of assets to the detriment of investors.

Second, Mr. Gunlicks' valuation of the two condominium units (Units 503 and 801) in the same building in Naples, Florida (1717 Gulf Shore Boulevard), an area hit hard by the real estate downturn, is also questionable. *See* Mr. Gunlicks' Asset Aff. [D.E. 72] ¶¶14, 15. The value of condominiums has decreased more than single-family

homes, and if the building has numerous units for sale, the value is further depressed as the length of time a unit is on the market increases. According to Mr. Gunlicks, these units are highly mortgaged, and even by his "good faith" estimates there is not much equity, if any, in them.[6]

Third, the Receiver is concerned about a third condominium unit in Naples, Florida, this one in a different building (12355 Collier Boulevard) for the same reasons given in the preceding paragraph. *See* Mr. Gunlicks' Asset Aff. [D.E.] ¶12. According to Mr. Gunlicks, his equity in this unit is $83,321, without any evidence to support this contention. Given the state of the real estate market and the falling prices of real estate, there may ultimately be no equity to support the investment of cash requested by Mr. Gunlicks.

Finally, the only property that looks like it *might* possibly have sufficient value to justify the investment of cash is 6465 GI Way Din Trail, Presque Isle, Wisconsin. Mr. Gunlicks' Asset Aff. [D.E.] ¶13. According to Mr. Gunlicks, this property was purchased in 1992 for $337,000, has a current mortgage of $495,674.76, and, according to Mr. Gunlicks' "good faith" estimate, it is now worth $2,200,000. *Id.* The Receiver cannot at this juncture verify or refute Mr. Gunlicks' "good faith" estimate. This property was purchased before the real estate market crash and the steep devaluation of real estate values, especially those in the second home market. Unfortunately, there is no reliable basis on which to value the equity. Based on the Receiver's independent research, the Presque Isle property appears to be more than five hours from Chicago or Milwaukee, in a remote, densely wooded area (which might explain why Zillow has no

[6] According to Zillow (which should be employed only for estimated ceilings), Mr. Gunlicks' good faith estimate is $70,000 too high on Unit 502 and $30,000 too high on Unit 801.

estimate on it). Since the Presque Isle property is not occupied year round, it no doubt requires substantial upkeep and repair in the winter season, which does not appear to have been taken into account by Mr. Gunlicks. Without better information about the value of the property, Mr. Gunlicks' equity, if any, in the property, the actual cost to maintain the property and the potential benefit to investors, the Receiver respectfully submits that the Court should not approve expenditures on this property.

Even if Mr. Gunlicks could prove he has sufficient equity in the Properties to justify the expenditures of large amounts cash to continue mortgage payments and pay for maintenance and repairs, it does not necessarily follow that available cash should be invested in the Properties. Rather, the Court must determine whether preserving the cash or investing it in real estate will maximize overall value to investors.

Counsel for the Receiver has raised many of these issues with counsel for Mr. Gunlicks, stating:

> Based on in the information provided, we have serious concerns that keeping up the properties will result in wasting. Even crediting your client's subjective assessments, with one exception, the properties are represented to have razor thin equity. At $20,000+ per month (and considering the accumulated costs that would need to be paid off), it seems that the properties would quickly absorb more cash than any equity that would result from maintaining the properties. It seems to make more sense to preserve the cash, and obtain whatever equity is left via a consensual foreclosure. In your papers, we don't see any recognition of the accumulated cost of maintaining the properties and the alternative of preserving the cash. Can you address this concern for us?

See e-mail correspondence dated June 25 and June 26, 2009, attached as Exhibit D. In her response, counsel for Mr. Gunlicks (a) did not address the Receiver's concern for the accumulated costs of maintaining the properties, (b) did not consider the alternative of preserving cash, and (c) failed to acknowledge Mr. Gunlicks' responsibility to address these issues.

CONCLUSION

For all of the foregoing reasons, the Receiver urges the Court to deny Mr. Gunlicks' Motion.

Dated: June 29, 2009.

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By: /s/Michael D. Magidson
Michael D. Magidson, Esq.
Florida Bar No. 36191

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

/s/Michael D. Magidson
Michael D. Magidson, Esq.

SERVICE LIST

Christopher Ian Anderson, Esq. U.S. Securities and Exchange Commission 801 Brickell Avenue Suite 1800 Miami, FL 33131 305-982-6317 305-536-4154 (fax) andersonci@sec.gov *Counsel for U.S. Securities and Exchange Commission* *Service via CM/ECF*	**Paul A. Calli, Esq.** **Walter J. Tache, Esq.** **Marissel Descalzo, Esq.** Carlton Fields, P.A. 4000 International Place 100 SE 2nd Street Miami, FL 33131 305-358-5000 305-579-9749 (fax) pcalli@carltonfields.com wtache@carltonfields.com mdescalzo@carltonfields.com *Counsel for Defendant William L. Gunlicks* *Service via CM/ECF*

EXHIBIT A

Jonathan Etra

From: Descalzo, Marissel [mdescalzo@carltonfields.com]
Sent: Sunday, June 21, 2009 7:47 PM
To: Jonathan Etra
Subject: Re: Emailing: Letter re Privilege.pdf
Attachments: BC.jpg

Jonathan,

Bill will not be ready to speak to you tomorrow.

He is still going to cooperate, he just won't be ready tomorrow.

We can talk more tomorrow.

Thanks,

Marissel

From: Jonathan Etra
To: Descalzo, Marissel
Cc: 'Anderson, C. Ian'
Sent: Sat Jun 20 11:52:38 2009
Subject: Emailing: Letter re Privilege.pdf

Marissel,

This letter follows up on our discussion of privilege in the meeting on Friday.

Hope you are having a nice weekend.

Jonathan

Jonathan Etra
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Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any tax advice contained herein is not intended or written to be used for the purpose of avoiding tax penalties that may be imposed by the Internal Revenue Service. If this advice is or is intended to be used or referred to in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement, the regulations under Circular 230 require that we advise you as follows: (1) this writing is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on a taxpayer; (2) the advice was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by the written advice; and (3) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

EXHIBIT B

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
100 F STREET, N.E.
WASHINGTON, D.C. 20549-1004

OFFICE OF
INTERNATIONAL
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April 20, 2009

VIA E-MAIL AND FEDERAL EXPRESSS
Mr. Ifor Hughes
Head of Compliance
The Bank of Bermuda Limited
6 Front Street, Hamilton HM 11
PO Box HM 1020
Hamilton HM DX
Bermuda

RE: ***Securities and Exchange Commission v. Founding Partners Capital Management Company, William Gunlicks, Sun Capital, Inc., Sun Capital Healthcare, Inc. Founding Partners Stable-Value Fund, LP, Founding Partners Stable-Value Fund II, LP, Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, LP., Case No. 2:09-CV-229-FtM-29SPC (M.D. Fla.); OIA Ref. 2009-01004***

Dear Mr. Hughes:

This letter is to notify you that accounts at The Bank of Bermuda, Ltd. may contain the proceeds of a securities fraud that is the subject of an enforcement proceeding brought by the United States Securities and Exchange Commission ("SEC") in the above-referenced matter. On 20 April 2009, the SEC filed an emergency civil enforcement action against Founding Partners Capital Management Company ("Founding Partners"), William Gunlicks, Sun Capital, Inc., Sun Capital Healthcare, Inc., Founding Partners Stable-Value Fund, LP, Founding Partners Stable-Value Fund II, LP, Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, LP. in the United States District Court for the Middle District of Florida. We will provide a copy of the complaint shortly.

On the same day on which the SEC filed its complaint, 20 April 2009, United States District Court Judge E. Steele issued an order freezing "any assets or property, including but not limited to cash, free credit balances, fully paid for securities, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of: (1) Founding Partners Capital Management Company; (2) William L. Gunlicks; (3) Founding Partners

Stable-Value Fund, LP; (4) Founding Partners Stable-Value Fund II, LP; (5) Founding Partners Global Fund, Ltd.; (6) Founding Partners Hybrid-Value Fund, LP;" In addition, the freeze order stated that, "any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of the Defendants [Founding Partners and William Gunlicks] or Founding Partners Relief Defendants [Founding Partners Stable-Value Fund, LP, Founding Partners Stable-Value Fund II, LP, Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, LP.], directly or indirectly, held jointly or singly, and which receives actual notice of this order by personal service, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets." A copy of the Order Freezing Assets and Other Emergency Relief is attached.

SEC staff believes that one or more accounts at The Bank of Bermuda in the name of Founding Partners Global Fund, Ltd. may contain fraud proceeds. We believe that the accounts under the name of Founding Partners Global Fund, Ltd. include accounts 010-075059-511, 010-075075-511, 010-075026-511, 010-075034-511, 010-075042-511, 010-075067-511, and 010-075075-512.

In addition to the potential legal impact of the judicial Orders on the responsibilities of The Bank of Bermuda with regard to preserving the funds in aforementioned accounts, we note that The Bank of Bermuda may have responsibilities under local law to prevent further dissipation and transfer of those funds. We also point out that The Bank of Bermuda may now be acting as a constructive trustee on behalf of allegedly defrauded investors with respect to funds held on behalf of Founding Partners, Founding Partners Global Fund, Ltd., or any other of the defendants. On the basis of the above, The Bank of Bermuda may render itself liable to allegedly defrauded investors if it permits funds in any account, which are held or controlled by Founding Partners, Founding Partners Global Fund, Ltd., or any other of the defendants, to be withdrawn, transferred or dissipated in any way during the pendency of the action.

***

The SEC appreciates your prompt attention to this matter. If you have any questions, please contact Kathleen M. Kelly (Kellyk@sec.gov) by telephone at (202)551-6456, Marianne Olson (Olsonm@sec.gov) by telephone at (202) 551-6669 or me (Arevaloa@sec.gov) by facsimile at (202)772-9280.

Sincerely,

Alberto Arevalo
Assistant Director

Attachment: Order Freezing Assets and Other Emergency Relief

cc: Mr. Thomas Galloway
Senior Legal Counsel
Bermuda Monetary Authority
BMA House
43 Victoria Street
Hamilton HM 12 Bermuda
PO Box 2447
Hamilton HM JX
Bermuda

Inspector Charlene Thompson
Head of the Unit
Financial Crime Unit
Bermuda Police Service
P.O. Box HM 530 Hamilton,
HM CX BERMUDA

Mr. Ian Anderson
Trial Counsel
U.S. Securities & Exchange Commission
801 Brickell Ave., 18th Floor
Miami, Florida 33131

Leyza F. Blanco

From: sonja.m.salmon@bob.hsbc.com
Sent: Friday, May 08, 2009 2:28 PM
To: Leyza F. Blanco
Cc: maria.x.burley@bob.hsbc.com
Subject: SEC v. Founding Partners

Dear Ms. Blanco,

I write to you in your capacity as the Court-Appointed Receiver for Founding Partners Global Fund Ltd.

The Bank of Bermuda Limited accepts your appointment as Receiver by the Order dated April 9, 2009 issued in the State of Florida. Accordingly, we will accept your enquires and instructions regarding accounts in the name of Founding Partners Global Fund Ltd. The relationship manager is Maria Burley and her contact details are below.

We note that the Order does not extend to Founding Partner Global Fund Inc. Please advise if you have an order extending to this corporate entity.

Kind regards,
Sonja

Sonja M. Salmon
General Counsel
The Bank of Bermuda Limited
Member HSBC Group
tel: +441-299-5731
fax: +441-299-6543
email: sonja.m.salmon@bob.hsbc.com

Maria Burley
Relationship Manager
Corporate Banking | The Bank of Bermuda Ltd, Member HSBC Group PLC
6 Front Street, Hamilton
Bermuda, HM11

Phone. +1 441 299 5262
Fax. +1 441 299 6922
Mobile. +1 441 525 5262
Email. maria.x.burley@bob.hsbc.com

"Leyza F. Blanco" <Leyza.Blanco@gray-robinson.com>

05/06/2009 05:24 PM

To "Anderson, C. Ian" <AndersonCI@sec.gov>, Sonja M Salmon/HBBM/HSBC@HSBC02

cc

Subject RE: SEC v. Founding Partners

Ms. Salmon:
Please see my contact information below.
My cell phone number is (305)586-0954.

Leyza F. Blanco
Shareholder
GrayRobinson, P.A.
1221 Brickell Avenue, Suite 1650
Miami, Florida 33131
Main: 305-416-6880 | Fax: 305-416-6887
GRAY | ROBINSON
ATTORNEYS AT LAW

From: Anderson, C. Ian [mailto:AndersonCI@sec.gov]
Sent: Wednesday, May 06, 2009 4:24 PM
To: sonja.m.salmon@bob.hsbc.com
Cc: Leyza F. Blanco
Subject: SEC v. Founding Partners

<<Order Receiver Appointment - ECF.pdf>>

C. Ian Anderson

Senior Trial Counsel

Miami Regional Office

United States Securities and Exchange Commission

801 Brickell Avenue, Suite 1800

Miami, Florida 33131

(305) 982-6317

(305) 536-4154 (facsimile)

andersonci@sec.gov

Brenda Fradera

From: Brenda Fradera
Sent: Tuesday, May 26, 2009 12:16 PM
To: 'maria.x.burley@bob.hsbc.com'; 'sonja.m.salmon@bob.hsbc.com'
Cc: Daniel Newman
Subject: SEC v. Founding Partners

Good afternoon Ms. Salmon and Ms. Burley: We would like to set up a conference call with you and Daniel Newman. Please advise me as to your availability for a conference call either this afternoon or tomorrow afternoon.

Thank you.

Brenda Fradera
LEGAL ASSISTANT
21ST FLOOR, ONE BISCAYNE TOWER
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FL 33131
TELEPHONE: (305) 373-9400
FACSIMILE: (305) 995-6436
DIRECT LINE: (305) 373-9407
E-MAIL: bfradera@broadandcassel.com

BROAD AND CASSEL
ATTORNEYS AT LAW

www.broadandcassel.com

Brenda Fradera

From: Brenda Fradera
Sent: Thursday, May 28, 2009 4:30 PM
To: 'maria.x.burley@bob.hsbc.com'; 'sonja.m.salmon@bob.hsbc.com'
Cc: Daniel Newman
Subject: Founding Partners

Ms. Burley and Ms. Salmon: Please advise if you are available for a conference call this afternoon with Daniel Newman.

Thanks.

Brenda Fradera
LEGAL ASSISTANT
21ST FLOOR, ONE BISCAYNE TOWER
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FL 33131
TELEPHONE: (305) 373-9400
FACSIMILE: (305) 995-6436
DIRECT LINE: (305) 373-9407
E-MAIL: bfradera@broadandcassel.com

BROAD AND CASSEL
ATTORNEYS AT LAW

www.broadandcassel.com

Brenda Fradera

From: Daniel Newman
Sent: Friday, May 29, 2009 12:08 AM
To: 'sonja.m.salmon@bob.hsbc.com'; Brenda Fradera
Cc: 'maria.x.burley@bob.hsbc.com'
Subject: Re: SEC v. Founding Partners

Ms. Salmon: it is imperative that I speak to you or someone else before the end of the week. Please call me or have someone from the bank contact me. Thank you.

Regards,

Dan Newman

Sent from my BlackBerry Wireless Handheld

From: sonja.m.salmon@bob.hsbc.com
To: Brenda Fradera
Cc: Daniel Newman; maria.x.burley@bob.hsbc.com
Sent: Tue May 26 12:38:34 2009
Subject: Re: SEC v. Founding Partners

Dear Ms. Fradera,

I am out of the office tomorrow. Please proceed without me. If you wish to have legal counsel involved, I will need to ask a member of my team to participate.

Kind regards,
Sonja

Sonja M. Salmon
General Counsel
The Bank of Bermuda Limited
Member HSBC Group
tel: +441-299-5731
fax: +441-299-6543
email: sonja.m.salmon@bob.hsbc.com

Brenda Fradera <bfradera@broadandcassel.com>

05/26/2009 01:16 PM

To Maria X Burley/HBBM/HSBC@HSBC02, Sonja M Salmon/HBBM/HSBC@HSBC02
cc Daniel Newman <dnewman@broadandcassel.com>
Subject SEC v. Founding Partners

Good afternoon Ms. Salmon and Ms. Burley: We would like to set up a conference call with you and Daniel Newman. Please advise me as to your availability for a conference call either this afternoon or tomorrow afternoon.

Thank you.

Brenda Fradera
legal assistant
21st Floor, One Biscayne Tower
2 South Biscayne Boulevard

Miami, FL 33131
Telephone: (305) 373-9400
Facsimile: (305) 995-6436
Direct Line: (305) 373-9407
E-mail: bfradera@broadandcassel.com

****

SAVE PAPER - THINK BEFORE YOU PRINT!

Brenda Fradera

From: Daniel Newman
Sent: Friday, May 29, 2009 9:41 AM
To: 'maria.x.burley@bob.hsbc.com'
Cc: Brenda Fradera; 'sonja.m.salmon@bob.hsbc.com'; Jonathan Etra
Subject: RE: SEC v. Founding Partners

Maria:

My last email should have been more precise. The funds placed under the control of the Receiver by the federal court order need to be immediately transferred to a receivership bank account in the United States. Please call me at your earliest convenience so we can effectuate this transfer. Thank you.

Dan Newman, Receiver

Daniel Newman
PARTNER
21ST FLOOR, ONE BISCAYNE TOWER
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FL 33131
TELEPHONE: (305) 373-9400
FACSIMILE: (305) 373-9443
BIO
DIRECT LINE: (305) 373-9467
DIRECT FACSIMILE (305) 995-6387
E-MAIL: dnewman@broadandcassel.com

BROAD AND CASSEL
ATTORNEYS AT LAW

www.broadandcassel.com

From: maria.x.burley@bob.hsbc.com [mailto:maria.x.burley@bob.hsbc.com]
Sent: Friday, May 29, 2009 8:18 AM
To: Daniel Newman
Cc: Brenda Fradera; sonja.m.salmon@bob.hsbc.com
Subject: Re: SEC v. Founding Partners

Mr Newman,

Sonja Salmon is on annual leave. Can you please detail what you wish us to assist you with and I will do my best to answer your questions.

Kind regards

Maria Burley
Relationship Manager
Corporate Banking | The Bank of Bermuda Ltd, Member HSBC Group PLC
6 Front Street, Hamilton
Bermuda, HM11

Phone. +1 441 299 5262
Fax. +1 441 299 6922
Mobile. +1 441 525 5262
Email. maria.x.burley@bob.hsbc.com

Daniel Newman <dnewman@broadandcassel.com>

05/29/2009 01:08 AM

To Sonja M Salmon/HBBM/HSBC@HSBC02, Brenda Fradera <bfradera@broadandcassel.com>
cc Maria X Burley/HBBM/HSBC@HSBC02
Subject Re: SEC v. Founding Partners

Ms. Salmon: it is imperative that I speak to you or someone else before the end of the week. Please call me or have someone from the bank contact me. Thank you.

Regards,

Dan Newman

Sent from my BlackBerry Wireless Handheld

From: sonja.m.salmon@bob.hsbc.com
To: Brenda Fradera
Cc: Daniel Newman; maria.x.burley@bob.hsbc.com
Sent: Tue May 26 12:38:34 2009
Subject: Re: SEC v. Founding Partners

Dear Ms. Fradera,

I am out of the office tomorrow. Please proceed without me. If you wish to have legal counsel involved, I will need to ask a member of my team to participate.

Kind regards,
Sonja

Sonja M. Salmon
General Counsel
The Bank of Bermuda Limited
Member HSBC Group
tel: +441-299-5731
fax: +441-299-6543
email: sonja.m.salmon@bob.hsbc.com

Brenda Fradera <bfradera@broadandcassel.com>

To Maria X Burley/HBBM/HSBC@HSBC02, Sonja M

05/26/2009 01:16 PM

Salmon/HBBM/HSBC@HSBC02

cc Daniel Newman <dnewman@broadandcassel.com>

Subject SEC v. Founding Partners

Good afternoon Ms. Salmon and Ms. Burley: We would like to set up a conference call with you and Daniel Newman. Please advise me as to your availability for a conference call either this afternoon or tomorrow afternoon.

Thank you.

Brenda Fradera
legal assistant
21st Floor, One Biscayne Tower
2 South Biscayne Boulevard

Miami, FL 33131
Telephone: (305) 373-9400
Facsimile: (305) 995-6436
Direct Line: (305) 373-9407
E-mail: bfradera@broadandcassel.com

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Internet communications cannot be guaranteed to be timely, secure, error or virus-free. The sender does not accept liability for any errors or omissions.

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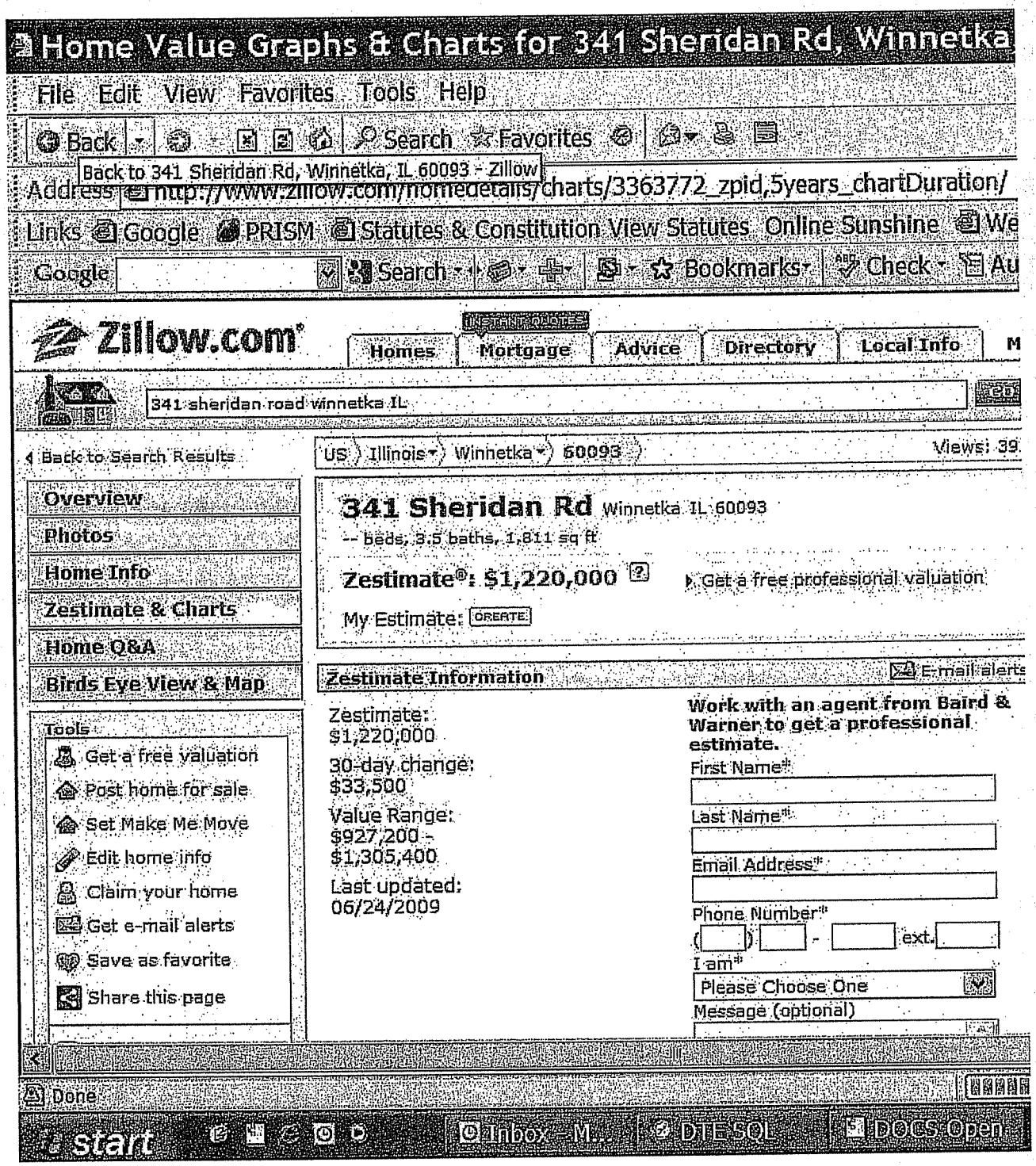
EXHIBIT C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Home Q&A
Birds Eye View & Map
Tools
Get a free valuation
Post home for sale
Set Make Me Move
Edit home info
Claim your home
Get e-mail alerts
Save as favorite
Share this page
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-- beds, 3.5 baths, 1,811 sq ft
Zestimate®: $1,220,000
Get a free professional valuation
My Estimate: CREATE
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E-mail alerts
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Value Range: $927,200 - $1,305,400
Last updated: 06/24/2009
Work with an agent from Baird & Warner to get a professional estimate.
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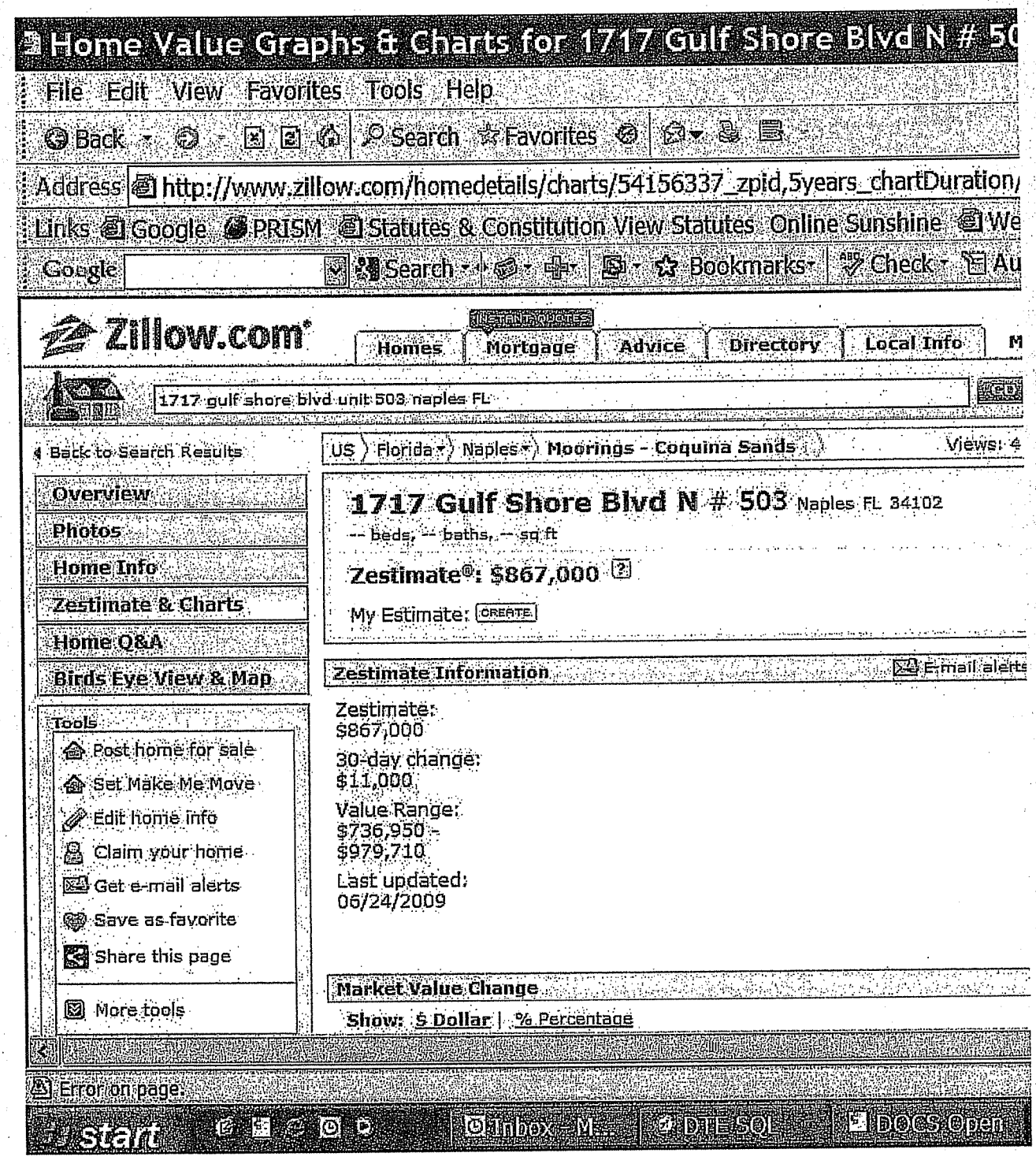
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Home Q&A
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Post home for sale
Set Make Me Move
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Save as favorite
Share this page
More tools
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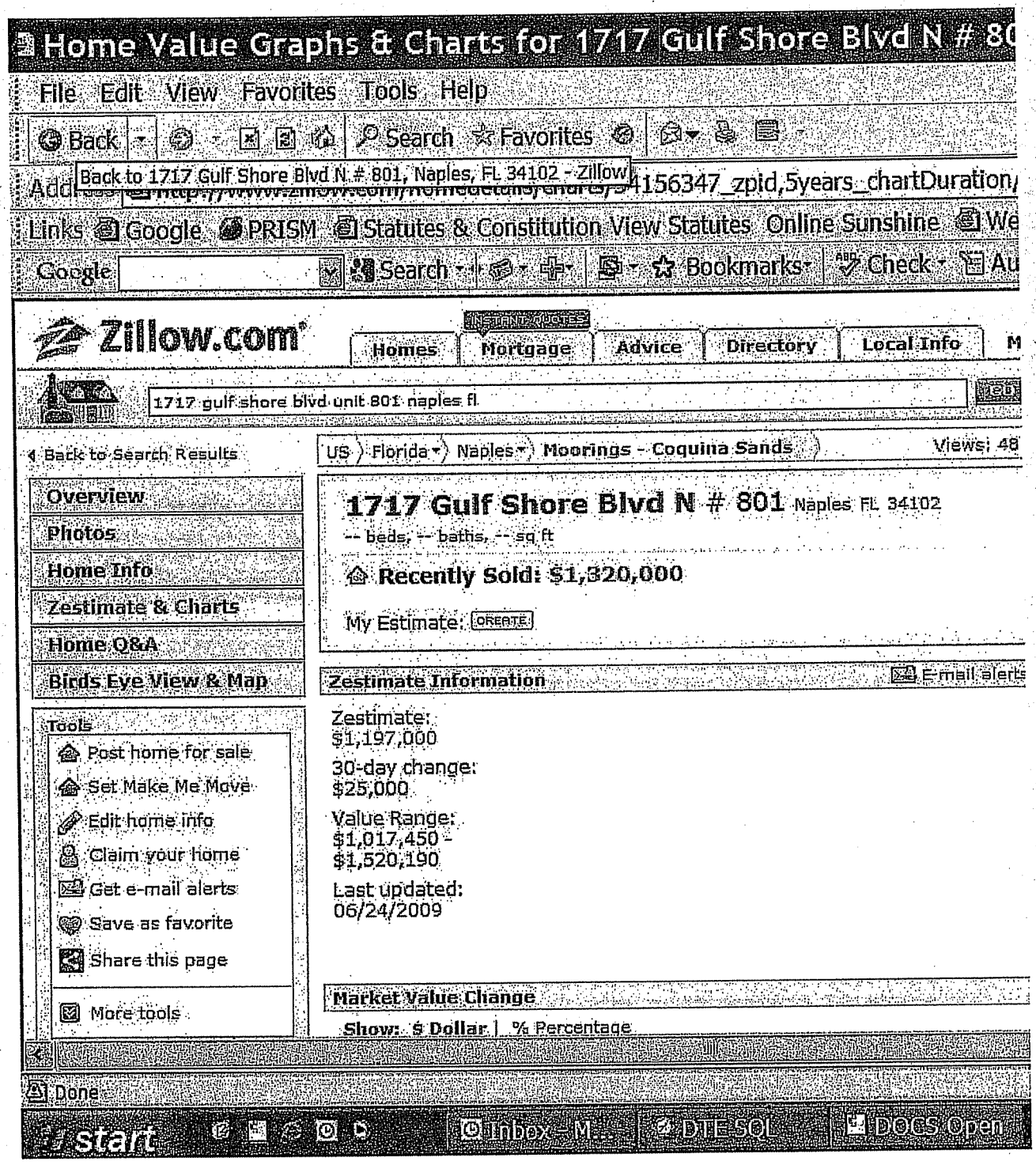
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Views: 48
Overview
Photos
Home Info
Zestimate & Charts
Home Q&A
Birds Eye View & Map
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-- beds, -- baths, -- sq ft
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My Estimate:
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Zestimate Information
E-mail alerts
Zestimate:
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30-day change:
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Value Range:
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Last updated:
06/24/2009
Tools
Post home for sale
Set Make Me Move
Edit home info
Claim your home
Get e-mail alerts
Save as favorite
Share this page
More tools
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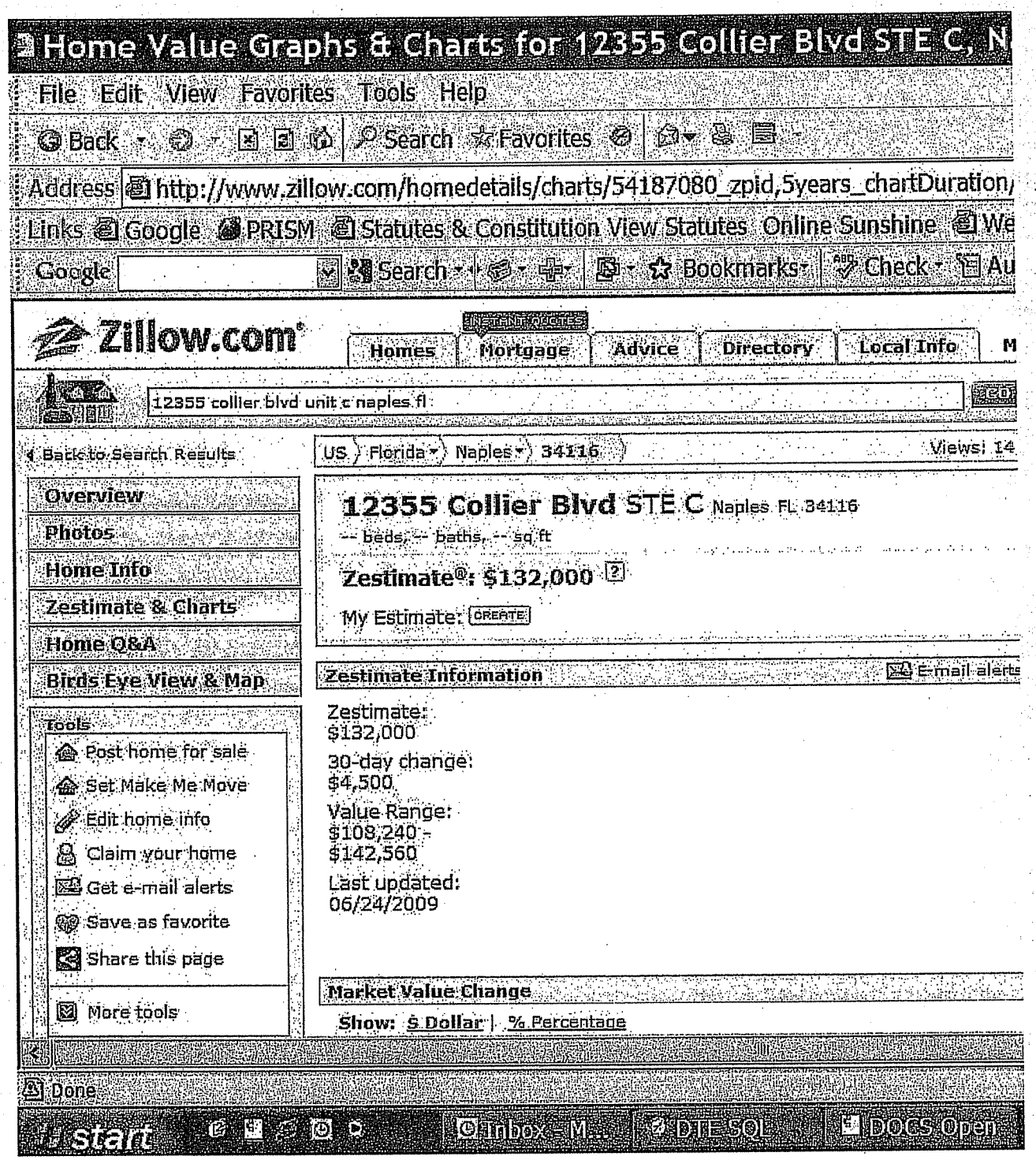
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Birds Eye View & Map
Tools
Post home for sale
Set Make Me Move
Edit home info
Claim your home
Get e-mail alerts
Save as favorite
Share this page
More tools
12355 Collier Blvd STE C Naples FL 34116
-- beds, -- baths, -- sq ft
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My Estimate: CREATE
Zestimate Information
E-mail alerts
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$132,000
30-day change:
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Value Range:
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Last updated:
06/24/2009
Market Value Change
Show: $ Dollar | % Percentage
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DOCS Open

EXHIBIT D

Jonathan Etra

From: Jonathan Etra

Sent: Thursday, June 25, 2009 8:40 PM

To: 'Descalzo, Marissel'

Subject: Your Motion For Relief From The Asset Freeze

Marissel,

As you know, the Judge has order the Receiver to provide his position on your Motion. In that regard, we have some questions and concerns:

1. Like the SEC, we have concerns that the properties may not have sufficient equity to warrant the investment. Can you provide any third-party information to verify the value, particularly given the current state of the real estate market and recognizing that tax data often is many steps behind the fast moving (in this case, downward) market.

2. Similarly, can you provide us with the monthly carrying costs of each property? In your motion, you state that the total costs for all five properties is $21,693.35, and you cite in support Paragraph 14 of Mr. Gunlicks' affidavit. However, Paragraph 14 of the affidavit makes no reference to the monthly costs of any of the properties. Nor does the rest of the affidavit. Please provide this information, with whatever back up you have.

3. I note that, in a previous e-mail, you asserted that the monthly costs for the Sheridan Road property was $5834.46, and you provided back up. However, that calculation did not include insurance. Does the estimate of $21,693.35 include insurance? Please advise.

4. Based on in the information provided, we have serious concerns that keeping up the properties will result in wasting. Even crediting your client's subjective assessments, with one exception, the properties are represented to have razor thin equity. At $20,000+ per month (and considering the accumulated costs that would need to be paid off), it seems that the properties would quickly absorb more cash than any equity that would result from maintaining the properties. It seems to make more sense to preserve the cash, and obtain whatever equity is left via a consensual foreclosure. In your papers, we don't see any recognition of the accumulated cost of maintaining the properties and the alternative of preserving the cash. Can you address this concern for us?

5. We are particularly concerned about the values in Naples, which as you know, has been hit hard by the real estate downturn, especially since two of the properties are condominium units in the same building. Do you have any information at all about how many units in that building are for sale, how they are being valued, or how long it takes for them to sell?

6. The exception may be the Presque Isle property, which is represented to have substantial equity. Without any appraisal or even broker estimate, a concern is the location. From what we can see via the internet, this appears to be located in an extremely remote area more than 5 hours from either Chicago or Milwaukee. Without any specific input from Mr. Gunlicks, it appears that this is the kind of area which, it was ever desirable as a vacation/resort spot, the values would have plummeted in the recent downturn. Also, the maintenance costs could potentially be very high, given the necessity of extra upkeep in the winter. Can you provide any more information about this, or provide your views on these concerns?

7. Insofar as Mr. Gunlicks believes that pertinent information on this is located in the Founding Partners offices, please let us know exactly what information he believes is there and exactly where it can be found, so that we may utilize the information in our analysis.

Thank you in advance for your anticipated cooperation.

Jonathan

Jonathan Etra
OF COUNSEL
2 SOUTH BISCAYNE BLVD.
21ST FLOOR
MIAMI, FL 33131
TELEPHONE: 305.373.9400
CELL: 305.318.3396
FACSIMILE: 305.373.9443

BIO

DIRECT LINE: 305.373.9447
DIRECT FACSIMILE: 305.995.6403
E-MAIL: jetra@broadandcassel.com

www.broadandcassel.com

Jonathan Etra

From: Descalzo, Marissel [mdescalzo@carltonfields.com]
Sent: Friday, June 26, 2009 11:28 AM
To: Jonathan Etra
Subject: RE: Your Motion For Relief From The Asset Freeze

Jonathan,

Most of the information you request below is available in our filings and the exhibits attached to those filings. Specifically, please refer to our Renewed Motion to Modify the Asset Freeze Order and our Reply. As the predecessor receiver has had access to the offices of FP for several weeks before being discharged, we trust that they would have advised you of their inventory of Mr. Gunlicks' personal business records where you would find the answers to your questions.

While the receiver may wish to assert that it shouldn't allow Mr. Gunlick assess to his own funds to preserve his property despite the fact that there has been no adjudication on the merits, this argument is best made to the Court, as we will not agree. Further, as you very well know, Mr. Gunlicks does not have the funds to have his properties appraised. Accordingly, we cannot make any current appraisals available to you at this time.

We respectfully request that you respond to our Motion to modify the asset freeze order as soon as possible in order for the judge to rule.

Regards,

Marissel Descalzo

From: Jonathan Etra [mailto:jetra@broadandcassel.com]
Sent: Thursday, June 25, 2009 8:40 PM
To: Descalzo, Marissel
Subject: Your Motion For Relief From The Asset Freeze

Marissel,

As you know, the Judge has order the Receiver to provide his position on your Motion. In that regard, we have some questions and concerns:

1. Like the SEC, we have concerns that the properties may not have sufficient equity to warrant the investment. Can you provide any third-party information to verify the value, particularly given the current state of the real estate market and recognizing that tax data often is many steps behind the fast moving (in this case, downward) market.

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Thank you in advance for your anticipated cooperation.

Jonathan

Jonathan Etra
OF COUNSEL
2 SOUTH BISCAYNE BLVD.
21ST FLOOR
MIAMI, FL 33131
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FACSIMILE: 305.373.9443

BIO
DIRECT LINE: 305.373.9447
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E-MAIL: jetra@broadandcassel.com

BROAD AND CASSEL
ATTORNEYS AT LAW

www.broadandcassel.com