



NO. L031587
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRITISH COLUMBIA SECURITIES COMMISSION

PETITIONER

AND:

BERKSHIRE CAPITAL PARTNERS, INC.
CARTER & ASSOCIATES, LTD.
DOTTENHOFF FINANCIAL, LTD.
GALTON SCOTT & GOLETT, INC.
STRATEGIC FINANCIAL SERVICES
EXCHANGE BANK AND TRUST INC.
STERLING INTERNATIONAL BANK INC.
GRAHAM R. WHITESIDE, IN HIS CAPACITY
AS PROVISIONAL LIQUIDATOR OF STERLING
INTERNATIONAL BANK INC.

RESPONDENTS

ORDER

BEFORE THE HONOURABLE

MADAM JUSTICE BROWN

)
) WEDNESDAY, THE 3RD DAY
)
) OF DECEMBER, 2008
)

UPON the application of KPMG Inc., in its capacity as Receiver of certain funds, securities, exchange contracts and other property in these proceedings, (the "Receiver") coming on for hearing at Vancouver, British Columbia, this day; AND UPON HEARING Mary Buttery, counsel for the Receiver, and counsel listed on Schedule "A" hereto AND UPON reading the materials filed, including the Receiver's Eighth Report dated September 3, 2008:

WHEREAS:

- A. Pursuant to an Order pronounced June 16, 2003 herein, the Receiver was appointed as Receiver of certain funds, securities, exchange contracts and other property subject to various freeze orders (the "Freeze Orders") issued by the British Columbia Securities Commission (collectively, the "Property");
- B. With the exception of certain unmarketable securities enumerated in various Reports filed herein by the Receiver (the "Unmarketable Securities"), the Receiver has converted, sold or redeemed all of the Property to cash or cash equivalents. As at July 31, 2008, the Receiver is holding an aggregate of USD\$22,578,372 representing the Property and proceeds thereof.
- C. Pursuant to various Orders pronounced herein, the Receiver gave notice to all potential claimants to the Property and proceeds thereof that any party wishing to make a claim to the Property and proceeds thereof was to deliver proof of its claim to the Receiver within a stipulated time-period;
- D. Various claimants (collectively, the "Claimants"), advanced claims against the Property and proceeds thereof, the particulars of which are set out in the various Reports filed herein by the Receiver;
- E. With the exception of the Remaining Claimants (defined below), the claims of each of Claimants have been disallowed by the Receiver and deemed to have been abandoned pursuant to various Orders made herein and thus those Claimants have no further claim against the Property and proceeds thereof;
- F. The claims of the following claimants to the Property and proceeds thereof have been allowed by the Receiver, in whole or in part, or have been allowed by the Court, in whole or in part, subject to final adjudication of those claims by this Court:
 - a) the United States Securities and Exchange Commission (the "SEC");
 - b) the British Columbia Securities Commission (the "BCSC");
 - c) Michael Jason Evans ("Evans");
 - d) H. Thomas Moran II, Receiver of the assets of Lifetime Capital, Inc. including the assets of Umbrella Capital LLC ("Moran");
 - e) Hoevet & Bernstein, Ltd. ("Hoevet");
 - f) Henninger Financial Inc. ("Henninger Financial");
 - g) Miguel Valenti, Nancy Valenti and Son Ametler Entertainment Inc. (collectively, the "Valentis");
 - h) Wolverton Securities Ltd. ("Wolverton Securities");

- i) Stourbridge Ltd. by Garvey Louison in his capacity as liquidator of Bank Crozier ("Stourbridge").
- j) Draco Limited ("Draco");
- k) Dennis Harmon, Executor for the Estates of Juanita Harman and Virgil Harman ("Harmon"); and
- l) Strategic Financial Service Ltd. ("Strategic Financial").

(collectively, the "Remaining Claimants")

G. The SEC claims against the Property and proceeds thereof pursuant to:

- a) judgments against Exchange Bank & Trust, Edward Durante, Berkshire Capital Partners, Inc., Dottenhoff Financial Ltd., Galton Scott and Gollett, Ltd., Commonwealth Associates, Inc., and other entities obtained in the following matters, all filed in the United States District Court for the Southern District of New York:

1. *SEC v. Wamex Holdings, Inc., et al*, Case No. 1:01-cv-9056 (S.D.N.Y.) (Judgment entered Oct. 10, 2002);
2. *SEC v. Absolutefuture.com, et al*, Case No. 1:01-cv-9058 (S.D.N.Y.) (Judgment entered Jan. 23, 2003);
3. *SEC v. U.N. Dollars Corp., et al*, Case No. 1:01-cv-9059 (S.D.N.Y.) (Judgment entered Jan. 16, 2003);

(collectively, the "Durante Judgments")

each of which were registered in this Court in Vancouver, British Columbia under the Registry Nos. S026090 (the Wamex matter); S030289 (the U.N. Dollars matter); and S031086 (the Absolutefuture.com matter);

- b) a judgment against Steven Sayre, International Financial Reports, Inc. and Silver Screen Industries, Inc. dated May 24, 2001 (entered May 31, 2001) in a matter styled *Securities and Exchange Commission v. Sayre et al.*, Case No. CV 00—3800 (C.D. Cal.), entered in the United States District Court for the Central District of California (the "Sayre Judgment") which was registered in this Court in Vancouver, British Columbia under the Registry No. L021639;

H. The SEC has confirmed to the BCSC that it will distribute all funds it receives in respect of the Property to investors who suffered losses due to the securities related misconduct of Edward Durante and Stephen Sayre in the United States. Subject to Court approval of this settlement and compromise, the BCSC has elected to forego its claims against the Property in order to allow the SEC to maximize the return of funds to investors.

I. Subject to approval of this Honourable Court, the Remaining Claimants have agreed to settle and compromise their respective claims to the Property and proceeds thereof as set out herein.

J. The BCSC has granted a Revocation Order whereby the Freeze Orders have been revoked.

THIS COURT ORDERS AND DECLARES THAT:

1. With the exception of the Remaining Claimants, all of the claims of the Claimants have been disallowed and deemed to be abandoned and thus those Claimants have no further claims against the Property and proceeds thereof;
2. The settlement and compromise reached between the Remaining Claimants is hereby approved and the Receiver is directed to disburse the Property and proceeds thereof as follows:
 - a) to the SEC, the sum of USD\$14,256,179 to be paid on account of the Durante Judgments, into the registry of the United States District Court for the Southern District of New York pursuant to instructions of the SEC to be provided to the Receiver;
 - b) to the SEC, the sum of USD\$951,813 (as adjusted for accrued interest as at the date of payment) to be paid on account of the Sayre Judgment, into the registry of the United States District Court for the Central District of California pursuant to instructions of the SEC to be provided to the Receiver;
 - c) to Church & Company, barristers and solicitors, in trust for Evans, the sum of USD\$3,895,238;
 - d) to Moran, the sum of USD\$1,825,000 be paid into the Registry of the United States District Court for the Northern District of Florida, pursuant to the instructions of said Court, to be provided to the Receiver by Moran;
 - e) to Heenan Blaikie LLP, barristers and solicitors, in trust for Henninger Financial, the sum of USD\$1,419;
 - f) to Heenan Blaikie LLP, barristers and solicitors, in trust for Hoevet, the sum of USD\$150,865;
 - g) to the Valentis, the sum of USD\$162,500;
 - h) to Wolverton Securities, the sum of USD\$55,000;
 - i) to Gehlen Dabbs, barristers and solicitors, in trust for Stourbridge, the sum of USD\$40,000;
 - j) to Tanet Graphics, LLC nominee for Draco, the sum of USD\$5,000;
 - k) to the Law Offices of Wahl & Ribadeneira, P.C., in trust for Harmon, the sum of USD\$61,000;
 - l) to Richards Buell Sutton LLP, barristers and solicitors, in trust for Strategic Financial, the sum of USD\$107,293;

- m) to Church & Company, barristers and solicitors, in trust for Evans, the sum of USD\$132,808, representing the interest that has accrued between May 15, 2008 and October 1, 2008 (the "First Interest Period"), on the portion of the Property and proceeds thereof identified in the Receiver's Eighth Report as "EBT BMO" and "Durante Funds", after deducting:
 - i) the fees and expenses paid or payable to the Receiver and its counsel in relation to these proceedings during the First Interest Period; and
 - ii) any decrease in value of the funds held in Canadian currency in respect of IPO Capital during the First Interest Period;
 - n) to Church & Company, barristers and solicitors, in trust for Evans, 21% of the interest that has accrued between October 1, 2008 and the date of payment (the "Second Interest Period"), on the portion of the Property and proceeds thereof identified in the Receiver's Eighth Report as "EBT BMO" and "Durante Funds", after deducting:
 - i) 21% of the fees and expenses paid or payable to the Receiver and its counsel in relation to the proceedings during the Second Interest Period; and
 - ii) 21% of any decrease in value of the funds held in Canadian currency in respect of IPO Capital during the Second Interest Period;
 - o) to the SEC 79% of the interest that has accrued during the Second Interest Period on the portion of the Property and proceeds thereof identified in the Receiver's Eighth Report as "EBT BMO" and "Durante Funds", after deducting:
 - i) 79% of the fees and expenses paid or payable to the Receiver and its counsel in relation to these proceedings during the Second Interest Period; and
 - ii) 79% of any decrease in value of the funds held in Canadian currency in respect of IPO Capital during the Second Interest Period;
 - p) the Receiver shall pay into Court to the credit of this proceeding all remaining funds, being the approximate amount of USD\$980,255 plus any accrued interest on those amounts, representing funds held in accounts in the names of the Other Companies (as defined in the various reports filed herein by the Receiver), which funds shall be held pending further Order.
3. The Receiver is directed and authorized to abandon the Unmarketable Securities.
 4. Upon the Receiver disbursing the Property and proceeds thereof as set out herein, each of the Remaining Claimants shall receive his, her or its portion of the Property and proceeds thereof free and clear of all right, title, interest, estate and equity or claim of any other of the Claimants or any other person having a claim against the Property or proceeds thereof.
 5. At such time that the Receiver is no longer in possession of any of the Unmarketable Securities, Property and proceeds thereof, the Receiver shall be discharged without further application to Court.

6. The Receiver's fees, receipts and disbursements (including that of its legal counsel), as set out in the Affidavit #1 of Pam Boparai sworn November 25, 2008 and filed herein, are hereby approved, without the need of further taxation.
7. All parties shall bear their own costs of these proceedings.
8. Approval as to the form of this Order is dispensed with.

APPROVED AS TO FORM:



Counsel for the KPMG Inc., in its capacity
as Receiver of the Property
(Mary Buttery)

BY THE COURT


DEPUTY DISTRICT REGISTRAR