

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

CHRISTOPHER FREEMAN BROGDON,

Defendant,

-and-

CONNIE BROGDON, et al.,

Relief Defendants.

15 Civ. 8173 (KM)

ORDER APPOINTING MONITOR ON CONSENT

WHEREAS this matter has come before this Court upon the filing of a Complaint and an emergency application for relief by plaintiff U.S. Securities and Exchange Commission (“Plaintiff” or “SEC”) on November 20, 2015;

WHEREAS the Court held an evidentiary hearing on the SEC’s motion for preliminary relief in this case on December 11, 2015;

WHEREAS the Court finds that, based on the record in these proceedings, and on consents of defendant Christopher Freeman Brogdon (“Defendant”) and relief defendant Connie Brogdon (“Relief Defendant Connie Brogdon”) (see ECF No. 54), the appointment of a monitor in this action (the “Monitor”) is necessary and appropriate for the protection of investors;

WHEREAS this Court has subject matter jurisdiction over this action and personal jurisdiction over the Defendant and Relief Defendant Connie Brogdon, and venue properly lies in this District;

WHEREAS pursuant to the Judgment as to Defendant and Relief Defendant Connie Brogdon (“Judgment”), filed herewith, and the consents of Defendant and Relief Defendant Connie Brogdon incorporated into the Judgment, Defendant and Relief Defendant Connie Brogdon have undertaken to (1) repay all investors in the outstanding conduit municipal bond and private placement offerings listed in Exhibit B to the Judgment (the “Investors”), as provided for in the Judgment, as well as the investors in any other outstanding securities offerings to the extent and on the conditions provided in the Judgment; (2) propose a plan (the “Plan”), subject to approval of the Monitor and of the Court, for the fair, prompt, and efficient disposition or refinancing of all or part of the entities and assets owned or controlled (in whole or in part) by Defendant or Relief Defendant Connie Brogdon listed on Exhibit C to the Judgment, as needed, to repay the Investors as described in the Judgment by no later than thirty (30) days from the entry of the Judgment, and, if the proceeds of the disposition or refinancing of the entities and assets listed on Exhibit C to the Judgment are not sufficient to meet their obligations as described in the Judgment, Defendant and Relief Defendant Connie Brogdon shall propose a further plan, subject to approval of the Monitor and of the Court, to fund such deficiency from the assets listed in the Declaration of Christopher F. Brogdon, sworn to December 9, 2015 (ECF No. 38); (3) provide quarterly updates to the Monitor on Defendant’s implementation of the Plan, with sufficient advance notice as the Monitor shall require to allow the Monitor to include the information in his required reports; (4) make any changes to the Plan ordered by the Court; (5) grant the Monitor access to all non-privileged books, records, and account statements for the entities and assets listed on Exhibit C to the Judgment; (6) cooperate fully with requests by the Monitor reasonably calculated to fulfill the Monitor’s duties; and (7) certify, in writing, compliance with these undertakings (collectively, the “Undertakings”).

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Until further Order of this Court, Soneet R. Kapila is hereby appointed to serve as Monitor in this action.

I.

General Powers and Duties of the Monitor

2. The Monitor is authorized, empowered and directed to develop, in conjunction with Defendant, Relief Defendant Connie Brogdon, and Defendant's employees and professionals, the Plan for the fair, prompt, and efficient sale or other disposition of the entities or assets owned or controlled (in whole or in part) by Defendant or Relief Defendant Connie Brogdon listed on Exhibit C to the Judgment as necessary to fulfill Defendant's Undertaking to repay all Investors, all as provided in the Judgment.

3. Defendant and his professionals will have responsibility to prepare and propose an initial plan to the Monitor. Defendant shall not propose any Plan to the Court that has not been approved, in writing, by the Monitor; except that the Monitor's consent may not be unreasonably withheld, conditioned or delayed, and a refusal to approve a Plan may be reviewed by the Court.

4. Defendant, Relief Defendant Connie Brogdon, Defendant's employees, and Defendant's professionals and advisers shall cooperate with the Monitor in the formulation and implementation of the Plan, and shall provide the Monitor with prompt access to all non-privileged books, records, and account statements for all of the entities and assets listed on Exhibit C to the Judgment for purposes of implementing this Order. For all non-privileged books, records and account statements maintained online, such persons shall provide the Monitor with immediate online access; for all other books, records, and account statements, such persons shall provide the Monitor with access on two business days' notice.

5. Defendant shall provide the Monitor with prompt notice of the receipt of a non-binding letter of intent with respect to the proposed sale of any of the entities or assets listed on Exhibit C to the Judgment. Defendant shall not consummate any sale pursuant to such letter of intent without prior consent of the Monitor; provided that the Monitor may only object on grounds relating to the implementation of the Plan and the protection of the Investors, and that the Monitor's consent may not be unreasonably withheld, conditioned or delayed.

6. Subject to Subparagraph 5, the Monitor shall have authority to approve or disapprove any transactions by any of the entities listed on Exhibit A to this Order in excess of \$15,000, or such other amount as the Monitor may, in the Monitor's sole discretion, deem appropriate. The Monitor shall have authority, within his sole discretion, to waive the approval or disapproval of any recurring transactions such as utility bills and rental payments to landlords.

7. Defendant and Relief Defendant Connie Brogdon shall not file, or cause to be filed, any bankruptcy or receivership petition for any of the entities or assets listed on Exhibit C to the Judgment without prior approval of the Monitor and application and approval by the Court.

8. The Monitor shall have authority to approve or disapprove the use of Defendant's or Relief Defendant Connie Brogdon's proceeds from any sale or disposition of the entities listed on Exhibit C to the Judgment, for the sole purpose of ensuring that the use of proceeds is consistent with the Plan and the Orders of this Court and otherwise not contrary to law. The Monitor shall also review and verify the accuracy of the monthly report from Defendant regarding sources of payments for the outstanding conduit municipal bond and private placement offerings listed on Exhibit B to the Judgment.

9. If the Monitor believes that some further inquiry not authorized in this Order is

required, he or she shall so report to the Defendant and the SEC and if, after consultation in good faith, the parties cannot agree as to the need for and scope of such proposed inquiry, they shall submit the dispute to the Court. In the event that the SEC or Monitor becomes aware of any other securities offering that is not included on Exhibit B to the Judgment that the SEC or the Monitor believes should be included, then the SEC or the Monitor will call the offering to the attention of Defendant and the parties will seek in good faith to reach agreement as to whether the offering should be included in their agreement and this Order. If the parties cannot agree, then they may submit their dispute to the Court.

10. The Monitor shall have the authority to share any findings, documents, or information with either the SEC or any other government body or agency.

II.

Recommendations and Reports

11. Within thirty (30) days after the end of each calendar quarter, the Monitor shall file with the Court, and serve on the SEC, Defendant, and Relief Defendant Connie Brogdon, a full report reflecting (to the best of the Monitor's knowledge as of the period covered by the report) the existence, value, and location of all of the entities and assets listed on Exhibit C to the Judgment that are the subject of the Plan, the status of the Plan and any proposed changes to the Plan, the Monitor's recommendations for contraction, expansion, continuation or discontinuation of the Monitorship, and the reasons for the recommendations (the "Quarterly Report"). For purposes of the Quarterly Report, the Monitor may in good faith rely on the values attributed to the entities and assets listed on Exhibit C to the Judgment provided by Defendant and his advisers and professionals. In the event the Monitor has a good faith reason to believe that the valuations provided by Defendant and his advisers and professionals are understated or

overstated by 20% or more, the Monitor shall raise his concerns with Defendant and the SEC staff. In the event that no agreement on valuation can be reached among the Monitor and Brogdon, the Monitor may seek Court approval to retain a third-party appraiser, whose retention and compensation will be subject to Court approval.

III.

Liability of Monitor

12. The Monitor and the Monitor's agents shall not be responsible for the operation of Defendant's businesses. The Monitor and the Monitor's agents, acting within scope of such agency, are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Monitor or the Monitor's agents be liable to anyone for their good faith compliance with their duties and responsibilities as Monitor or Monitor's agents.

13. This Court shall retain jurisdiction over any action filed against the Monitor or the Monitor's agents based upon acts or omissions committed in their representative capacities.

14. In the event the Monitor decides to resign, the Monitor shall first give written notice to the SEC's counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Monitor shall then follow such instructions as the Court may provide.

IV.

Fees, Expenses and Accountings

15. Subject to the specific provisions of this Order, the Monitor is authorized to solicit persons and entities ("Retained Personnel") to assist the Monitor in carrying out the duties and responsibilities described in this Order. The Monitor shall not engage any Retained Personnel

without first obtaining an Order of the Court authorizing such engagement.

16. The Monitor and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Subject Assets in accordance with the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission” (available at www.sec.gov/oiea/Article/billinginstructions.pdf) (the “Billing Instructions”) agreed to by the Monitor and Retained Personnel. Such compensation shall require the prior approval of the Court.

17. Within forty-five (45) days after the end of each calendar quarter, the Monitor and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Subject Assets (the “Quarterly Fee Applications”). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Monitor will serve upon counsel for the SEC a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by the SEC.

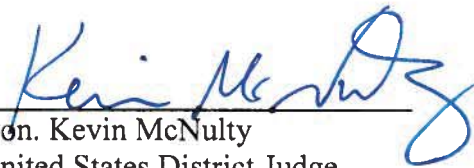
18. All Quarterly Fee Applications will be interim and will be subject to cost-benefit and final reviews at the close of the Monitorship. At the close of the Monitorship, the Monitor will file a final fee application, describing in detail the costs and benefits associated with all activities pursued by the Monitor during the course of the Monitorship.

19. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each Application filed with the Court. The total amounts held back during the course of the Monitorship will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the Monitorship.

20. Each Quarterly Fee Application shall:
- a. comply with the terms of the Billing Instructions agreed to by the Monitor;
and
 - b. contain representations (in addition to the certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the investors in the outstanding conduit municipal bond and private placement offerings listed on Exhibit B to the Judgment, and; (ii) with the exception of the Billing Instructions, the Monitor has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid to the Monitor or any sharing thereof.

SO ORDERED.

Dated: Newark, New Jersey
December 28, 2015



Hon. Kevin McNulty
United States District Judge

EXHIBIT A

Arcadia Partners, LLC / Creekside at Olde Town
Bama Oaks Retirements, LLC / Gordon Oaks Assisted Living
Ban NH, LLC / Betty Ann Nursing Center
Bay Landing LLC
Bleckley NH, LLC / Bryant Health and Rehabilitation Center
Chattahoochee Nursing LLC
Chelsea Investment LLC
Chestnut Independent Living, LLC / Chestnut Hill of Highlands
Gordon Jensen Healthcare Association Inc.
Green Street NH, LLC / Providence Health and Rehabilitation Center
Harrah NH, LLC and Harrah Property Holdings, LLC / Harrah Nursing Center
Highlands Assisted Living, LLC / Highlands Assisted Living
Kenmetal, LLC / Kenwood Manor
Knollwood NH, LLC / Gordon Oaks Nursing Home
Living Center, LLC / The Living Center
Maple Tree Partners LLC / Hickory Hill Specialty Care Assisted Living
Marsh Pointe Management LLC
McLoud NH, LLC and McLoud Property Holdings, LLC / McLoud Nursing Center
Meeker NH, LLC and Meeker Property Holdings, LLC / Meeker Nursing Center
Oak Lake, LLC / Grand Lake Villa
Oaks Partners Two, LLC / Bell Oaks
Oklahoma Investors LLC
Oklahoma Operating LLC
PHNH, LLC / Pinehill Nursing Home
Polo Road Assisted Living, LLC / Summers Landing Polo Road
Riverside Place LLC
Saint Simons Healthcare LLC
Senior NH, LLC / Enid Senior Care
Southeastern Cottages, Inc. / Summer's Landing of Vidalia
Tilly Mill Assisted Living LLC
Winter Haven Homes Inc.
Woodlands Health and Rehab / Liberty Manor