

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 0:14-CV-60954-DPG

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

ROBERT J. VITALE and :

REALTY ACQUISITIONS & TRUST, INC. :

Defendants. :

and :

CORAL SPRINGS INVESTMENT :

GROUP, INC., :

Relief Defendant. :

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S UNOPPOSED
MOTION TO TRANSFER FUNDS, APPOINT DISTRIBUTION AGENT, AND
APPROVE PROPOSED DISTRIBUTION PLAN**

Plaintiff United States Securities and Exchange Commission (“SEC” or “Commission”) respectfully moves the Court to enter an Order: (1) directing the Clerk of the Court to transfer funds on deposit with the Court Registry Investment System (“CRIS”) under the case name SEC v. ROBERT J. VITALE to the SEC; (2) appointing Commission employee, Nichola L. Timmons, as Distribution Agent; and, (3) approving the Commission’s proposed distribution plan (the “Distribution Plan”) to distribute \$661,390.94 to certain harmed investors.

I. BACKGROUND

On April 23, 2014, the Commission filed its Complaint against Defendants Robert J. Vitale (“Vitale”) and Realty Acquisitions and Trust, Inc. (“RATI”), a Florida-based private company that Vitale established (collectively “Defendants”). Additionally, Coral Springs Investment Group, Inc. (“CSIG”), a Florida-based company and Vitale’s alter ego, was named as a relief defendant. The Complaint alleged that the Defendants orchestrated a fraudulent offering of securities and acted as an unregistered broker. According to the Complaint, Vitale formed RATI in 2004 for the stated purpose of RATI acquiring, improving, and selling at a profit, residential and commercial real estate in South Florida. The Defendants solicited and sold shares in RATI’s four securities offerings, titled Series A, B, C, and D offerings (“RATI offerings”). Between November 2004 and until at least February 2010, Defendants sold at least \$8.7 million worth of the RATI offerings’ shares to at least 52 investors, including numerous senior citizens. The Complaint alleges that in connection with the securities offerings, Vitale and RATI made numerous materially false and misleading statements and omissions. Additionally, no registration statement was ever filed with the Commission or has ever been in effect with any of the RATI offerings.

On August 12, 2015, the Court entered final judgments against Vitale, RATI, and CSIG.¹ Vitale and RATI were ordered to disgorge all investor assets in their possession, custody, or control, consisting of certain real property titled in the name of RATI (the “South Federal Property”),² immediately upon the entry of the final judgments. Vitale and RATI surrendered the South Federal Property to the Court for liquidation, which, pursuant to the final judgments

¹ Final Judgments, Dkt. Nos. 51, 50, and 49, respectively.

² The property was located at 2139 South Federal Highway, Boynton Beach, FL 33435.

against the Defendants and Relief Defendant, satisfied all monetary obligations ordered.³

Following the Liquidation Agent's sale of the South Federal Property, \$661,799.03 was deposited in the CRIS account under the name SEC v. ROBERT J. VITALE.⁴ On July 1, 2016, the Court entered a satisfaction of all monetary provisions of the final judgments entered against Vitale, RATI, and CSIG.⁵

The Commission staff has verified that there is \$661,390.94 remaining in the CRIS account ("Distribution Fund"). The Commission staff requests that the Distribution Fund plus any accrued interest be transferred to the SEC for distribution pursuant to the Commission's Distribution Plan.

On June 17, 2016, the Court appointed Damasco & Associates LLP⁶ as the tax administrator ("Tax Administrator") to execute all the tax reporting and filing requirements for the Distribution Fund (Dkt. No. 62).

The final judgments against Vitale and CSIG state that the Commission may propose a plan to distribute the funds collected pursuant to the final judgments, subject to the Court's approval. The Commission now moves the Court to approve the Distribution Plan so that the Distribution Fund can be distributed to the investors harmed by the Defendants' conduct.

³ Vitale was ordered jointly and severally liable for \$121,000 in disgorgement, \$25,598 in prejudgment interest, and a \$100,000 civil penalty; CSIG was ordered jointly and severally liable with Vitale for disgorgement of \$320,827, and prejudgment interest of \$125,771. *See* Final Judgment of Permanent Injunction and Other Relief as to Defendant Robert J. Vitale, Dkt. No. 51 and Final Judgment as to Relief Defendant Coral Springs Investment Group, Inc., Dkt. No. 49.

⁴ From those funds, on June 17, 2016 the Court ordered \$405.51 (as of May 6, 2016, with \$0.06 per diem) transferred to the Commission to fully satisfy Vitale's lien on the South Federal Highway Property. *See* Order, Dkt. No. 63.

⁵ Satisfaction of Monetary Provisions Only as to Final Judgments Against Defendants and Relief Defendant, Dkt. No. 64.

⁶ As of October 1, 2016, Damasco and Associates, LLC became a part of Miller Kaplan Arase LLC. The firm's engagement with the SEC and their ability to carry out their appointment as Tax Administrator for this case have not changed.

II. ARGUMENT

A. The Applicable Standard

Nearly every plan to distribute funds obtained in a Commission enforcement action requires choices to be made regarding the allocation of funds between and among potential claimants within the parameters of the amounts recovered. In recognition of the difficulty of this task, courts historically have given the Commission significant discretion to design and set the parameters of a distribution plan. *See, e.g., SEC v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *SEC v. Levine*, 881 F.2d 1165, 1182 (2d Cir. 1989).

The court's review of a proposed distribution plan focuses on whether the plan is fair and reasonable. *See Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 82 (2d Cir. 2006), citing *Wang*, 944 F.2d at 85, "[u]nless the consent decree specifically provides otherwise[,] once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end."

For the reasons articulated below, the Commission submits that the Distribution Plan for the Distribution Fund constitutes a fair and reasonable allocation of the small amount of funds available for distribution and should be approved.

B. The Commission's Distribution Plan Provides a Fair and Reasonable Allocation of the Distribution Fund

The Commission's principal goal in fashioning a distribution plan for the Distribution Fund was to identify a methodology that would allocate the available funds fairly and reasonably, in a manner proportional to the injury that investors in the RATI offerings suffered as a result of the Defendants' actions. Here, the total losses suffered by the investors identified by Commission staff during its investigation exceed \$8.7 million and the amount of money recovered from the sale of the South Federal Property is only \$661,390.96 (7.6%). The amount

of money lost by the harmed investors is significantly more than the amount of funds that are available for distribution. However, the Commission staff desires to distribute a small, but meaningful payment as cost-effectively as possible to certain harmed investors. Commission staff has determined that: 1) 59 of the 60 harmed investors who made investments should be compensated⁷; 2) these 59 had net losses ranging from \$9,980 to \$998,000; 3) a *pro rata* distribution to this group would range from \$ 717.52 to \$ 74,359.71; 4) their losses comprise 100% of all investor losses; and 5) these 59 were not officers or directors of RATI or CSIG (or any of their affiliates, distributes, spouses, parents, children, siblings, or controlled entities) and did not share an address with any officers or directors of RATI or CSIG. The Commission's Distribution Plan calculates payments to these 59 harmed investors on a *pro rata* basis, and thereby allocates the available funds fairly and reasonably, in a manner proportional to the economic harm they sustained.

C. The Court Should Appoint a Distribution Agent

The Commission proposes Nichola L. Timmons, Assistant Director of the Commission's Office of Distributions, as Distribution Agent to administer and implement the Distribution Plan, as described below. As a Commission employee, the Distribution Agent shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Distribution Fund. As the harmed investors are limited in number and known, the appointment of a Commission employee will expedite the distribution process and avoid the costs and expenses that would ordinarily be incurred by appointing a third-party administrator thus maximizing the return to harmed investors.

D. The Court Should Approve the Distribution Plan

⁷ Based on our analysis, the 60th investor did not incur a net loss.

The Commission seeks approval of its Distribution Plan (attached hereto as Exhibit A) to distribute the Distribution Fund. The Distribution Plan provides for a distribution to certain individuals (the “Eligible Recipients”) who were harmed by the Defendants’ false and misleading statements in connection with the sale of RATI securities, and their failure to file a registration statement for any of the RATI offerings. The Distribution Plan contemplates that a total of \$661,390.94, less a \$10,665.00 reserve for taxes and fees and expenses of the Tax Administrator will be distributed to Eligible Recipients on a *pro rata* basis for the harm created by the Defendants’ conduct. The Distribution Agent plans to quickly distribute the full amount, less any tax obligations and fees and expenses of the Tax Administrator, on a *pro rata* basis to Eligible Recipients, subject to the Court’s approval of the Distribution Plan.

III. CONCLUSION

For the reasons stated above, the Commission hereby moves the Court to:

- A. Transfer the funds on deposit in the CRIS account under the case name SEC v. ROBERT J. VITALE to the SEC for the distribution to Eligible Recipients;
- B. Appoint Commission employee, Nichola L. Timmons, as Distribution Agent; and
- C. Approve the Commission’s Distribution Plan.

Attachments:

EXHIBIT A—Proposed Distribution Plan
EXHIBIT B—Redacted Chart
EXHIBIT C—Eligible Recipient Notice of Distribution

Date: December 9, 2016

Respectfully submitted,

/s/ Keshia W. Ellis

Keshia W. Ellis
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Attorney for Plaintiff

EXHIBIT A

PROPOSED DISTRIBUTION PLAN

Eligibility

1. “Eligible Recipients” will be the investors who incurred net losses in the RATI offerings: a) who were not officers or directors of RATI or CSIG (or any of their affiliates, distributes, spouses, parents, children, siblings, or controlled entities); b) did not share an address with any officers or directors of RATI or CSIG; and c) who were harmed by the Defendants’ false and misleading statements in connection with the RATI offerings.

Methodology for Calculating Distribution Amount

2. Determine each Eligible Recipient’s net loss (“Eligible Recipient’s Net Loss”) and calculate the total net losses of all Eligible Recipients by calculating the sum of all Eligible Recipients’ Net Losses (“Total Net Losses”);

3. Divide each Eligible Recipient’s Net Loss by the Total Net Losses. This fractional result represents the Eligible Recipient’s proportion of net losses to the pool of Total Net Losses (“Eligible Recipient’s Proportional Net Loss”); and

4. Multiply each Eligible Recipient’s Proportional Net Loss by the Distribution Fund, less any reserve for tax obligations and fees of the Tax Administrator (“Net Distribution Fund”) and court registry fees. The resulting figure represents the amount of the Net Distribution Fund to be distributed to that Eligible Recipient (“Eligible Recipient’s *Pro Rata* Share”) (*see* Exhibit B).

Distribution Procedure

5. The Net Distribution Fund will be distributed *pro rata* among the Eligible Recipients based upon the calculations in paragraphs 2 through 4 with the payment amounts as set forth in Exhibit B.

6. Following approval of the Distribution Plan by the Court, the Distribution Agent will send a notice (“Notice”) (attached hereto as Exhibit C) to each Eligible Recipient by U.P.S. mail. The Notice will provide each Eligible Recipient with a copy of the Distribution Plan, including Exhibit B, which sets forth that Eligible Recipient’s payment amount and requests confirmation of contact information sufficient to issue the distribution payment. The Distribution Agent will send the Notice within 14 days of the date of the order approving the Distribution Plan.

7. Eligible Recipients will have 45 days from the date of the order approving the Distribution Plan to submit the requested information. After receipt of the information from the Eligible Recipients, the Distribution Agent is authorized to provide the SEC’s Office of the Financial Management with an unredacted version of Exhibit B containing the names and amounts to be disbursed to the Eligible Recipients. The SEC’s Office of Financial Management shall promptly thereafter cause checks to be issued to each Eligible Recipient in the amount of each Eligible Recipient’s *Pro Rata* Share. Each check issued to the Eligible Recipients will state on the face of the check that it is valid for one year. After 60 days from the date on the distribution check, the SEC’s Office of Financial Management will notify the Distribution Agent of the amount of all uncashed checks. Any amount remaining in the Distribution Fund as a result of uncashed checks, less any expenses to complete the distribution, shall be transmitted to the U.S. Treasury.

7. The Distribution Agent will submit a final report to the Court summarizing the distribution payments, all taxes and tax administration fees and expenses paid, and the amount of funds to be transmitted to the U.S. Treasury. The Commission staff shall seek an order from the

Court to terminate the Distribution Fund, discharge the Distribution Agent, and remit any remaining funds to the U.S. Treasury.

EXHIBIT B**PRO RATA SHARE CALCULATION CHART**

Eligible Recipient	Net Loss	Proportional Net Loss	Pro Rata Share
Eligible Recipient #1	\$998,000	11.4%	\$74,359.71
Eligible Recipient #2	\$948,100	10.9%	\$70,641.73
Eligible Recipient #3	\$443,404	5.1%	\$33,037.48
Eligible Recipient #4	\$410,000	4.7%	\$30,548.58
Eligible Recipient #5	\$331,854	3.8%	\$24,726.02
Eligible Recipient #6	\$324,400	3.7%	\$24,170.63
Eligible Recipient #7	\$319,600	3.7%	\$23,812.99
Eligible Recipient #8	\$319,400	3.7%	\$23,798.09
Eligible Recipient #9	\$314,270	3.6%	\$23,415.86
Eligible Recipient #10	\$294,436	3.4%	\$21,938.05
Eligible Recipient #11	\$291,900	3.3%	\$21,749.10
Eligible Recipient #12	\$274,540	3.1%	\$20,455.63
Eligible Recipient #13	\$244,238	2.8%	\$18,197.86
Eligible Recipient #14	\$209,600	2.4%	\$15,617.03
Eligible Recipient #15	\$204,590	2.3%	\$15,243.74
Eligible Recipient #16	\$187,500	2.1%	\$13,970.39
Eligible Recipient #17	\$175,000	2.0%	\$13,039.03
Eligible Recipient #18	\$174,750	2.0%	\$13,020.40
Eligible Recipient #19	\$172,654	2.0%	\$12,864.23
Eligible Recipient #20	\$162,500	1.9%	\$12,107.67
Eligible Recipient #21	\$112,276	1.3%	\$8,365.54
Eligible Recipient #22	\$109,820	1.3%	\$8,182.55
Eligible Recipient #23	\$104,153	1.2%	\$7,760.31
Eligible Recipient #24	\$100,000	1.1%	\$7,450.87
Eligible Recipient #25	\$99,800	1.1%	\$7,435.97
Eligible Recipient #26	\$92,300	1.1%	\$6,877.16
Eligible Recipient #27	\$89,820	1.0%	\$6,692.37
Eligible Recipient #28	\$87,200	1.0%	\$6,497.16
Eligible Recipient #29	\$73,000	0.8%	\$5,439.14
Eligible Recipient #30	\$69,900	0.8%	\$5,208.16
Eligible Recipient #31	\$61,500	0.7%	\$4,582.29
Eligible Recipient #32	\$59,900	0.7%	\$4,463.07
Eligible Recipient #33	\$50,000	0.6%	\$3,725.44
Eligible Recipient #34	\$50,000	0.6%	\$3,725.44
Eligible Recipient #35	\$49,900	0.6%	\$3,717.99
Eligible Recipient #36	\$49,900	0.6%	\$3,717.99
Eligible Recipient #37	\$49,900	0.6%	\$3,717.99
Eligible Recipient #38	\$49,900	0.6%	\$3,717.99
Eligible Recipient #39	\$49,900	0.6%	\$3,717.99

Eligible Recipient #40	\$49,900	0.6%	\$3,717.99
Eligible Recipient #41	\$44,910	0.5%	\$3,346.19
Eligible Recipient #42	\$39,920	0.5%	\$2,974.39
Eligible Recipient #43	\$34,950	0.4%	\$2,604.08
Eligible Recipient #44	\$29,940	0.3%	\$2,230.79
Eligible Recipient #45	\$29,940	0.3%	\$2,230.79
Eligible Recipient #46	\$29,934	0.3%	\$2,230.34
Eligible Recipient #47	\$24,950	0.3%	\$1,858.99
Eligible Recipient #48	\$24,950	0.3%	\$1,858.99
Eligible Recipient #49	\$24,950	0.3%	\$1,858.99
Eligible Recipient #50	\$24,950	0.3%	\$1,858.99
Eligible Recipient #51	\$24,950	0.3%	\$1,858.99
Eligible Recipient #52	\$24,950	0.3%	\$1,858.99
Eligible Recipient #53	\$24,950	0.3%	\$1,858.99
Eligible Recipient #54	\$20,000	0.2%	\$1,490.17
Eligible Recipient #55	\$19,960	0.2%	\$1,487.19
Eligible Recipient #56	\$14,970	0.2%	\$1,115.40
Eligible Recipient #57	\$14,964	0.2%	\$1,114.95
Eligible Recipient #58	\$9,980	0.1%	\$743.60
Eligible Recipient #59	\$9,630	0.1%	\$717.52
TOTALS:	\$8,733,553	100%	\$650,725.94
Net Distribution Fund:	\$650,725.94		

EXHIBIT C

ELIGIBLE RECIPIENT NOTICE

VIA UPS

[Eligible Recipient Name]

[Eligible Recipient Address]

**Re: In the Matter of Robert Vitale and Realty Acquisitions and Trust, Inc., and Coral Springs Investment Group, Inc.
(0:14-CV-60954-DPG)**

Dear [Eligible Recipient Name],

We are writing to inform you that there will be a distribution of funds in the above-referenced matter to those investors in the securities of Realty Acquisitions & Trust, Inc. (“RATI”) who: a) suffered net losses; b) were not officers or directors of RATI or Coral Springs Investment Group, Inc. (“CSIG”) (or any of their affiliates, distributes, spouses, parents, children, siblings, or controlled entities); c) did not share an address with any officers or directors of RATI or CSIG, and d) were harmed as a result of Robert J. Vitale’s (“Vitale”), RATI, and CSIG’s false and misleading statements in connection with the offer of RATI securities, and Vitale’s failure to file a registration statement for any of the RATI offerings (“Eligible Recipients”).

Background

On April 23, 2014, the Commission filed a complaint in the United States District Court for the Southern District of Florida alleging, inter alia, that Vitale and RATI sold securities to the public in four unregistered offerings based on false and misleading statements concerning, among other things: Vitale’s credentials and experience and other purported RATI officers, Vitale’s reputation for honesty in the investment world, and the safety of investing in RATI.

On August 12, 2015, the Court entered final judgments against Vitale, RATI, and CSIG. They surrendered a property in satisfaction of their judgments, which was liquidated by a Liquidation Agent. The Commission was authorized to hold the funds (the “Distribution Fund”) and propose a plan to distribute the Distribution Fund, subject to the Court’s approval.

The District Court for the Southern District of Florida has approved a distribution of the RJ Vitale Distribution Fund and the staff of the Commission has reviewed the defendants’ records to identify the Eligible Recipients. The Commission staff has determined that you are an Eligible Recipient and will receive a distribution of funds.

Plan of Distribution

On _____, the Court issued an order granting the Commission's Motion for Order to Appoint Distribution Agent and Approve Proposed Distribution Plan in this matter.

A copy of the Distribution Plan is attached for your review. In the Distribution Plan, to protect personally identifiable information, the names of Eligible Recipients have not been made public. To assist in your review of the Distribution Plan, please note that you are Eligible Recipient #____ in the distribution chart contained with the Distribution Plan. Also please note that the staff of the Commission has calculated your *pro rata* share of the Net Distribution Fund to be \$ _____.

In order to send your distribution payment, we must have the following information:

1. Please complete and sign the enclosed Form W-9 and return it as soon as possible in the reusable UPS envelope provided or email it to:

Keshia W. Ellis, Esq.
elliskw@sec.gov

Should you have any questions or concerns, please feel free to contact me at (202) 551-4406.

Regards,

Nichola L. Timmons, Esq.
Securities and Exchange Commission
Assistant Director, Office of Distributions
Division of Enforcement

Enclosure:
Distribution Plan

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2016, a copy of the Plaintiff Securities and Exchange Commission's Motion to Transfer Funds, Appoint a Distribution Agent, and Approve Proposed Distribution Plan and its accompanying proposed Order were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Keshia Ellis
Keshia Ellis
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