

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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In re:

CHAPTER 11

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

Debtors.

**LIQUIDATING TRUSTEE'S MOTION TO APPROVE (1) SETTLEMENT
WITH THE ASHTON REVOCABLE LIVING TRUST AND
MARIE ASHTON AND (2) PAYMENT OF CONTINGENCY FEE**

Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be cancelled.

Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (collectively, the "*Palm Beach Liquidating Trusts*"), by and through undersigned counsel, and pursuant to *Fed. R. Bankr. P.* 9019, seeks an Order from this Court approving a settlement of claims that could be asserted against The Ashton Revocable Living Trust and Marie Ashton (individually or collectively, the "*Transferee*") and payment of counsel's contingency fee. In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

A. Procedural Background

1. Prepetition, Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the “*Debtors*”) operated as hedge funds. Together, David Harrold and Bruce Prevost managed the Debtors’ fund raising and investment activities.

2. The principal investment strategy of the Debtors was to invest in purchase financing transactions supposedly sourced by Thomas Petters and his company, Petters Company, Inc. and its affiliated entities (collectively, “*PCI*”).

3. The reality, however, was that Mr. Petters and PCI were engaging in a massive *Ponzi* scheme.

4. On October 2, 2008, the United States of America filed under seal in the United States District Court for the District of Minnesota its Complaint for Permanent Injunctive Relief and Other Equitable Relief (“*DOJ Complaint*”) pursuant to 18 U.S.C. § 1345. The parties to the DOJ Complaint included a number of parties implicated in the massive *Ponzi* scheme perpetrated by Mr. Petters, including Deanna Coleman; Frank E. Vennes, Jr.; Metro Gem, Inc. (“*MGF*”; and together with Mr. Vennes, the “*Vennes Parties*”); Robert White; Nationwide International Resources, Inc.; Larry Reynolds a/k/a Larry Reservitz; Michael Catain and Enchanted Family Buying Company (collectively, the “*Receivership Defendants*”).

5. On October 3, 2008, the United States District Court for the District of Minnesota (“*Minnesota Court*”) entered a temporary restraining order, finding, among other things, that “[t]here is probable cause to believe that Defendants have conspired to commit and/or committed federal mail, wire, and/or banking fraud offenses.”

6. On October 6, 2008, the Minnesota Court entered an Order for Entry of Preliminary Injunction, Order Appointing Receiver, and Other Equitable Relief (including amendments thereto, the “*Petters Receivership Order*”).

7. The Petters Receivership Order appointed Douglas A. Kelley as the receiver for the Receivership Defendants (“*Petters Receiver*”). Thereafter, the Petters Receiver filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the District of Minnesota (“*Minnesota Bankruptcy Court*”) for PCI and was appointed Chapter 11 trustee for all such entities (in such capacity, the “*PCI Trustee*”; and at times together with the Liquidating Trustee, the “*Trustees*”).

8. On November 30, 2009, the Debtors filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the Southern District of Florida (“*Florida Bankruptcy Court*”). By subsequent Order of this Court, the cases are jointly administered.

9. On January 29, 2010, the United States Trustee appointed the Liquidating Trustee as Chapter 11 trustee in both of the Debtors’ estates. [ECF No. 107].

10. On October 21, 2010, this Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the Palm Beach Liquidating Trusts and appointing the Liquidating Trustee as Liquidating Trustee.

B. The Vennes Litigation

11. The Debtors’ entry into the Petters’ fraud was made through the Vennes Parties. Namely, based on representations made by them, the Debtors invested hundreds of millions of dollars in fictitious PCI transactions.

12. On November 29, 2011, the Liquidating Trustee filed suit against the Vennes Parties, Adversary Case No. 11-03041-PGH-A (“*Vennes Action*”). The Vennes Action seeks to

avoid and recover transfers made to the Palm Beach Funds by the Vennes Parties and to hold the Vennes Parties liable in tort for material misrepresentations made by them to the Palm Beach Funds.

13. Concurrently with commencing his action against the Vennes Parties, the Liquidating Trustee also commenced suit against the Transferee, Adv. Case No. 11-2995-PGH (“*Adversary Proceeding*”). The Adversary Proceeding seeks to avoid transfers made to or for the benefit of the Transferee by the Vennes Parties during the period from approximately February of 2004 through and including approximately September of 2008 (“*Transfers*”).

14. After the commencement of the Adversary Proceeding, on March 2, 2012, the PCI Trustee sent a letter to the Transferee indicating that he intends to pursue the Transferee for the recovery of the Transfers under 11 U.S.C. § 550 (“*Letter Demand*”; and together with the Adversary Proceeding, the “*Litigation*”).

15. Altogether, as set forth in the complaint filed in the Adversary Proceeding and the Letter Demand, the Trustees assert that the Transferee received in the aggregate, approximately \$858,020.00 in Transfers from the Vennes Parties that are subject to avoidance and recovery for the benefit of the victims of the Petters’ fraud.

16. Subsequent to the commencement of the Adversary Proceeding, the Trustees entered into an agreement whereby they have agreed to mediate jointly with the Transferee and other transferees of the Vennes Parties and allocate between themselves according to the terms of that agreement any settlement proceeds relating to the transfers (“*Allocation Agreement*”). Under the terms of the Allocation Agreement, the parties agreed to share equally the first one million dollars of total aggregate recoveries relating to claims against the Vennes Parties and

their transferees, and for recoveries in excess of one million dollars, the PCI Trustee receives sixty percent and the Liquidating Trustee receives forty percent. [See ECF No. 1282.]

C. The Mediation and the Settlement

17. On August 21, 2012, the parties attended mediation in the offices of Justice James H. Gilbert, Esq. in accordance with this Court's Order Setting Filing and Disclosure Requirements for Pretrial and Trial entered in the Adversary Proceeding [Adv. Case No. 11-02995, ECF No. 3]. The Transferee attended the mediation together with her legal counsel, Keith T. Appleby, Esq. At the mediation, the parties achieved a global resolution and settlement of the Litigation ("**Settlement**") as set forth in more detail below.

18. On August 28, 2012, the Mediator filed a report with this Court [Adv. Case No. 11-02995, ECF No. 14] ("**Mediator's Report**") indicating that the mediation had been held and had resulted in an agreement between the parties in total resolution of the Adversary Proceeding. No parties filed an objection or in any way challenged the propriety of the Mediator's Report.

19. On December 3, 2012, this Court entered, in accordance with the Local Rules and this Court's policies, practices and procedures, an Order dismissing the Adversary Proceeding as settled and retaining jurisdiction for purposes of approving and enforcing the Settlement [Adv. Case No. 11-02995, ECF No. 15] ("**Dismissal Order**").

20. On November 29, 2012, the PCI Trustee filed with the Minnesota Bankruptcy Court a motion to approve a number of settlements that had been reached in accordance with the Allocation Agreement, including the Settlement with the Transferee ("**MN 9019 Motion**"). The MN 9019 Motion included a summary of the basic terms of the Settlement reached with the

Transferee and was served, together with a notice of hearing thereon, on the Transferee and her legal counsel, Darren D. Farfante, Esq.¹

21. No written objections were filed to the MN 9019 Motion, no one appeared at the hearing in opposition to the MN 9019 Motion, and counsel for each of the Trustees received no communication from the Transferee or her counsel in opposition to or challenging in any way the MN 9019 Motion.

22. On December 20, 2012 the Minnesota Bankruptcy Court entered an order approving the MN 9019 Motion, including the Settlement (“*MN 9019 Order*”). A true and correct copy of the MN 9019 Order is attached as Exhibit 1.

23. The MN 9019 Order is final and non-appealable. To date, no motion for reconsideration, appeal or other relief from the MN 9019 Order has been sought by the Transferee or anyone else.

24. On or about December 31, 2012, counsel for the Liquidating Trustee was notified by Helen Davis Chaitman, Esq. that she had been retained to represent the Transferee in connection with the Litigation.

25. Since that time, Mrs. Chaitman has informed counsel for the Trustees that the Transferee does not intend to honor the terms of the Settlement and believes that “no *binding* agreement” exists between the parties (emphasis added). Despite numerous requests, however, Mrs. Chaitman has neither presented any support for her position in this regard, nor has she sought relief from the MN 9019 Order.

26. As evidenced by the Mediator’s Report, the Dismissal Order, the MN 9019 Motion and the MN 9019 Order (none of which were opposed, appealed or otherwise in any way

¹ On or about November 23, 2012, Mr. Appleby left his firm (Fowler White Boggs, P.A.) and representation of the Transferee was taken over by his partner, Mr. Farfante.

challenged), the Plaintiff asserts that the Settlement represents an agreement reached between the parties and should be approved by this Court for the reasons set forth below.

II. Settlement Terms

27. The key terms of the Settlement are the following:

- a) The Transferee will pay (or cause to be paid) \$225,000.00 (“*Settlement Payment*”) within 30 days after entry of an order approving this Settlement by this Court.² Of the total Settlement Payment, \$90,000.00 will be paid to the Liquidating Trustee and \$135,000.00 will be paid to the PCI Trustee. The Settlement Payment represents roughly 26% of the Transfers.
- b) The parties shall exchange mutual, general releases;
- c) The Liquidating Trustee shall seek dismissal of the Adversary Proceeding; and
- d) The Transferee shall not be entitled to any distribution from the Debtors’ or PCI bankruptcy estates.

28. Pursuant to the Second Amended Joint Plan of Liquidation (“*Plan*”), approved by this Court’s Order dated October 21, 2010 [ECF No. 444], all monetary consideration received by the Palm Beach Liquidating Trusts in conjunction with the Settlement will be allocated as follows: 18% to Palm Beach Finance Partners Liquidating Trust and 82% to Palm Beach Finance II Liquidating Trust (“*Pro Rata Allocation Formula*”).

III. Relief Requested

29. The Liquidating Trustee seeks an Order from this Court (a) approving the Settlement and (b) directing payment of the Contingency Fee (as defined below).

² As noted above, the Settlement has already been approved by the Minnesota Bankruptcy Court by order dated December 20, 2012. See Exhibit 1.

30. Federal Rule of Bankruptcy Procedure 9019 provides in relevant part that “[o]n motion ... and after a hearing on notice to creditors; the debtor ... and to such other entities as the Court may designate, the Court may approve a compromise or settlement.”

31. Approval of a settlement in a bankruptcy proceeding is within the sole discretion of the Court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *See In re Arrow Air*, 85 BR 891 (Bankr. S.D. Fla. 1988).

32. The standards for approval are well settled and require the Court to inquire into the reasonableness of the proposed settlement. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). The inquiry need only determine whether the settlement falls below the lowest point of the range of reasonableness. *See W.T. Grant Co.*, 699 F.2d at 608; *see also In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*, 211 B.R. 798 (D. Del. 1997) (setting forth considerations by the Court for approval of a settlement, including: (i) the probability of success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors.

A. *The Settlement Ought to be Approved*

33. Based upon the above legal principles, the Liquidating Trustee asserts that the Settlement falls well above the lowest point of the range of reasonableness and, thus, should be approved.

Probability of success in litigation

34. The Liquidating Trustee, on behalf of the Liquidating Trusts, could assert that the transfers made to the Transferee by the Vennes Parties were fraudulent transfers under federal or state law, or alternatively, that the Transferee was unjustly enriched by such transfers.

35. The Liquidating Trustee believes that he will likely succeed in prosecuting either of these causes of action.

36. Nonetheless, the Liquidating Trustee acknowledges that there are risks inherent in all litigation and there is the possibility that the Transferee, or other similarly situated parties, could raise certain issues or defenses that potentially could impact the Liquidating Trustee's claims.

Collectability

37. Collectability is not a significant consideration with respect to the Litigation.

Complexity of litigation and attendant expense, inconvenience and delay

38. This is a significant consideration that militates in favor of approval of the Settlement.

39. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still will require retention of experts and extensive fact discovery before a trial could take place. The result of these efforts will be substantial attorney's fees on both sides which would diminish the net result of any recovery.

40. Moreover, a significant focus of the litigation will be the Vennes Parties themselves. To that end, the pending criminal case against Mr. Vennes is currently scheduled for trial next month. The possibility exists that discovery from the Vennes Parties may be delayed until the conclusion of that proceeding.

41. The Settlement addresses these concerns. The parties avoid litigating fact-specific claims with the attendant expense and delay of such litigation being nullified.

Paramount interest of creditors

42. The Settlement provides a meaningful payment of the claims asserted against the Transferee in the Adversary Proceeding. The Settlement Payment is a meaningful resolution in light of the complexity of the Litigation, as well as the potential delay and professional costs associated therewith. As such, the Settlement is in the paramount interest of the Debtors' stakeholders.

B. The Contingency Fee Ought to be Approved

43. Pursuant to the Plan and this Court's Order Approving the Trustee's Motion to Approve Hybrid Form of Compensation [ECF No. 223], Meland Russin & Budwick, P.A. ("**MRB**") is entitled to a fee of 10% of any affirmative recovery received by the Debtors' estates from a litigation matter pursued by the firm without further order of the Court ("**Contingency Fee**").

44. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$9,000 – be approved and that he be authorized and directed to pay this amount when the Liquidating Trustee receives his allocation of the Settlement Payment.

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WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an Order (similar in form to the Order attached as Exhibit 2) (i) approving the Settlement; (ii) approving payment of the Contingency Fee; and (iii) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on February 1, 2013, via: (i) the Court's Notice of Electronic Filing upon the Registered Users listed on the attached Exhibit 3; and (ii) U.S. Mail upon the parties on the service list attached as Exhibit 4, Lisa M. Castellano, Esq., Becker & Poliakoff, P.A., 311 Park Place, Suite 250, Clearwater, FL 33759, and Helen Davis Chaitman, Esq., Becker & Poliakoff, LLP, 45 Broadway, 8th Floor, New York, NY 10006.

s/ Jessica L. Wasserstrom
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*Attorneys for Barry E. Mukamal,
Liquidating Trustee*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Petters Company, Inc., et al.,

Debtors.

**Jointly Administered under
Case No. 08-45257**

Court File No. 08-45257

(includes:
Petters Group Worldwide, LLC;
PC Funding, LLC;
Thousand Lakes, LLC;
SPF Funding, LLC;
PL Ltd., Inc.;
Edge One LLC;
MGC Finance, Inc.;
PAC Funding, LLC;
Palm Beach Finance Holdings, Inc.)

Court Files No.'s:
08-45258 (GFK)
08-45326 (GFK)
08-45327 (GFK)
08-45328 (GFK)
08-45329 (GFK)
08-45330 (GFK)
08-45331 (GFK)
08-45371 (GFK)
08-45392 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

ORDER

This matter came before the Court on December 18, 2012, on the verified motion of Douglas A. Kelley (the "Trustee"), as the Chapter 11 Trustee of the above-captioned bankruptcy estates, to approve the Settlement of Multiple Adversary Proceedings and Claims and to Authorize Trustee to Enter into and Consummate Settlement and Mutual Release Agreements and Stipulations of Settlement.

Based on the arguments of counsel, moving documents, the record made at the hearing, the Court's findings of fact and conclusions of law, if any, having been recorded in open court following the close of evidence and the court having reviewed the Settlement Agreements and being fully advised in the premises,

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 12/20/2012 Lori Vosejka, Clerk, By JRB, Deputy Clerk

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED;
2. The Settlement Agreement by and between the Trustee and Big Brothers Big Sisters of the Greater Twin Cities in the amount of \$20,000.00 is approved;
3. The Settlement Agreement by and between the Trustee and Gianfranco Palma in the amount of \$60,000.00 is approved;
4. The Settlement Agreement by and between the Trustee and Wishes and More in the amount of \$750.00 is approved;
5. The Stipulations of Settlement by and between the Trustee, the Palm Beach Trustee, and the Metro Gem Subsequent Transferees: Minnesota Military Family Foundation, Fathers Heart - A Children's Ranch, Inc., First Baptist Church of Tequesta, Inc., His Voice Ministries, Inc., New Life Family Services, Make Old Things New, Inc., Bethany Fellowship, Inc., Southwest Key Programs, Inc., Prison Fellowship Ministries, Inc., Redeemer Bible Church, Masterworks, T-Net International, Metro Hope Ministries, Crown Financial Ministries, North Central University, Church on the Green, Southwest Christian High School, Smithtown Gospel Tabernacle, Einar and Luella Unseth, Robert Naegle, TLB-A CRUT, Gary Harpst and Rhonda Harpst, Alan Dirks, Tom Roelofs, Marlyn Wolbet Trust and Marlys Wolbert Trust, Mark Wolbert, Richard Wolbert, Ashton Revocable Trust, Jeff Bird, George Alex, Don Bierle, Lee Stedman, Harvey William Sleck and Sandy Sleck, Herbert Murphy, Sterling Management Group, Inc., Caridad Corporation and Thomas P. Lowe Trust, and Ron Lind, as described in the motion, are approved;
6. The Trustee is hereby authorized to enter into the Settlement Agreements and Stipulations with the parties identified in the motion and perform in accordance with the terms

thereof and allocate the proceeds received in connection with the settlement in a manner that is consistent with the motion;

7. The Trustee is authorized to execute and deliver such other documents and instruments and take such other actions as may be necessary or desirable to implement the terms of the Settlement Agreements and Stipulations; and

8. This Court shall retain jurisdiction to enforce the terms of the Settlement Agreements.

Dated: December 20, 2012

/e/ Gregory F. Kishel

Gregory F. Kishel
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

CHAPTER 11

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

Debtors.

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION TO
APPROVE (1) SETTLEMENT WITH THE ASHTON REVOCABLE LIVING TRUST
AND MARIE ASHTON AND (2) PAYMENT OF CONTINGENCY FEE [ECF NO. ____]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion to Approve (1) Settlement with The Ashton Revocable Living Trust and Marie Ashton and (2) Payment of Contingency Fee [ECF No. ____] (the "**Motion**").¹ The Court, having reviewed the Motion and noting that a Certificate of No Response and Request for Entry of Order has been filed, finds that the notice of the proposed compromise and settlement is sufficient to comply with

¹ All capitalized terms not defined in this Order shall have the meaning ascribed to such term as set forth in the Motion.

Bankruptcy Rules 9019 and 2002(a)(3), Local Rule 9013-1(D) and any other applicable notice requirement, and accordingly, it is:

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Settlement is **APPROVED**.
3. Transferee shall pay (or cause to be paid)) \$225,000.00 (the “**Settlement Payment**”) within 30 days from the date of the entry of this Order. Of the total Settlement Payment, \$90,000.00 will be paid to the Liquidating Trustee and \$135,000.00 will be paid to the PCI Trustee. The Liquidating Trustee’s portion of the Settlement Payment (\$90,000.00) may be made via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to “Barry E. Mukamal, Liquidating Trustee” and delivered to Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3000, Miami, Florida 33131.
4. The Liquidating Trustee’s portion of the Settlement Payment will be allocated and apportioned among the Liquidating Trusts as follows: 18% to the Palm Beach Finance Partners Liquidating Trust and 82% to the Palm Beach Finance II Liquidating Trust (the “**Pro Rata Allocation Formula**”), and the wire transfers and/or checks referenced in paragraph 3 above as the mechanism for the Settlement Payment shall be made in the amounts in accordance with this allocation.
5. MRB’s Contingency Fee in the amount of \$9,000.00 is approved. The Liquidating Trustee is authorized and directed to make payment of the Contingency Fee without the need of further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.

6. To the extent that the Transferee has any scheduled claim or proof of interest or has filed a proof of claim or proof of interest in the Debtors' chapter 11 cases, such claim or interest is deemed disallowed in its entirety.

7. The Court retains jurisdiction to enforce the terms of the Settlement.

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Submitted By:

s/ Jessica L. Wasserstrom
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Copies Furnished To:

Jessica L. Wasserstrom, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

Mailing Information for Case 09-36379-PGH

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- Geoffrey S. Aaronson gaaronson@aspalaw.com, tdmckeown@mckeownpa.com;sbeiley@aspalaw.com
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