

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES COMMODITY	§	
FUTURES TRADING COMMISSION,	§	
	§	
<i>Plaintiff,</i>	§	
v.	§	Civil Action No. A-12-CV-0862-DAE
	§	
SENEN POUSA, INVESTMENT	§	
INTELLIGENCE CORPORATION,	§	
<i>DBA</i> PROPHETMAX MANAGED FX,	§	
JOEL FRIANT, MICHAEL DILLARD, and	§	
ELEVATION GROUP, INC.,	§	
	§	
<i>Defendants.</i>	§	

**ORDER GRANTING RECEIVER'S  
SECOND MOTION FOR INSTRUCTIONS**

Before the Court is the Receiver's Second Motion for Instructions (the "Motion"). The Receiver is seeking approval of a series of steps that he believes appropriate to compromise disputes in Morocco, to pay government transfer and currency conversion fees, and to abandon certain assets.

Having considered the Motion, the evidence presented, and arguments of counsel, if any, the Court finds the Motion should be, and is hereby, GRANTED.

The Court further orders the following:

1. The Receiver has the authority to discontinue the Moroccan asset repatriation efforts relates to the real estate.
2. To have US dollars repatriated to the Receivership estate, the Receiver has the authority that he be allowed to pay any reasonable currency conversion and/or expropriation fees (up to 10% of the amount repatriated) to the Moroccan authorities.

3. The Receiver has the authority to divide the net proceeds of the Banque Populaire accounts pro-rata between the CSF victims (7.95%) and the IB Capital victims (92.05%).

4. Once the series of steps above are completed, the Receiver has the authority to discontinue any further Moroccan asset recovery efforts.

SIGNED this 7<sup>th</sup> day of September, 2023.

  
\_\_\_\_\_  
DAVID A. EZRA  
SENIOR UNITED STATES DISTRICT JUDGE

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES COMMODITY §
FUTURES TRADING COMMISSION, §
§
Plaintiff, §
v. § Civil Action No. 1:12-CV-0862-DAE §
SENEN POUSA, INVESTMENT §
INTELLIGENCE CORPORATION, §
DBA PROPHETMAX MANAGED FX, §
JOEL FRIANT, MICHAEL DILLARD, and §
ELEVATION GROUP, INC., §
Defendants. §

RECEIVER’S UNOPPOSED SECOND MOTION FOR INSTRUCTIONS

Comes now Guy M. Hohmann, this Court’s appointed receiver (“Receiver”), and files this his Second Motion for Instructions (“Motion”), respectfully stating:

I. Introduction

This Motion seeks the Court’s approval of a series of steps the Receiver believes appropriate to compromise disputes in Morocco, to pay government transfer and currency conversion fees and to abandon certain assets. Specifically, there are two asset classes in Morocco, upon which, the Receiver seeks to have this Court’s instructions.

II. The Real Estate Assets

1. Over the last 18 months, the Receiver has explored the possibilities of disposing of five (5) pieces of property presently located in Morocco. One is an improved property known as the Villa. The other four parcels are unimproved farmland. (Collectively, the five properties will be referred to herein as the “Properties”.) The Dutch Public Prosecutor’s Office (the “DPPO”) believes

the Properties were acquired primarily with funds that were misappropriated from IB Capital, the entity for which the Receiver has been appointed.

2. All five Properties have liens on them, and several have multiple liens.

3. While the Receiver has not had formal appraisals completed on the Properties, the Receiver was provided with records that indicated what was paid for the Properties. He also performed internet market research on the Moroccan real estate market, over the last ten years. Based on the above, the Receiver estimates the five Properties have a value in the range of USD \$750,000 to \$850,000, with most of the value being in the Villa.

4. Approximately 18 months ago, the DPPO provided the Receiver with the name of a Moroccan real estate broker who may have been willing to list the properties. After the Receiver provided him with the legal descriptions of the Properties and the realtor performed further lien research, he indicated he would need to consult with his lawyer, prior to deciding whether he could accept the listings. Several weeks later, the Receiver contacted the realtor and was told the realtor would not list the Properties.

5. Thereafter, the Receiver contacted a local realtor that works with an international realty firm, Kuper Sotheby's International Realty. This realtor was also provided the legal descriptions of the Properties and forwarded them to their office in Morocco. Kuper Sotheby's Moroccan office was also not interested in listing the properties.<sup>1</sup>

### **III. Moroccan Dirham ("MAD") Accounts**

6. There are three bank accounts at a bank in Morocco (Banque Populaire or "the Bank") in the names of Essadia and Rabiaa Moutaouakkil and Emade Echade.<sup>2</sup> All three individuals

---

<sup>1</sup> The Receiver's Moroccan counsel also researched the Properties.

<sup>2</sup> Essadi and Rabiaa Moutaouakkil are Emade Echade's aunt and mother, respectively

will be collectively referred to hereinafter as (the “Account Holders”). In the aggregate, the accounts contain MAD 46,641,689 (USD 4.65 million).<sup>3</sup>

7. The Receiver, his French and Moroccan counsel have discussed with counsel for the Bank the path forward to have those funds repatriated to the Receivership estate. The Bank’s counsel indicated his client would transfer the funds if the Account Holders executed Irrevocable Transfer Orders (the “ITOs”) in favor of the Receivership estate.

8. The Account Holders executed the ITOs and the Receiver’s French counsel received them; they are going to be mailed to the Receiver for his execution. Once the Receiver has executed the ITOs, they will be forwarded to the Receiver’s Moroccan counsel, who will then present them to the Bank’s counsel.<sup>4</sup>

9. Once the ITOs are presented to the Bank’s counsel, it is expected the funds will be converted to US dollars. Thereafter, the Receiver’s Moroccan counsel will seek to obtain permission from Morocco’s Currency Exchange Office to have the US dollars repatriated to the Receivership estate. In connection with this contemplated conversion and subsequent transfer, it is possible a fee may have to be paid to the Kingdom of Morocco.

10. It is important to note; the primary source of the funds in the bank accounts were funds that were misappropriated from IB Capital. However, the DPPO believes a portion of the funds in these accounts were misappropriated from a previous fraud committed by Michel Geurkink and Emade Echade known as the Capilo Spot Forex (“CSF”) fraud. In addition, one of the Account

---

<sup>3</sup> Google Finance (August 27, 2023). Moroccan Dirham to United States Dollar Retrieved August 27, 2023, from <https://www.google.com/finance/quote/MAD-USD?hl=en>

<sup>4</sup> In order to fully execute the ITOs, the Receiver will have the documents notarized and apostilled and will return via air-mail to the Receiver’s Moroccan counsel.

Holders stated through her counsel that prior to transfers from CSF and IB Capital being deposited into her account; she had the equivalent of EUR 50,000 in her account.

11. The Receiver's Dutch counsel obtained copies of the three bank account statements through a request for production of documents on the DPPO. He has analyzed the bank records for the accounts and surmised, prior to misappropriated funds being deposited, the three accounts in the aggregate only held approximately MAD 3,464.06. The amount is equivalent to approximately USD \$340.<sup>5</sup> The Receiver's Dutch counsel shared his memorandum and analysis along with the bank statements with counsel for the Account Holders. After his review of the bank statements, counsel for the Account Holders agreed to waive any claim for funds in the Banque Populaire accounts if the Receiver and the DPPO agree to waive any claims on the Properties. The Receiver's Dutch counsel is communicating with the DPPO to confirm it will agree to waive any claims to the Properties.

#### **IV. Proposed Resolutions Related to the Moroccan Assets**

12. Given his inability to engage a listing broker and the number of liens on the Properties, the Receiver is of the opinion it is appropriate to discontinue further repatriation efforts in connection with the Moroccan real estate.

13. The Receiver seeks this Court's permission to pay a reasonable fee (up to 10% of the amount repatriated) to Moroccan authorities, to the extent such becomes necessary, to have the Moroccan Dirham in the Banque Populaire accounts converted to US dollars and repatriated to the Receivership estate.

---

<sup>5</sup> Google Finance (August 27, 2023). Moroccan Dirham to United States Dollar Retrieved August 27, 2023, from <https://www.google.com/finance/quote/MAD-USD?hl=en>

14. As noted above, according to the DPPO, a portion of the funds in the Banque Populaire accounts emanated from an earlier separate fraud referred to as CSF. For the DPPO to request their Moroccan counterparts to lift the attachments on the bank accounts, it became necessary for the Receiver to reach an agreement with the DPPO on how to divide the funds. Subject to this Court's approval, the Receiver and the DPPO have tentatively agreed to divide the net proceeds in the accounts pro-rata.

15. The CSF fraud involved approximately USD \$3 million. The IB Capital fraud involved USD \$35 million. Thus, the total of the two frauds was \$38 million. A pro-rata calculation would be as follows:

- i. CSF portion: \$3 million divided by \$38 million equals 7.95%
- ii. IB Capital portion: \$35 million divided by \$38 million equals 92.05%

## **V. Applicable Law**

16. In shaping equitable distribution plans in receiverships ancillary to securities enforcement actions, a district court "is vested with broad discretionary power". *SEC v. Forex Asset Management, LLC*, 242 F.3d 325, 331 (5th Cir. 2001).

17. Where there is a doubtful or important matter, it is appropriate for a receiver to seek instructions from the supervising court, and that court has the power to provide instructions. *Northern Fin. Corp. v. Byrnes*, 5 F.2d 11, 12 (8th Cir. 1925). ("[Receivers] are at liberty, and are in fact encouraged to apply at all times to the court for instructions and advice, and such is their duty in any doubtful or important matter arising in the course of their duties."); see also 2 CLARK ON RECEIVERS § 361, at 618-19 (1992). ("Receivers have a very large latitude in the matter of asking advice and seeking protection of the court appointing them with reference to discharge of their duties. They are at all times entitled to apply to the court for instructions.")

**VI. Receiver's Recommendation**

18. The Receiver recommends the Moroccan asset repatriation efforts related to the real estate should be discontinued at this time.

19. In order to have US dollars repatriated to the Receivership estate, the Receiver recommends that he be allowed to pay any reasonable currency conversion and/or expropriation fees (up to 10% of the amount repatriated) to the Moroccan authorities.

20. The Receiver recommends the net proceeds of the Banque Populaire accounts be divided pro-rata between the CSF victims (7.95%) and the IB Capital victims (92.05%).

21. The Receiver recommends that once the tasks set forth in paragraphs 18 through 20 have been accomplished, that he be allowed to discontinue any further Moroccan asset recovery efforts.

Respectfully submitted,

GUY HOHMANN

By: /s/ Guy Hohmann

Guy Hohmann  
State Bar No. 09813100  
guyh@hohmannlaw.com  
114 West 7<sup>th</sup> Street  
Suite 1100  
Austin, Texas 78701  
(512) 495-1438

**RECEIVER FOR THE PROPHETMAX AND  
IB CAPITAL RECEIVERSHIP ESTATES**



**CERTIFICATE OF CONFERENCE**

The Receiver conferred with Timothy Mulreany, counsel for the CFTC, who stated the CFTC is not opposed to the Motion nor the relief sought herein.

*/s/ Guy Hohmann* \_\_\_\_\_

Guy Hohmann

**CERTIFICATE OF SERVICE**

On September 6, 2023, I electronically submitted the foregoing document with the Clerk of the Court of the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

*/s/ Guy Hohmann* \_\_\_\_\_

Guy Hohmann