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*Attorneys for Court-Appointed Receiver,  
Diane A. Thompson*

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**AMERICAN PENSION SERVICES, INC.,  
a Utah Corporation and CURTIS L.  
DeYOUNG, an individual,**

**Defendants.**

**RECEIVER'S SECOND MOTION AND  
MEMORANDUM FOR AN ORDER  
AUTHORIZING THE LIQUIDATION  
OF STOCK HELD BY APS FOR THE  
BENEFIT OF APS ACCOUNT  
HOLDERS**

**Case No.: 2:14-cv-00309-RJS-DBP**

**Judge Robert J. Shelby  
Magistrate Judge Dustin B. Pead**

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Diane Thompson ("Receiver"), Court-appointed Receiver for American Pension Services, Inc. ("APS"), by and through undersigned counsel, hereby respectfully moves the

Court to authorize the liquidation of stock held in four APS accounts to satisfy the loss allocation per the Receiver's Amended Modified Plan of Liquidation.

**RELIEF SOUGHT AND GROUNDS FOR MOTION**

By this Motion, the Receiver seeks Court approval to liquidate stock held by five APS account owners (Account Numbers 6362, 6610, 7130, and 14097) (collectively, "Non-compliant Accounts") through a securities brokerage firm or by public auction pursuant to 28 U.S.C. § 2004 and as described in the Court-approved Receiver's Amended Modified Plan of Liquidation ("Liquidation Plan") (Dkt. 458 and 458-1).

**MOTION AND MEMORANDUM**

On April 24, 2014, the Securities and Exchange Commission ("SEC") filed suit against APS and Curtis L. DeYoung, alleging, among other claims, that DeYoung, as president and CEO of APS, misappropriated over \$24 million of APS account owner funds from APS's master trust account. (Complaint (Dkt. 1), ¶ 1). That same day, the Receiver was appointed and tasked to promote the orderly and efficient administration of the Receivership Estate. (Order Appointing Receiver, Freezing Assets, and Other Relief (Dkt. 9) ("Receivership Order").

On February 27, 2015, the Court approved the Receiver's proposed Liquidation Plan. The Liquidation Plan provides that the loss in the total value of the APS account owners' assets shall be divided among the accounts on a pro rata basis, resulting in an approximate loss of ten percent (10%) to each account. Under the Liquidation Plan, if an account owner fails to pay a loss allocation and transfer to Equity Trust Company ("Equity") by December 31, 2015, the Receiver may take certain action, including any of the following: (1) resigning as administrator and issuing an IRS Form 1099-R for tax reporting of the distribution of the total balance of the

account; (2) imposing a lien for the amount of the applicable loss allocation on IRA account owner assets; (3) pursuing collection; or (4) liquidating account assets sufficient to meet the loss allocation requirement. (Liquidation Plan at p. 46).

The Receiver has carefully considered the costs associated with pursuing the liquidation of account assets of non-compliant IRA account owners and developed a plan for ensuring the greatest recovery to the Receivership Estate. At the time of this filing, there are fifty-three (53) accounts remaining at APS. Of the fifty-three (53) remaining accounts, four (4) are the subject of this motion, twenty-seven (27) will be the subject of future motions to be filed with the Court or are the subject of a motion filed concurrently herewith, seventeen (17) have been the subject of previous motions, two (2) are in the process of funding their loss allocation, and three (3) will be assigned by the Receiver as authorized in previous motions.<sup>1</sup>

By this Motion, the Receiver seeks authorization, pursuant to 28 U.S.C. § 2004, to liquidate stock for which there is no readily available market held by four (4) Non-compliant Accounts. The Receiver intends to liquidate the stock through a securities broker or other similar public offering as allowed by applicable law in order to maximize the return for the Non-

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<sup>1</sup> The three (3) accounts to be assigned contain LLCs organized under the laws of Arizona, Colorado, and Michigan. In these particular states, judicial dissolution is available when a member files a motion in the court for the county in which the registered office of the LLC is located, and only when the LLC is unable to carry on business in conformity with the LLC articles of organization and operating agreement. ARIZ. REV. STAT. ANN. § 29-785 (2016) (West); COLO. REV. STAT. ANN. § 7-80-810(3) (West 2016); MICH. COMP. LAWS § 450.4802 (West 2016). Alternatively, in Colorado and Michigan, a judicial dissolution is available on the grounds that the LLC acted in an unlawful manner only upon application by the attorney general. COLO. REV. STAT. ANN. § 7-80-810(1) (West 2016); MICH. COMP. LAWS § 450.4803 (West 2016). Based on the statutory requirements for a judicial dissolution, the Receiver believes it is more economically sound to resign as administrator and assign these assets to the clients with the accompanying tax documents.

compliant Account owners. Any such sale will only be conducted after notice of the sale of the stocks has been given to the account owners.

### **BACKGROUND FACTS**

1. On April 24, 2014, the Securities and Exchange Commission (“SEC”) filed suit against APS and Curtis L. DeYoung, alleging, among other claims, that DeYoung, as president and CEO of APS, misappropriated over \$24 million of APS account owner funds from APS’s master trust account. (Complaint (Dkt. 1), ¶ 1). That same day, the Receiver was appointed and tasked to promote the orderly and efficient administration of the Receivership Estate. (Order Appointing Receiver, Freezing Assets, and Other Relief (Dkt. 9) (“Receivership Order”).

2. Following her appointment, the Receiver filed notice of the Receivership with the district court for each district in which APS property or Receivership Assets were located, pursuant to 28 U.S.C. § 754.

3. On August 22, 2014 the Receiver filed a motion for Court approval of the Liquidation Plan.

4. The Receiver provided notice of the Liquidation Plan to all APS account owners by mail, e-mail, and posting on the Receivership website at [www.apsreceiver.com](http://www.apsreceiver.com). (Dkt. 221; Dkt. 316 at p. 2).

5. The Receiver responded to a significant number of written objections from APS account owners regarding the proposed Liquidation Plan. (Dkt. 425 at p. 10). The Receiver filed a summary of these objections with the Court on November 11, 2014. (Dkt. 316). The Receiver then filed a response to APS account owner objections with the Court on December 3, 2014. (Dkt. 356).

6. The Court held a hearing on the Receiver's proposed Liquidation Plan on December 17, 2014, and afforded APS account owners the opportunity to be heard on the proposed Liquidation Plan in oral argument.

7. This Court approved the Liquidation Plan on February 27, 2015. (Dkt. 458). The Receiver provided notice of the approved Liquidation Plan to each account owner by mail, e-mail, and posting on the APS Receivership website at [www.apsreceiver.com](http://www.apsreceiver.com).

8. The Liquidation Plan required that APS account owners provide a loss allocation equal to ten percent (10%) of the total value of their accounts as of April 24, 2014. (Dkt. 458-1 at p. 44). This loss allocation applied to clients regardless of the form in which their assets within their account were held. (*Id.*). APS account owners were required to fund their loss allocation by May 27, 2014. (*Id.*).

9. The Liquidation Plan allowed clients with illiquid assets to preserve those assets by funding their loss allocation by direct payment of the loss allocation to the Receiver. In order to resolve potential tax reporting issues, the Receiver also sought a Private Letter Ruling ("PLR") from the IRS. (Liquidation Plan at 40–41). Clients that were awaiting the outcome of the PLR were allowed to defer their loss allocation until a determination on the PLR was made. (*Id.*).

10. Furthermore, the Liquidation Plan authorized the Receiver to take certain actions if the APS Account Owner failed to fund their loss allocation. (Liquidation Plan at p. 46). Under the Liquidation Plan, the Receiver is authorized to: (1) resign as administrator and issue an assignment of assets and IRS Form 1099-R reporting a full distribution based on the recorded value of account assets of April 25, 2014; (2) impose a lien on APS account owners' assets; (3)

pursue collection from APS account owners who refuse to comply with the Liquidation Plan; (4) liquidate assets sufficient to meet the loss allocation requirement; or (5) any combination of the above. (*Id.*).

11. On July 2, 2015, the IRS declined to issue a PLR for procedural reasons. (Dkt. 592 at p. 4). As a result, the Receiver proposed, and this Court approved, an alternative method for reporting a cash payment to fund a loss allocation and requiring all remaining APS account owners to transfer their accounts by September 15, 2015. (Dkt. 592).

12. The Liquidation Plan recognized that some APS account owners required additional time to liquidate or otherwise fund a loss allocation. (Liquidation Plan at p. 45). Thus, the Liquidation Plan required all loss allocations be funded by December 31, 2015. (*Id.*).

13. On February 10, 2016, the Receiver filed a motion seeking to force transfer certain remaining APS account owners. (Dkt. 705). For that motion, the Receiver evaluated over 1,100 APS accounts and determined that, based on a cost-benefit analysis, 786 accounts had loss allocation amounts that did not justify the cost of liquidation and therefore transferred those accounts to the successor custodian. (*Id.*). The Court approved this motion on February 19, 2016, concluding that the transfer of these 786 accounts “would further implement the purpose and intent of the Liquidation Plan.” (Dkt. 720). Those APS account owners that were transferred without a loss allocation forfeited “any opportunity to participate in future recoveries” made by the Receiver. (*Id.*). The Receiver then transferred the 786 APS accounts.

14. The Receiver has taken actions permitted by the Liquidation Plan and subsequent Court orders to collect required loss allocation payments from non-compliant accounts, including sweeping accounts of cash, and liquidating foreign currency, gold, silver, coins, and brokerage

accounts.

15. APS records contained limited information regarding certain assets. In an effort to ascertain additional information, and to evaluate whether liquidation of assets was justified from a cost-benefit standpoint, the Receiver issued subpoenas and a cover letter to remaining APS account owners. The subpoena and cover letter explained the APS account owners' obligations to comply with the Liquidation Plan and other Court orders. The subpoenas requested a number of financial records and other documents related to the APS account owners' assets.

16. The owner of Account Number 6362 is a resident of Utah.

17. The owner of Account Number 6362 was served at his residence on July 27, 2016. As of this filing, the owner of Account Number 6362 has not responded to the subpoena. Based on account information available, the Receiver believes there are sufficient assets in Account Number 6362 to fund all or part of the loss allocation.

18. The owner of Account Number 6610 is a resident of Utah.

19. The owner of Account Number 6610 was served a subpoena at his residence on July 23, 2016. The owner of Account Number 6610 has responded to the subpoena. After a review of the documents supplied in response to the subpoena, the Receiver believes there are sufficient assets to liquidate in order to fund the Court-ordered loss allocation.

20. The owner of Account Number 7130 is a resident of Utah.

21. The owner of Account Number 7130 was served at her residence on August 15, 2016. The owner of Account Number 7130 has not responded to the subpoena. Based on account information available, the Receiver believes there are sufficient assets in Account

Number 7130 to fund all or part of the loss allocation.

22. The owner of Account Number 14097 is a resident of the State of New Jersey.

23. The owner of Account Number 14097 was served at her residence on August 12, 2016. The beneficiary of Account Number 14097 has not responded to the subpoena. Based on account information available, the Receiver believes there are sufficient assets in Account Number 14097 to fund all or part of the loss allocation.

24. In addition to service of a subpoena and cover letter, the owners of Non-compliant Accounts were mailed and e-mailed a copy of the Liquidation Plan on or about February 27, 2015, and were provided notice of additional court orders via the Receivership website at [www.apsreceiver.com](http://www.apsreceiver.com).

25. Account Number 6362 holds 73,000 shares of Quest Solution, Inc. stock with a reported value of \$5,840.00 and shares of Transamerica Oil, Inc. stock with a reported value of \$32,600.00.<sup>2</sup> Account Number 6362 has a loss allocation of \$13,557.48, has made partial payments totaling \$2,322.02, and owes \$0.00 in outstanding management fees. The Receiver believes the shares of stock can be liquidated to fund the loss allocation for Account Number 6362.

26. Account Number 6610 holds 364 shares of Red Leaf Manager, LLC with a reported value of \$250,725.94. Account Number 6610 has a loss allocation of \$25,072.59 and owes \$2,858.05 in outstanding management fees. The Receiver believes the shares of stock can be liquidated to fund the loss allocation and outstanding management fees for Account Number

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<sup>2</sup> Account Number 6362 holds additional assets in addition to the promissory note. Those assets will be the subject of separate motions filed by the Receiver.

6610.

27. Account Number 7130 holds 16,779 shares of National Academy Echo with a reported value of \$25,000.71, 15,773 shares in NeuroAdjuvants, Inc. with a reported value of \$50,000.41, and 122,857 shares in Techniscan with a reported value of \$86,000.00. Account Number 7130 has a loss allocation of \$16,341.40, has made partial payments totaling \$2,416.35, and owes \$0.00 in outstanding management fees. The Receiver believes the shares of stock can be liquidated to fund the loss allocation and outstanding management fees for Account Number 7130.

28. Account Number 14097 holds 215,000 shares of Ausindo Resources, Inc. with a reported value of \$215,000.00. Account Number 14097 has a loss allocation of \$21,500.00 and owes \$0.00 in outstanding management fees. The Receiver believes the shares of stock can be liquidated to fund the loss allocation and outstanding management fees for Account Number 14097.

29. The stocks held in each of the Non-compliant Accounts are penny stocks or otherwise have a limited market and are not traded or listed on the New York Stock Exchange, NASDAQ, or other national stock exchange.

30. The Receiver will incur fees and costs associated with the liquidation of the promissory notes in the Non-compliant Accounts.

### **ARGUMENT**

#### **I. The Receiver Has Authority to Sell Assets Within APS Accounts.**

The district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010). “When a

district court creates a receivership, its focus is to . . . achiev[e] a final, equitable distribution of the assets.” *Id.* The district court has authority to accomplish the goal of an equitable distribution, including the liquidation of assets from individual accounts. *See, e.g., In re Comm’r of Banks and Real Estate*, 764 N.E.2d 66, 86 (Ill. App. Ct. 2001); *see also SEC v. Bilzerian*, 378 F.3d 1100, 1103 (D.C. Cir. 2004) (holding a district court has personal jurisdiction over non-resident that holds property subject to receivership in another jurisdiction). Furthermore, no preference should be given to some account holders to the detriment of others. *See generally Cunningham v. Brown*, 265 U.S. 1 (1924); *Rosenberg v. Collins*, 624 F.2d 659 (5th Cir. 1980); *see also In re Comm’r of Banks and Real Estate*, 764 N.E.2d at 101; *Reichert v. Fidelity Bank & Trust Co.*, 245 N.W. 808, 810 (Mich. 1932); 5 Scott on Trusts § 519. This Court recognized the Receiver’s authority to “pursue collection from APS clients who refuse to cooperate with th[e] Liquidation Plan and, if necessary, liquidate the assets and deposit the client’s proportionate share of the loss allocation with the balance, if any, transferred to the Successor [custodian] on behalf of the APS client” when it approved the Receiver’s Liquidation Plan. (Plan of Liquidation at p. 46).

Pursuant to the Liquidation Plan, the Receiver now seeks approval from this Court to liquidate stock for which there is no readily available market from Non-compliant Accounts to satisfy the loss allocations and outstanding management fees for the respective accounts. Account Number 6362 has a loss allocation of \$13,557.48, has made partial payments totaling \$2,322.02, and owes \$0.00 in outstanding management fees. Account Number 6610 has a loss allocation of \$25,072.59 and owes \$2,858.05 in outstanding management fees. Account Number 7130 has a loss allocation of \$16,341.40, has made partial payments totaling \$2,416.35, and

owes \$0.00 in outstanding management fees. Account Number 14097 has a loss allocation of \$21,500.00 and owes \$0.00 in outstanding management fees. Shares of the stocks held by Non-compliant Accounts can be liquidated in each of these accounts to fully or partially fund the respective loss allocations and outstanding management fees.

The Receiver has reached out to each of the owners of Non-compliant Accounts on numerous occasions to pay their loss allocations. The Receiver has obtained additional Court orders requiring these owners to pay their respective loss allocations and transfer their accounts. *See, e.g.,* Order Requiring All Remaining APS Account Holders to Transfer Within 30 Days (Dkt. 592). Despite the Receiver's numerous communications, each of the above account owners has failed to cooperate with the Receiver to resolve their loss allocation. Ultimately, the Receiver issued subpoenas to the owners of the Non-compliant Accounts in order to compel cooperation. Of the four owners served or attempted to be served, none have responded to the Receiver's subpoena. While the owners of each of the accounts may believe they are being punished (and most assuredly, the owners are victims of Curtis DeYoung's misappropriation), the loss allocation is the product of a lawful court order, and the owners of Non-compliant Accounts are in violation of this Court's order. *See In re Comm'r of Banks and Real Estate*, 764 N.E.2d at 123.

The United States Code describes the procedure for selling personal property assets. 28 U.S.C. §§ 2001, 2004. According to 28 U.S.C. § 2004, "Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise." According to 28 U.S.C. § 2001(a), "Property in the possession of a receiver . . . appointed by one or more district courts shall be sold at public sale

in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city” where the property is located, “or on the premises” of the property. The Receiver seeks the approval of this Court to sell the shares of stock for which there is not a readily available market within the Non-compliant Accounts.

Should this Court approve, the Receiver intends to engage a local securities brokerage firm or conduct a similar public sale or offering, as allowed under applicable laws, that will bring the highest and best value for the shares of stock. The Receiver requests the Court grant the Receiver authority to sell the stock through a local securities broker or through a similar public sale or offering, whichever the Receiver determines will bring the highest and best value. Regardless of the method of sale, the Receiver will strive to obtain the highest and best value for the stock in order to attempt to fully fund loss allocation and outstanding management fees owed by each of the respective accounts, and reasonable fees and costs associated with liquidating the properties in the respective accounts. The Receiver should also be awarded her reasonable costs and fees associated with the liquidation of the stock shares, as this Motion is necessary only because the Non-compliant Accounts have completely disregarded this Court’s orders. Furthermore, those account owners that have willingly complied with this Court’s orders should not be harmed by subsidizing the costs incurred by the Receiver in executing against the Non-compliant Accounts.

The Receiver seeks to engage a local securities broker that has specific expertise in penny stocks or stocks for which there is a limited market in order to liquidate the stock shares. The likely liquidation process will require the securities broker or other authorized individual to list the stock shares on the Over-The-Counter Bulletin Board (“OTCBB”), which is operated by the

Financial Industry Regulatory Authority (“FINRA”), for the purchase or liquidation of stocks that are not listed on the NYSE, NASDAQ, or other national stock exchange. A securities broker or other authorized individual will also enable the Receiver to appropriately re-register the shares of stock in the name of the purchaser more efficiently and at a significant cost savings to the Receivership. In the event local securities brokers decline to liquidate the stock, the Receiver will use reasonable efforts to locate an authorized individual to liquidate the stocks through available public offering, as intended by 28 U.S.C. § 2004.

The Receiver will deposit any funds from the liquidation of the assets into the respective APS accounts. Following the deposit to accounts, the Receiver will fund the loss allocation and outstanding management fees, as well as reasonable fees and costs associated with the liquidation of the promissory notes from the Non-compliant Accounts. The loss allocation asset will be represented by a Contingent Repayment Agreement.<sup>3</sup> (Plan of Liquidation at p. 44). As the opportunity to transfer the accounts to Equity Trust Company has expired, the Receiver will then resign as administrator of the account and distribute the Contingent Repayment Agreement and any excess funds to the client with a letter explaining the resignation and the account holder’s right to rollover the account assets. The client will be issued an IRS Form 1099-R for the amount of the distribution, which would include the face value of the Contingent Repayment Agreement.

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<sup>3</sup> The Contingent Repayment Agreement will represent only the value of the loss allocation and will not include any management fees or reasonable fees associated with the liquidation of the account assets.

**II. Due Process Has Been Afforded to the Account Holder.**

“Due process requires notice and an opportunity to be heard.” *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). Due process ensures a “claimant[’s] interests [are] adequately safeguarded.” *Id.* The owners of each of the Non-compliant Accounts have been, and will be, afforded due process.

In *In re Comm’r of Banks and Real Estate*, a Receiver sought to dissolve and liquidate a custodian of investment trust assets. 764 N.E.2d 66 (Ill. App. Ct. 2001). In affirming the Receiver’s authority to liquidate assets from individual trust accounts, the Court addressed due process considerations, and found that account holders had “both actual and constructive notice . . . in the form of publication of pleadings, orders, the receiver’s recommendations, etc.” on the receiver’s website. *In re Comm’r of Banks and Real Estate*, 764 N.E.2d at 92. The Court noted that each of the account holders had been mailed notice of the receivership, which advised account holders that “a substantial portion of cash . . . was missing and it was the priority of the receiver to determine the amount of money missing and how the beneficiaries would be affected by the missing cash,” and that notice was posted to the receiver’s website. *Id.* The Court then noted that account holders received notice of other court filings by mail and website postings, and that account holders “were afforded ample opportunity to participate in the court’s proceedings,” including the ability to “file extensive pleadings . . . including objections and suggestions . . . to the receiver’s initial recommendation[s], . . . objections and oppositions to the proposed final order,” and other filings. *Id.* at 93–94.

In addition to the initial notice of the Receivership, APS account owners were mailed notice of the Receiver’s proposed Liquidation Plan and afforded an opportunity to make

suggestions and objections. APS account owners were also mailed the Court-approved Liquidation Plan. Additionally, the Receiver has posted all substantive pleadings to the Receiver's website at [www.apsreceiver.com](http://www.apsreceiver.com). As to each of the Non-compliant Accounts, the Receiver has issued and served or attempted to serve subpoenas with cover letters explaining the loss allocation and the need to comply with the Court's orders to owners of Non-compliant Accounts. The cover letter to the subpoena explicitly stated that each client was "in violation of Court orders by failing to pay [their] loss allocation." The cover letter also stated that, pursuant to the Liquidation Plan, the Receiver may take certain actions, including "liquidat[ing] assets sufficient to meet the loss allocation."

Furthermore, upon approval of this Motion, the Receiver will post a copy of this Motion and the Court's order to the Receivership website. The Receiver will also send each of the respective owners of Non-compliant Accounts a copy of this Motion, the Court's order, and notice of the date of sale via certified mail or other verifiable delivery method to the address where each were served by subpoena. Clients seeking to redeem their stock and avoid a sale may do so by paying the amount of their loss allocation and outstanding management fees no later than five days before the date of sale. A cover letter will accompany the mailing of the Court's order, this Motion, and notice of the sale date to each owner of a Non-compliant Account explaining their redemption rights and the process for handling the accounting and distribution of any excess funds. Thus, each of the account owners has been and will be afforded due process.

**CONCLUSION**

The Receiver requests that this Court approve the Receiver's request to liquidate stock from Non-compliant Accounts through a public offering by a local securities brokerage firm or other individual authorized by law, as contemplated by statute and the Liquidation Plan.

DATED this 18th day of January, 2017.

/s/ Jeffrey D. Enquist

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BALLARD SPAHR LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct of copy of the foregoing **RECEIVER'S MOTION AND MEMORANDUM FOR AN ORDER AUTHORIZING THE LIQUIDATION OF STOCK HELD BY APS FOR THE BENEFIT OF APS ACCOUNT HOLDERS** was served to the following this 18th day of January, 2017, in the manner set forth below:

Through the CM/ECF System for the U.S. District Court

Hand Delivery

U.S. Mail, postage prepaid

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**AMERICAN PENSION SERVICES, INC.,  
a Utah Corporation and CURTIS L.  
DeYOUNG, an individual,**

**Defendants.**

**ORDER APPROVING RECEIVER'S  
SECOND MOTION FOR AN ORDER  
AUTHORIZING THE LIQUIDATION  
OF STOCK HELD BY APS FOR THE  
BENEFIT OF APS ACCOUNT  
HOLDERS**

**Case No.: 2:14-cv-00309-RJS-DBP**

**Judge Robert J. Shelby  
Magistrate Judge Dustin B. Pead**

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Before this Court is the Receiver's Second Motion and Memorandum for an Order  
Authorizing the Liquidation of Stock Held by APS for the Benefit of APS Account Holders

(“Motion”). For good cause appearing, and for the reasons stated in the Motion, the Court hereby GRANTS the Receiver’s motion.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court approved the Receiver’s Liquidation Plan on February 27, 2015. (Dkt. 458).

2. The Receiver filed necessary notices of the Receivership in other jurisdictions pursuant to 28 U.S.C. § 754.

3. This Court has jurisdiction to authorize the sale of personal property assets pursuant to 28 U.S.C. § 754 and 1692. *See SEC v. Bilzerian*, 378 F.3d 1100, 1103 (D.C. Cir. 2004); *see also In re Comm’r of Banks and Real Estate*, 764 N.E.2d 66, 88 (Ill. App. Ct. 2001) (holding receiverships and liquidations are *in rem* proceedings and that funds deposited for investment with a company were within the jurisdiction of the Receivership court).

4. The liquidation of assets is authorized by statute, 28 U.S.C. §§ 754, 1692, and by the Liquidation Plan.

5. The liquidation of assets from APS Account Numbers 6362, 6610, 7130, and 14097 will further the purpose of the Receivership to treat all account owners equitably.

6. The liquidation of assets from APS Account Numbers 6362, 6610, 7130, and 14097 is fair and reasonable and necessary to allow the Receivership to be administered to a conclusion.

7. The owners of APS Account Numbers 6362, 6610, 7130, and 14097 received notice of the Liquidation Plan by mail, e-mail, and by posting of the Liquidation Plan to the Receiver’s website at [www.apsreceiver.com](http://www.apsreceiver.com).

8. The owners of APS Account Numbers 6362, 6610, 7130, and 14097 have not complied with the Liquidation Plan, approved by this Court on February 27, 2015. (Dkt. 458).

9. The owners of APS Account Numbers 6362, 6610, 7130, and 14097 were either served or the Receiver exercised reasonable efforts to serve a subpoena with a cover letter explaining that they had not complied with the Liquidation Plan. The cover letter also explained that the Liquidation Plan authorized the Receiver to liquidate assets within their accounts.

10. Account Number 6362 has a loss allocation of \$13,557.48, has made partial payments totaling \$2,322.02, and owes \$0.00 in outstanding management fees.

11. Account Number 6610 has a loss allocation of \$25,072.59 and owes \$2,858.05 in outstanding management fees.

12. Account Number 7130 has a loss allocation of \$16,341.40, has made partial payments totaling \$2,416.35, and owes \$0.00 in outstanding management fees.

13. Account Number 14097 has a loss allocation of \$21,500.00 and owes \$0.00 in outstanding management fees.

14. Proceeds from the sale of stock in each of APS Account Numbers 6362, 6610, 7130, and 14097 will be utilized to satisfy each Non-compliant Account's loss allocation, outstanding management fees, and reasonable fees and costs associated with liquidation of the asset.

15. Any excess funds available as a result of the liquidation or public sale of the stock will be deposited to the respective Non-compliant Accounts. These excess funds, as well as any other assets, including a Contingent Repayment Agreement as described in the Liquidation Plan,

will be distributed to the account owner. The Receiver will also issue appropriate documents for the purpose of tax reporting, including but not limited to an IRS Form 1099-R.

16. Statute requires that the stocks in possession of a receiver be offered via public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish or city in which the property is located, or on the premises of the property, or as the Court otherwise directs. 28 U.S.C. §§ 2001(a), 2004.

17. The Receiver is authorized to conduct the sale of the stocks held by APS Account Numbers 6362, 6610, 7130, and 14097 by engaging a securities broker, securities firm, or other authorized individual to effectuate the sale of stock not traded on the New York Stock Exchange, NASDAQ, or other national stock exchange in order to bring the highest and best value for the stock.

18. The Receiver shall promptly publish a copy of this Order to the Receivership website at [www.apsreceiver.com](http://www.apsreceiver.com).

19. The Receiver shall also mail a copy of her Motion, this Order, a cover letter, and notice of the final date of the sale of the property to the owners of APS Account Numbers 6362, 6610, 7130, and 14097 by certified mail or other verified delivery method to the address at which each of the individuals was served or attempted to be served a subpoena.

20. The Receiver is to use her best efforts to obtain the highest and best value for the stock.

21. The respective beneficiaries of APS Account Numbers 6362, 6610, 7130, and 14097 shall have the opportunity to fund their loss allocation and pay outstanding APS management fees up to five (5) days before the public sale of the stock. If the beneficiary of the

account fully satisfies their loss allocation for their respective account, the public sale shall not be performed and shall be cancelled.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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Honorable Robert J. Shelby  
United States District Court