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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

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

Defendants.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER ON JOINT
STIPULATED MOTION AND
MEMORANDUM TO APPROVE
SETTLEMENT WITH MICHELLE
DEYOUNG**

Case No.: 2:14-CV-00309-RJS-DBP

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

Before the court is the Joint Stipulated Motion and Memorandum to Approve Settlement with Michelle DeYoung (“Motion”). (Dkt. 693.) The Motion is unopposed. For good cause appearing, HEREBY ENTERS THE FOLLOWING:

FINDINGS OF FACT

BACKGROUND

1. Michelle and Curtis DeYoung (“Curtis”) were married in Manti, Utah on June 15, 1978.
2. APS was founded by Curtis and Michelle in 1982, as a family business for the purpose of administering self-directed traditional IRAs, Roth IRAs, SEP IRAs, and Health Savings Accounts.
3. Michelle is a former employee and officer of APS and alleges she is the owner and sole shareholder of American Pension 401(k) Services, Inc. (“AP4S”).
4. Michelle received \$1,407,000 total in compensation for the years 2001 to 2014.
5. By the time the Receiver was appointed, Michelle was receiving a salary of \$260,000.00 per year, which was equal to Curtis’s.
6. Michelle used her salary from APS to set up and fund the following retirement accounts for which she is the owner:
 - a. APS 401(k) account no. 9238, with a reported value as of November 30, 2015 of \$1,665.41 cash and \$128,432.40 in other investments;
 - b. APS Roth 401(k) account no. 9329, with a reported value as of November 30, 2015 of \$4,085.72 cash and \$91,199.30 in other investments;
 - c. APS HSA and IRA account nos.
 - i. IRA Account No. 1119, with a reported value as of November 30, 2015 of \$0.00 cash and \$103.10 in other investments;

- ii. HSA Account No. 11601, with a reported value as of November 30, 2015 of \$4,180.73 cash and \$0.00 in other investments;
- iii. IRA Account No. 2823, with a reported value as of November 30, 2015 of \$0.00 cash and \$3,156.16 in other investments;
- iv. IRA Account No. 5757, with a reported value as of November 30, 2015 of \$0.00 cash and \$6,202.09 in other investments.

(the above retirement accounts are collectively referred to herein as “Michelle’s Retirement Accounts”).

7. In 1988, Curtis and Michelle purchased real property located at 12231 South 1950 East, Draper, Utah 84020 (the “Draper Property”), and in 1992 they constructed their personal residence on the Draper Property, and fully furnished it with furniture and other personal property that same year. Michelle is listed on title to the Draper Property as a joint tenant. The personal property, such as furniture, located within the Draper Property shall hereinafter be referred to as the “Personal Property.”

8. In 1996, Michelle asserts that she received a 1913 Model T Ford as a gift on her 40th birthday.

9. Also during 1996, Michelle asserts that she received a large geode as a gift, which geode was displayed in the APS office, and various antique Coca-Cola vending machines as gifts. Michelle also asserts that a Model T Ford was given to her as a gift. This miscellaneous personal property shall hereinafter be referred to as the “Misc. Property.”

10. In 1996, Curtis acquired commercial property located at 11027 South State Street, Unit 2, Sandy, Utah 84070 (the “Sandy Condo”), which property was allegedly purchased using funds obtained from a home equity loan secured by the Draper Property.

11. On October 22, 1998, Curtis organized LIC Environmental, LLC (“LIC Environmental”), for the alleged purpose of holding the Sandy Condo, and which property served as the office suite for APS.

12. On October 7, 1999, the Sandy Condo was purportedly deeded by Special Warranty Deed from First Utah Office Condominium Association, Inc. to LIC Environmental. The Sandy Property is LIC Environmental’s only reported asset.

13. After APS vacated the Sandy Condo, it was leased to First Utah Bank.

14. Curtis owns fee simple title to real property located at Iron Horse Street, Bluffdale, UT 84065 (the “Iron Horse Property”).

15. While he was working for APS, Curtis was paid a salary, which by the end of 2014 totaled \$260,000.00 per year.

16. Curtis used a portion of his salary from APS to set up and fund the following retirement accounts:

- a. APS 401(k) account no 9330, with a reported value as of November 30, 2015 of \$0.00 cash and \$129,835.11 in other investments;
- b. APS 401(k) account no 9331, with a reported value as of November 30, 2015 of \$2,052.47 cash and \$85,759.81 in other investments;
- c. APS HSA and IRA account nos.

- i. IRA Account No. 1118, with a reported value as of November 30, 2015 of \$2,108.23 cash and \$25,962.59 in other investments;
- ii. IRA Account No. 2824, with a reported value as of November 30, 2015 of \$1,709.18 cash and \$72,973.72 in other investments;
- iii. HSA Account No. 11600 with a reported value as of November 30, 2015 of \$4,180.69 cash and \$0.00 in other investments; and
- iv. IRA Account No. 5756 with a reported value as of November 30, 2015 of \$0.00 cash and \$6,201.61 in other investments;

(the above retirement accounts are collectively referred to herein as “Curtis’ Retirement Accounts”).

RECEIVER IS APPOINTED

17. On April 24, 2014, the SEC instituted the Receivership Action against APS and Curtis, in the case of *Securities and Exchange Commission v. American Pension Services, Inc., et al.*, Case No. 2:14-CV-00309 (the “SEC Action”), alleging among other claims, that Curtis, as a principal of APS, misappropriated over \$24 million of IRA Account Owner funds from APS’s Master Trust Account.

18. On April 24, 2014, under the Order Appointing Receiver, the Court appointed the Receiver to gather and recover assets and liquidate claims for the benefit of all IRA Account Owners that suffered losses from Curtis’s alleged misappropriations of funds from the APS Master Trust Account.

19. Pursuant to the Receivership Order, the Receiver has the power and duty to “use all reasonable efforts to determine the nature, location and value of all property interests of

[APS] including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly (“Receivership Property”).” (Receivership Order Art. II, § 7.A.)

20. The Receiver is further permitted upon leave of Court “to sue for and collect, recover, receive and taking into possession from third parties all Receivership Property and records relevant thereto” (*Id.*, Art. II § 7.B; Art. X).

RETIREMENT FUNDS ARE MOVED

21. On April 28, 2014, Dean Becker, acting in his capacity as manager for four newly-formed LLCs, withdrew funds from each LLC bank account at Zions Bank and moved the funds to Brighton Bank.

22. Relevant to this lawsuit are two of the LLCs: RE Ventures, LLC and DLC2 Investments, LLC (the “Brighton Bank Accounts”).

23. Mr. Becker withdrew \$81,744.70 from the Zions Bank account of RE Ventures, LLC and deposited those funds with Brighton Bank account number ending in 2157.

24. Mr. Becker also withdrew \$70,050.58 from the Zions Bank Account for DLC2 Investments, LLC and deposited those funds with Brighton Bank account number ending 2140 in the name of DHB2 Holdings, LLC.

25. The RE Ventures, LLC bank account at Brighton Bank has \$81,744.70 remaining on deposit.

26. The DHB2 Holdings, LLC bank account at Brighton Bank has \$67,616.45 remaining on deposit, due to withdrawal of \$2,434.13 from that account.

27. The Brighton Bank Accounts are currently frozen.

PLAN OF LIQUIDATION IS APPROVED

28. On February 27, 2015, the Court in the Receivership Action entered its Order Approving Amended Modified Plan of Liquidation and concluded that, among other things, “the primary purpose of equity receiverships is to promote orderly and efficient administration of the receivership estate by this court for the benefit of creditors, including the adoption of a liquidation plan.” ((Order Approving Liquidation Plan (Dkt. 458).)

29. In seeking Court approval of the Liquidation Plan, the Receiver disclosed that she has evaluated and is pursuing potential claims against third parties and financial institutions arising from their business relationships and dealings with APS and DeYoung, including evaluating and pursuing claims against Michelle.

30. The Court ordered and decreed that “the Receiver implement” the Liquidation Plan, which included, among other things, pursuing third-parties and their related entities.

CLAIMS OF THE PARTIES

31. On December 30, 2014, the Receiver filed suit against Michelle and Curtis DeYoung in the case of *Thompson v. DeYoung*, Case No. 2:14-CV-00870, the Honorable Judge Robert J. Shelby presiding (the “Ancillary Legal Action”), alleging various causes of action against Michelle, including fraudulent transfer under the Utah Fraudulent Transfer Act, conversion, breach of contract, fraud and unjust enrichment (collectively “Claims Against Michelle”).

32. In response to the Ancillary Legal Action, Michelle has asserted affirmative defenses against the Receiver, including failure to join an indispensable party, laches, estoppel, public policy, misconduct, unclean hands, conditions precedent and subsequent, lack of standing, statute of limitations, and failure to mitigate damages.

33. On December 16, 2014, prior to the filing of the Ancillary Legal Action, Michelle filed a Motion to Intervene in the SEC Action, claiming an interest in certain assets frozen and/or seized by the Receiver, including Michelle's alleged interests in AP4S.

34. The Court denied Michelle's Motion to Intervene on grounds that her claims to real and personal property were not yet ripe, but with respect to AP4S, the Court ruled that Michelle's Motion to Intervene was untimely.

35. Michelle filed an Appeal of the Court's ruling that Michelle's Motion to Intervene was untimely. The Appeal has been stayed pending the outcome of this Motion.

36. In the SEC Action, on April 20, 2015, the Receiver filed a motion requesting the Court's permission to liquidate the Misc. Property and the Personal Property, which Michelle claims belong to her. (Motion for and Memorandum in Support of Order Approving the Sale of Certain Personal Property (Dkt. 515).) On May 26, 2015, Michelle once again moved to intervene in the SEC Action to assert her interest in the Misc. Property and Personal Property. (Michelle DeYoung's Renewed Motion to Intervene (Dkt. 544).)

37. With the Court's consent, on August 26, 2015, Michelle filed an Amended Complaint in Intervention (Dkt. 602) alleging, among other claims, ownership of the Misc. Property and Personal Property.

38. On September 23, 2015, the Receiver filed a Motion and Memorandum to: (1) Approve Settlement with First Utah Bank; and (2) for a Claims Bar Order (Dkt. 618). The settlement included the sale of the Sandy Condo to First Utah Bank for \$330,000.

39. On November 2, 2015, Michelle filed a Third Motion to Intervene (Dkt. 642), alleging an interest in LIC Environmental and the Sandy Condo as were named in the proposed settlement agreement (“Settlement Agreement”) between the Receiver and First Utah Bank.

CURTIS AND MICHELLE’S DIVORCE ACTION

40. Michelle filed a Verified Petition for Divorce on November 18, 2014, (“Divorce Action”) in the Third Judicial District Court in and for Salt Lake County, State of Utah, against Curtis, in which Michelle claims her spousal share of the assets obtained during the course of their marriage.

41. A Decree of Divorce and Judgment (the “Divorce Decree”) between Curtis and Michelle was entered on June 2, 2015, in the Third Judicial District Court, in and for Salt Lake County, State of Utah.

42. The Divorce Decree awards to Michelle all assets held and/or owned by Curtis and Michelle, including, the Draper Property, the Sandy Condo, a 100% ownership interest in LIC Environmental, the Misc. Property, and the Personal Property, with the exception of a 1913 Studebaker and the Iron Horse Property.

43. The Divorce Decree also awards Michelle all of her and Curtis’ Retirement Accounts.

44. The Claims Against Michelle, the Claims Against the Receiver, and the Appeal (collectively “Claims of the Parties”) are all disputed claims and nothing in the Settlement Agreement constitutes an admission of liability by any Party.

RECEIVER’S INVESTIGATION

45. The Receiver has been in control of, and operating, the business of APS, the business of AP4S, and all known Receivership Assets.

46. The SEC and the Receiver have deposed witnesses and issued subpoenas.

47. The Receiver has had access to the documents and records related to the Claims of the Parties to enter into this Agreement.

48. Based upon the Receiver’s forensic analysis of the APS operations, she has determined that LIC Environmental is the owner of the Sandy Condo.

49. The Receiver has also produced and provided to Michelle a Schedule K-1 (IRS form 1065) showing that Michelle is a 50% owner of LIC Environmental.

50. Based upon the Receiver’s forensic analysis of AP4S, the Receiver has produced and provided to Michelle a Schedule K-1 (IRS form 1065) showing that Michelle is a 100% owner of AP4S.

51. Based upon the Receiver’s forensic analysis, she has discovered that Curtis owns fee simple title to real property located at Iron Horse Street, Bluffdale, UT 84065 (the “Iron Horse Property”).

52. The Settlement Agreement with First Utah Bank provides that the Receiver will provide a Deed in Lieu of Foreclosure relating to the Iron Horse Property to First Utah Bank in exchange for First Utah Banks’s release the Deed of Trust encumbering the Iron Horse Property

and Sandy Condo. As of September 17, 2015, DeYoung owed approximately \$450,950.91 on the DeYoung Loan.

53. Based upon the Receiver's forensic analysis, the Draper Property is encumbered by a first mortgage in favor of Franklin American Mortgage Company in the amount of \$600,300.00 and second mortgage in favor of Heritage West Credit Union in the amount of \$143,700.00.

54. The total combined debt secured by the Draper Property is \$744,000.00.

55. The appraisal obtained by the Receiver of the Draper Property reveals that it has a fair market value of \$630,000.00.

56. As a result, the Receiver has determined there is no equity in the Draper Property and that it will add no value to the Receivership Estate.

57. The Receiver is also informed that a cabin located at 4204 Centennial Dr., Island Park, ID 83429 (the "Idaho Property") may have been furnished using funds of APS and/or Curtis. The Idaho Property is currently titled in the name of Crystal Lakes Trust, a trust controlled by Michelle's father.

MEDIATION

58. The Parties determined it to be in their respective best interests, the best interests of APS and in the best interests of each IRA Account Owner, to participate in Court-assisted mediation with Magistrate Judge Dustin B. Pead on November 12, 2015.

59. Following the mediation, the Parties reached a settlement in principal.

60. The Parties participated in additional mediation with Judge Dustin B. Pead on November 30, 2015.

Following the additional mediation, the parties executed the Settlement Agreement.

CONCLUSIONS OF LAW

1. The Receiver is an officer of the Court with fiduciary obligations of impartiality and individual loyalty and is bound to act fairly and openly with the Court and the IRA Account Owners. *Phelan v. Middle States Oil Corp.*, 154 F2d 978 (2nd Cir. 1946).

2. The Court has the power and authority to permit the Receiver to enter into the Settlement Agreement with Michelle.

3. The Settlement Agreement is made to further implement the purpose and intent of the Liquidation Plan.

4. The Settlement Agreement is fair to the Receivership Estate and the IRA Account Owners.

5. The Settlement Agreement fully resolves all issues, disputes, claims and/or defenses by and between the Receiver and Michelle.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby

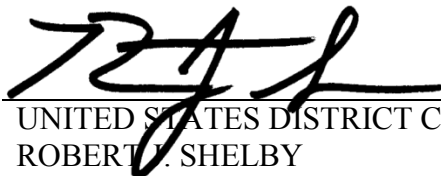
ORDERS, ADJUDGES AND DECREES THAT:

1. The Motion is approved.
2. The Receiver shall promptly post a copy of these Findings of Fact, Conclusions of Law, and Order on the Receiver's website, www.apsreceiver.com.

3. The Court shall retain jurisdiction to enforce the terms and conditions of the Settlement Agreement.

DATED this 2nd day of February, 2016.

BY THE COURT

A handwritten signature in black ink, appearing to read 'RJS', is written over a horizontal line.

UNITED STATES DISTRICT COURT JUDGE
ROBERT J. SHELBY