

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 08-81565-CV-HURLEY/HOPKINS**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

v.

**CREATIVE CAPITAL CONSORTIUM, LLC, et al.,**

**Defendants.**

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**ORDER GRANTING IN PART RECEIVER'S MOTION FOR CLARIFICATION AND  
CONFIRMATION OF OWNERSHIP OF CERTAIN PERSONAL PROPERTY**

**THIS CAUSE** is before the Court upon the Receiver's Motion for Clarification and Confirmation of Ownership of Certain Personal Property or to Compel Turnover [ECF No. 260]. The motion seeks an order from the Court confirming that certain Options Accounts<sup>1</sup> are owned by the Receiver as part of the receivership estate or, in the alternative, an order compelling turnover.

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<sup>1</sup>Specifically, the Options Accounts are identified as follows:

optionsXpress Accounts:

George Thoedule	0484-9246
Elza Thoedule/George Thoedule	0186-0048
Detra Pasby/George Thoedule	0319-5377
Yolette Fabre/George Thoedule	0548-0553
Gabrielle Alexis/George Thoedule	0549-6260

TD Ameritrade Accounts

Creative Capital Concepts	86044435.
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Motion 1-2 [ECF No. 260].

The Receiver filed the motion on November 19, 2012 and served Defendant George Theodule on November 29, 2012. By December 20, 2012, Thoedule had filed no response, so the Court entered an order directing Theodule to show cause why the Receiver's motion should not be granted within fourteen days. As of the date of this Order, Theodule has not complied with the Court's show-cause order. The Court will therefore rule on the motion without the benefit of Theodule's response, keeping in mind that failure to respond to a motion within the permitted time "may be deemed sufficient cause for granting the motion by default." S.D. Fla. L.R. 7.1(c).

On December 29, 2008, the Court appointed the Receiver and ordered that "[t]itle to all property, real or personal, all contracts, rights of action and books and records of Creative Capital and its principals, wherever located within or without this state, is vested by operation of law in the Receiver." Order Appointing Receiver 6 [ECF No. 8]. The Court subsequently expanded the receivership to include related entities (the "Receivership Entities"). *See, e.g.*, Order Granting Receiver's Verified Motion to Expand the Receivership [ECF No. 14]. In the instant motion, the Receiver seeks to clarify whether the Courts orders vested him with title to the Options Accounts.

"It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership." *Secs. & Exch. Comm'n v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372-73 (5th Cir. 1982) (quoting *Secs. & Exch. Comm'n v. Lincoln Thrift Assoc.*, 577 F.2d 600, 606 (9th Cir. 1978)). "In granting relief, it is appropriate for the district court to use summary proceedings." *Secs. & Exch. Comm'n v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992).

Attached to the instant motion is the affidavit of Sherry M. Bennet, a certified public accountant and certified insolvency and restructuring advisor who is also certified in financial forensics. Bennet Aff. 1 [ECF No. 260-1]. Bennet traced investor funds from Receivership Entities to the Options Accounts. *Id.* at 2-3; *see also id.* at 7-9. On this basis, the Receiver argues that the funds invested in the Options Accounts were proceeds of the Receivership Estate and covered by the Receivership Order. Upon reviewing this affidavit and with no contrary evidence before it, the Court finds no genuine dispute that the Options Accounts were funded by Receivership proceeds and therefore property of the Receivership. Thus, to the extent the Receiver requests clarification that the Court's Order Appointing Receiver transferred title to the Options Accounts to the Receiver, the Court grants the motion. In light of the Court's order, the Receiver has title to the Options Accounts by operation of law and stands in the shoes of the account holders. He may therefore assert any causes of actions that may have been asserted by the account holders subject to the same defenses that may had been asserted against them, *see generally* 75 C.J.S. *Receivers* § 409, which claims and defenses are to be resolved in the appropriate proceeding.<sup>2</sup>

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:


1. The Receiver's Motion for Clarification and Confirmation of Ownership of Certain Personal Property or to Compel Turnover is **GRANTED** to the extent described herein.
2. The motion to compel turnover is **DENIED AS MOOT**.

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<sup>2</sup>The causes of action discussed in the motion appear to be properly before an arbitration panel.

Order Granting Receiver's Motion for Clarification and Confirmation of Ownership of Certain Personal Property  
Securities & Exchange Commission v. Creative Capital Consortium, LLC  
Case No. 08-cv-81565-DTKH

**DONE** and **SIGNED** in Chambers in West Palm Beach, Florida, this 23<sup>rd</sup> day of January,  
2013.

  
Daniel T. K. Hurley  
United States District Judge

*Copies provided to counsel of record*