

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

JLH

FINANCIAL INSTITUTIONS DIVISION,
Petitioner,

v.

NO. D-101-CV-2012-00378

NEW MEXICO TITLE ESCROW,
NEW MEXICO TITLE CO.
BOBBY WILLIS,
CARRIE WILLIS,
CHAD COX,
KYLE FINCH,
JENNIFER OLSON,
C.W.,
JJ BOND INVESTMENTS, INC.,
GOLDEN RULE, LLC d/b/a NEW MEXICO TITLE ESCROW
WILLIS ASSET MGT., LLC d/b/a NEW MEXICO TITLE CO.
Respondents.

ORDER GRANTING APPLICATION FOR APPOINTMENT OF RECEIVER

THIS MATTER having come before the Court on April 9, 2012 on Petitioner's Application for Appointment of Receiver with James C. McKay, General Counsel for the Regulation and Licensing Department (RLD), representing Petitioner, Cynthia Richards, Director of the Financial Institutions Division (FID), who were present; Respondent Chad Cox representing himself *pro se* and on behalf of Respondent JJ Bond Investment, Inc. having concurred in this application, but was not present at the hearing; Paul Kennedy, representing Respondents Kyle Finch and Jennifer Olson, was present, and Michael R. Comeau, representing all remaining respondents, was present, and also having concurred with this application, but not with the scope and breadth of the proposed order, specifically in the receiver's jurisdiction over Willis Asset Management, LLC (WAM), and assets and in providing simultaneous and immediate equal access to books and records of the receiver; and the Court being fully advised of the facts, and relying upon the record:

THE COURT HEREBY FINDS that it is authorized under specific statutory provisions pursuant to §58-22-27(B) Escrow Company Act NMSA 1978 to appoint a Receiver, that the venue is proper, and that just cause exists and irreparable harm may result from failure to appoint a Receiver.

THE COURT HEREBY FINDS that WAM is an indispensable party by the admission of Exhibit 1 of Petitioner's Motion for Joinder of Necessary and Indispensible Parties, the submission of renewal of licensure application of NM Title Escrow Co to FID, stating that WAM is the operator of Golden Rule, LLC, who controls and operated NM Title Escrow Co, that WAM and Bobby Willis, the registered agent, were placed on notice that this company was subject to FID's Application for TRO, Permanent Injunction, and Petition for Receiver;

THE COURT FINDS that WAM has been properly served with notice when Bobby Willis was served with notice in his personal capacity as an owner of NM Title Escrow business, as a registered agent of WAM, and that summons of these pleadings was served upon Bobby Willis as a registered agent of WAM as of April 6, 2012, as the filed returns of service reflect.

THE COURT FURTHER FINDS:

1. The Receivership estate consists of any and all current escrow accounts managed and held by New Mexico Title Escrow (NMTE) and/or Golden Rule, LLC d/b/a NMTE; any and all business records held by NMTE and/or Golden Rule, LLC d/b/a NMTE; any financial accounts in the name of NMTE, Golden Rule, LLC d/b/a NMTE, Willis Asset Management, and/or any other undisclosed accounts related to NMTE or which control NMTE; records and monies held by NMTE and/or Golden Rule, LLC d/b/a NMTE, and/or NMTE owners with various financial institutions including Four Corners Community Bank, Bank of America, and institutions yet to be identified, for any accounts controlling or related to NMTE, Golden Rule, LLC d/b/a NMTE, Willis Asset Management, and any other undisclosed entities controlling or related to NMTE; computers and other office equipment and supplies; buildings, property and/or their leases used to operate NMTE, and/or owned by NMTE or its owners; any safety deposit boxes associated with NMTE and/or Golden Rule, LLC d/b/a NMTE and/or WAM; and any postal service mail boxes associated with NMTE and/or Golden Rule, LLC d/b/a NMTE, prior to the

time this document is executed. NMTE receives and disburses funds monthly under the terms of between eight hundred (800) and nine hundred (900) escrow account service contracts.

2. The Receivership estate is located in Farmington, New Mexico and the business location is 650 West Main Street, Suite # C Farmington, NM 87401-8445.
3. Neither FID nor RLD have any financial interest or ownership right to NMTE; however, FID is the licensing agency that has the statutory authority and the obligation to supervise and regulate the escrow industry in which NMTE conducts its regular business activity, as well as NMTE itself as a licensed escrow business.
4. Darryl W. Millet is willing to serve and meets the qualifications under §44-8-6 (A-D) NMSA 1978 as a Receiver in this matter.
5. In consideration of assuming the responsibilities of a Receiver under §44-8-6 (A-D) NMSA 1978 Darryl Millet shall:
 - A. Sign and file a Professional Services Contract to act as Receiver before beginning performance of his duties as Receiver;

IT IS ORDERED THAT Mr. Darryl W. Millet is appointed as the Liquidating Receiver over NMTE; that the appointed Receiver has the exclusive authority to wind down all business transactions and activity of NMTE and to effectuate the final disposition and disbursement of the Receivership estate on behalf of FID and RLD in accordance with §44-8-7 (A-I) NMSA 1978. Specifically, Mr. Millet's duties, as outlined in a Professional Service Contract entered into between FID, RLD, and Receiver shall include, but not be limited to, the following provisions:

- 1A) Identify all open escrow accounts managed or serviced by NMTE;
- 2A) Obtain, secure, and safeguard all original documents, titles, deeds or any other documents or writings evidencing the records of NMTE;
- 3A) Maintain accurate and updated accounting records in accordance with the terms of the Escrow Company Act;
- 4A) Issue verification letters to customers requesting account holders to confirm account balances;

- 5A) Maintain all open escrow accounts managed or serviced by NMTE in accordance with the terms of the Escrow Company Act, and the NMAC Escrow Company Act Regulations with the exception of the required licensure and employee requirements, §58-22-1 *et. seq.* NMSA 1978 (1983), and applicable real estate and/or escrow servicing contracts. Maintenance shall include, but is not limited to, receiving and disbursing payments on behalf of NMTE, breaching contracts and facilitating new contracts with other licensed escrow companies; preparing any tax documents dependent upon records available; and responding to inquiries and complaints made concerning contracts serviced by NMTE;
- 6A) Open and consolidate any accounts held with financial institutions into a new trust account with a federally insured financial institution to be used to receive and disburse escrow payments on behalf of NMTE;
- 7A) Provide contact information where correspondence, payments, and inquiries will be accepted for the purpose of carrying out the Receiver's duties.
- 8A) Issue notice letters to escrow account holders. The notice letters should include at a minimum:
 - a) A statement that NMTE is under court appointed receivership management pursuant to cause number D-101-CV-201200378, and that all of its business activities are being wound down;
 - b) The address and contact information to send any future escrow payments and correspondence;
 - c) A statement that each account holder must transfer their escrow account to a new escrow company within a designated period of time; and
 - d) A statement informing customers that they may contact the Receiver directly with any questions about the Receivership and how to effectuate the transfer of their escrow account;
- 9A) Issue verification letters to all customers with open NMTE accounts. The verification letters shall include, but not be limited to: a statement of the balance of the account, and a statement requesting that the customer respond in writing to verify the accuracy of the account balance;

Other statutorily provided powers and duties pursuant to §44-8-7 NMSA 1978 Receivership Act shall include:

- 1B) Preparing a preliminary inventory to the best of the Receiver's ability within thirty (30) days of appointment, and filing that inventory with the district court;

- 2B) Preparing a final inventory within ninety (90) days of appointment, and filing that inventory with the district court;
- 3B) Collecting and managing the Receivership, including all Receivership assets, in a reasonable and prudent manner;
- 4B) Filing monthly operating reports with the district court, providing copies to all parties who have entered an appearance, and allowing such parties reasonable access to the books and records of the Receivership (in accordance with specific access terms as outlined below);
- 5B) Entering into contracts reasonably necessary to operate, maintain, and preserve the Receivership estate, including but not limited to entering a contract with a forensic auditor to assist the Receiver in identifying all open escrow accounts and available financial assets of NMTE, and to assist in reconciling NMTE accounts;
- 6B) Taking possession of all available books, records and other documents related to the Receivership estate including electronic records;
- 7B) Taking possession of all assets of the Receivership estate;
- 8B) Leasing assets of the Receivership estate in accordance with the powers and limitations contained in the original order of the appointment;
- 9B) Bringing and defending action in his capacity as a Receiver to maintain and preserve the Receivership estate;
- 10B) Retaining attorneys, accountants, brokers or any other professionals necessary to assist the Receivership; paying compensation for fees; selling or mortgaging property of the Receivership estate, borrowing money for the Receivership estate, and making distributions of the Receivership proceeds as payment for professional services and Receivership supplies;
- 11B) Exercising any other powers expressly granted by statutes or an order of the district court, such as issuing subpoenas to financial institutions for the purposes of identifying relevant company financial assets and all open escrow trust accounts managed and serviced by NMTE.

IT IS FURTHER ORDERED that the Receiver in complying with his statutory duties pursuant to §44-8-7(C) NMSA 1978, will have full authority in determining how to allow “such parties *reasonable* access to books and records of the Receivership,” while preserving the books

and records from any destruction; “Reasonable access to books and records of the Receivership” shall be determined in accordance with the following conditions:

- 1C) Respondents shall be permitted reasonable access to books and records only after the Receiver has completed a completed a final audit and a final inventory of NMTE books and records;
- 2C) All computer hard drives, memory components, hardware and software shall be preserved in its current form so that it may be subsequently reviewed by counsel for Bobby Willis, Carrie Willis, Golden Rule, LLC, d/b/a New Mexico Title Escrow and Willis Asset Management.
- 3C) Receiver shall make available a preserved copy of computer system records to date to all parties who have entered an appearance;
- 4C) The Receiver shall be the designated individual to determine the manner and means of providing “reasonable access to the books and records,” including but not limited to providing copies, and arranging a schedule and location of the Receiver’s choice to view documents;
- 5C) The Receiver shall be permitted to exercise discretion in denying Respondents physical access to the building at 650 W. Main St., Ste. #C, Farmington, NM 87401 so long as a reasonable alternative is provided to Respondents to access books and records of the Receivership, as noted in the above paragraph.
- 6C) Should a disagreement arise between the listed Respondents and the Receiver, Respondents shall file a written demand for access with the Court, and the Receiver shall file a written response with the Court within ten (10) business days;
- 7C) The Receiver will fully cooperate with the Department of Insurance, First American Title, law enforcement agencies, and whomever these entities delegate as agents, in providing access to books and records to complete any necessary audit of records of title insurance transactions.

IT IS FURTHER ORDERED that in order to maintain the assets of NMTE, the Receiver shall have the authority to prohibit the Respondents and their agents from engaging in the following activity:

- 1D) Entering the premises of 650 W. Main St. Ste. #C, Farmington, NM 87401, unless specifically authorized by the Receiver, and subject to the conditions of access outlined in paragraphs 1C through 6C of this Order;
- 2D) Taking or removing documents and property stored on the premises of 650 W. Main St. Ste. #C, Farmington, NM 87401,
- 3D) Conducting business transactions at or on behalf of New Mexico Title Co. and New Mexico Title Escrow under these trade names or any other corporate names related to and/or controlling the New Mexico Title Co. and New Mexico Title Escrow business;
- 4D) Accessing by means of deposit, transfer or withdrawal, any funds held at Four Corners Community Bank or Bank of America, or any other undisclosed bank under the name Golden Rule, LLC, Golden Rule, LLC d/b/a New Mexico Title Escrow or d/b/a New Mexico Title, New Mexico Title, New Mexico Title Escrow, Willis Asset Management or any other corporate name which is presently being used to store funds for New Mexico Title Escrow, whether in the State of New Mexico or any other states, including Missouri; and
- 5D) Accessing disabling or tampering with the servers and electronic data which support Golden Rule, LLC d/b/a New Mexico Title Escrow, New Mexico Title, and Willis Asset Management, LLC.

IT IS FINALLY ORDERED that, consideration will be given to the compensation of the Receiver and any other persons duly engaged and retained by the Receiver to be paid from the Receivership estate in accordance with §44-8-9 NMSA 1978.



Judge Raymond Ortiz

Submitted By:



James McKay, General Counsel
Regulation and Licensing
Financial Institutions Division

Approved By:

Was contacted several times based upon various changes, on 4-19-2012 was contacted, but unavailable to respond

Paul Kennedy
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Concurs

Chad Cox (Owner of JJ Bond Investment, Inc.)
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Objects and will be filing objections

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