

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,  
WILLIAM STENGER,  
JAY PEAK, INC.,  
Q RESORTS, INC.,  
JAY PEAK HOTEL SUITES L.P.,  
JAY PEAK HOTEL SUITES PHASE II. L.P.,  
JAY PEAK MANAGEMENT, INC.,  
JAY PEAK PENTHOUSE SUITES, L.P.,  
JAY PEAK GP SERVICES, INC.,  
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,  
JAY PEAK GP SERVICES GOLF, INC.,  
JAY PEAK LODGE AND TOWNHOUSES L.P.,  
JAY PEAK GP SERVICES LODGE, INC.,  
JAY PEAK HOTEL SUITES STATESIDE L.P.,  
JAY PEAK GP SERVICES STATESIDE, INC.,  
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,  
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,  
GSI OF DADE COUNTY, INC.,  
NORTH EAST CONTRACT SERVICES, INC.,  
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL  
AND CONFERENCE CENTER, L.P.  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants<sup>1</sup>

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RECEIVER'S MOTION TO APPROVE SETTLEMENT WITH  
TOWN OF JAY, VERMONT REGARDING 2016 REAL PROPERTY TAXES  
AND SUPPORTING MEMORANDUM OF LAW

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<sup>1</sup>See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No. 60].

Michael I. Goldberg (the “Receiver”), the Court-appointed Receiver pursuant to the Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointment of Receiver (the “Receivership Order”) [ECF No. 13], dated April 13, 2016, through undersigned counsel, hereby files this Motion to Approve Settlement With Town of Jay, Vermont Regarding 2016 Real Property Taxes. In support of this motion, the Receiver states as follows:

**PRELIMINARY STATEMENT**

Prior to the appointment of the Receiver, the Receivership Entities (defined below in fn. 3) were largely engaged in the business of raising money from investors pursuant to the federal EB-5 immigration program and utilizing a portion of such funds for the construction of various hotels and related projects at the Jay Peak Resort. At the time the Receiver was appointed, there were limited funds in the Receivership Entities’ bank accounts. Soon thereafter, the 2016 real property taxes for properties located in the Town of Jay, Vermont, which are owned by Jay Peak Inc. and other Receivership Entities became due, but the Receiver did not possess funds to pay the approximately \$2 million in real property taxes to the Town of Jay. By the time the Receiver obtained sufficient funds to pay the 2016 property taxes, the Town of Jay had imposed additional charges, including over \$113,000 in interest and more than \$164,000 in penalties on the amount due. The Receiver disputed the amount of interest and the Town of Jay’s authority to impose penalties. The Receiver and the Town of Jay have reached settlement of their dispute whereby the Receiver has agreed to pay \$113,000 in interest and the Town of Jay has agreed to accept a \$60,000 for the penalties. The Receiver believes that this settlement is in the best interest of the Receivership Entities and the receivership estate because it reduces the liability for taxes and saves the cost, risk and uncertainty of litigation with the Town of Jay.

## I. BACKGROUND

1. On April 12, 2016, the Securities and Exchange Commission (the “SEC”) filed a complaint [ECF No. 1] in the United States District Court for the Southern District of Florida (the “District Court”) against the Receivership Defendants,<sup>2</sup> the Relief Defendants,<sup>3</sup> William Stenger and Ariel Quiros, alleging that the Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by making false or materially misleading representations to investors in connection with seven securities offerings through which the Defendants raised money from foreign investors through the EB-5 Immigrant Investor Program..

2. The first six offerings were associated with the construction, renovation and expansion of the Jay Peak Resort and its accompanying facilities.

3. Receivership Defendant Jay Peak, Inc. (“Jay Peak”) owns and operates the Jay Peak Resort and related facilities in Jay, Vermont.

4. Receivership Defendant Jay Peak Hotel Suites L.P. (“Suites Phase I”) raised funds from investors to construct a 57-suite hotel located at the base of the Jay Peak Mountain.

5. Receivership Defendant Jay Peak Hotel Suites Phase II L.P. (“Suites Phase II”) raised funds from investors to build a 120-suite hotel located at the base of the Jay Peak Mountain. This project includes an ice arena, a golf clubhouse, a waterpark, conference center, multiple restaurants and arcade.

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<sup>2</sup> The “Receivership Defendants” are Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC.

<sup>3</sup> The “Relief Defendants” are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC. Later, Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC were added as “Additional Receivership Defendants”. The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants are collectively referred to as the “Receivership Entities.”

6. Receivership Defendant Jay Peak Golf and Mountain Suites L.P. (“Golf and Mountain Phase IV”) raised funds from investors to build “golf cottage” duplexes, a wedding chapel, and other facilities. This project consists of a 100-suite hotel located at the base of the Jay Peak Mountain, along with a restaurant and general store.

7. Receivership Defendant Jay Peak Lodge and Townhouses L.P. (“Lodge and Townhouses Phase V”) raised funds from investors to build a 110 suites hotel located at the base of the Jay Peak Mountain, along with a cafeteria, bar, retail shops and ski rental facilities. Additionally, this project includes an amphitheater that can accommodate up to 3,500 guests and a 480-car parking garage.

8. Receivership Defendant Jay Peak Hotel Suites Stateside L.P. (“Stateside Phase VI”) raised funds from investors to build an 84-unit hotel and other facilities.

9. Jay Peak, Suites Phase II, Lodge and Townhouses Phase V, and Stateside Phase VI, pay real property taxes to the Town of Jay for the ski areas, golf course, hotels, conference center, various storage buildings, and various townhomes. The Receiver was unable to timely pay the 2016 real property taxes because he did not have access to sufficient funds to pay the \$2 million in real property taxes.

10. The Receiver subsequently secured funds to pay the principal amount of the real property taxes to the Town of Jay. However, the Town of Jay had also imposed interest and penalties against the properties. According to the Town of Jay, by March of 2017, the Receivership Entities owed the sum of \$113,539.80 in interest and \$164,559.63 in penalties, and those amounts continue to increase.

11. The Receiver disputes the amounts owed and further disputes the Town of Jay’s authority to impose the penalties. In order to avoid protracted litigation, the Receiver and the

Town of Jay have agreed to resolve the amounts demanded by the Town of Jay, subject to approval of the Court.

12. The settlement encompasses the following parcels, and represents the entirety of real property taxes the Receivership Entities owe to the Town of Jay for 2016:

<b>Name of Owner</b>	<b>Parcel ID</b>	<b>Description</b>
Jay Peak Inc.	07-5000100	Hotel, ski area, golf course and (2,488.44 acres)
Jay Peak Inc.	17-2420064	Housekeeping building (3.0 acres)
Jay Peak Hotel Suite Phase II	21-5010001	Hotel & conference center (1.02 acres)
Jay Peak Lodge & Townhouses LP	24-5000001	Three buildings with 10 townhomes (3.81 acres)
Jay Peak Hotel Suites Stateside LP	23-5200001	Jay Peak (Stateside) Suites Hotel (0.47 acres)
Jay Peak Inc.	21-503N320	Townhouse unit 320
Jay Peak Inc.	21-503N314	Townhouse unit 314
Jay Peak Inc.	18-0200006	Well lot (3.0 acres)
Jay Peak Inc.	17-2420052	Garage & storage building (32.21 acres)
Kruse, Svein & Janice c/o Inglenook Lodge	17-2420056	Inglenook Lodge with 18 units (8.8 acres)

13. The Receiver believes the settlement is fair and reasonable and prevents the accrual of any additional interest or penalties imposed by the Town of Jay.

## **II. Settlement Terms**

14. The Receiver has agreed to seek the entry of an Order of the Court authorizing the Receiver to pay interest in the sum of \$113,539.80, immediately upon entry of an Order approving this motion. The parties have agreed that the Receiver will pay the sum of \$60,000 in lieu of the penalties assessed by the Town of Jay. The Receiver will pay the \$60,000 in increments of \$5,000 a month to the Town of Jay for a period of twelve months.

15. Based on the settlement, the Receiver will pay the total sum of \$173,539.80 to the Town of Jay, which is a reduction of \$104,559.63 from the amount demanded by the Town of Jay.

16. The Receiver believes the terms of this settlement are beneficial to the Receivership Entities and their creditors.

17. The settlement resolves all claims the Receiver and the Town of Jay may have against each other regarding interest and alleged penalties for the 2016 taxes.

### **Memorandum of Law**

The Order Appointing Receiver authorizes, empowers and directs the Receiver to defend, compromise or settle legal actions in which the receivership entities are a party. *See* Order Appointing Receiver at ¶ 6. Here, the Receiver was able to resolve the dispute with the Town of Jay prior to initiating litigation. “A district court has broad powers and wide discretion to determine relief in an equity receivership.” *SEC. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). In such an action, a district court has the power to approve a settlement that is fair, adequate and reasonable, and is the product of good faith after an adequate investigation by the receiver. *Sterling v. Steward*, 158 F.3d 1199 (11th Cir. 1998). “Determining the fairness of the settlement is left to the sound discretion of the trial court and *we will not overturn the court’s decision absent a clear showing of abuse of that discretion.*” *Id.* at 1202 (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (emphasis supplied).

To approve a settlement in an equity receivership, a district court must find the settlement is fair, adequate and reasonable, and is not the product of collusion between the parties. *Sterling*, 158 F.3d at 1203. To determine whether the settlement is fair, the court should examine the following factors: “(1) the likelihood of success; (2) the range of possible [recovery]; (3) the

point on or below the range of [recovery] at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Id* at 1203 n.6 (citing *Bennett*, 737 F.2d at 986 (11th Cir. 1984)).

Upon due consideration of these governing factors, the settlement with the Town of Jay should be approved. Before entering into the settlement, the Receiver and his counsel carefully considered and dutifully investigated all tax claims by the Town of Jay. The Receiver evaluated the defenses to be asserted in the event of litigation; the delay and expense of litigating such claims; the uncertainty of outcome in any such litigation; and the possibility of an appeal of any adverse outcome. The Receiver entered into the settlement after extensive, arm’s length negotiations conducted between the parties.

The Settlement Agreement reduces the claims asserted by the Town of Jay by approximately \$100,000. The settlement therefore, provides a substantial benefit to the Receivership Entities and their investors and other creditors. Accordingly, the settlement is fair, adequate and reasonable. The Order Appointing Receiver authorizes, empowers and directs the Receiver to make agreements as may be reasonable, necessary and advisable in discharging the Receiver’s duties. *See* Order Appointing Receiver at ¶ 8. The Receiver believes that approving the settlement with the Town of Jay is advisable and will undoubtedly benefit the receivership estate.

**WHEREFORE**, the Receiver respectfully requests the Court to enter an Order in the form attached hereto as Exhibit “1”, approving the settlement and to grant such further relief as is just and proper.

**LOCAL RULE 7.1 CERTIFICATION OF COUNSEL**

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that he has conferred with counsel for the Securities and Exchange Commission, who has no objection to the Motion or the relief requested in this Motion; counsel for Ariel Quiros, who has no objection to the Motion; and counsel for William Stenger, who takes no position on the Motion.

Respectfully submitted,

By: /s/ Michael I. Goldberg  
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*Counsel for Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this August 17, 2018 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Michael I. Goldberg  
Michael I. Goldberg, Esq.

**SERVICE LIST**

**1:16-cv-21301-DPG Notice will be electronically mailed via CM/ECF to the following:**

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COMMISSION**

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# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

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v.

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WILLIAM STENGER,  
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Defendants, and

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Relief Defendants.

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AND CONFERENCE CENTER, L.P.  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants<sup>1</sup>

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**ORDER APPROVING RECEIVER'S SETTLEMENT WITH  
TOWN OF JAY, VERMONT REGARDING 2016 REAL PROPERTY TAXES**

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<sup>1</sup>See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].

**THIS MATTER** comes before the Court upon the Motion to Approve Settlement With Town of Jay, Vermont Regarding 2016 Real Property Taxes (the "Motion") [ECF No. \_\_\_\_] filed by Michael I. Goldberg, the Court-appointed receiver (the "Receiver"). The Court, having reviewed the Motion, being advised that counsel for the Securities and Exchange Commission and Defendant Ariel Quiros have no objection and counsel for William Stenger takes no position on the relief requested in the Motion, and finding that the Receiver has made a sufficient and proper showing in support of the relief requested,

**IT IS ORDERED, ADJUDGED AND DECREED**, as follows:

1. The Motion is **GRANTED**.
2. The Receiver shall pay the Town of Jay the sum of \$113,539.80 representing interest on the 2016 real property taxes. Payment shall be made upon entry of this Order.
3. The Receiver shall pay the Town of Jay the sum of \$60,000.00 in lieu of the penalties assessed by the Town of Jay for the late payment of the 2016 real property taxes. Payment shall be made in increments of \$5,000.00 a month for a period of twelve months.

**DONE AND ORDERED** in Chambers at Miami, Florida this \_\_\_\_ day of August 2018.

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DARRIN P. GAYLES  
UNITED STATES DISTRICT COURT JUDGE

Copies to:  
Counsel of Record