

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FREDERIC ELM f/k/a FREDERIC ELMALEH, et al.,

Defendants,

and

AMANDA ELM f/k/a AMANDA ELMALEH,

Relief Defendant.

_____)

**AGREED ORDER APPROVING TURNOVER OF
HOME OF DEFENDANTS FREDERIC ELM AND AMANDA ELM**

This cause came before the Court upon the Receiver's Motion for Entry of Agreed Order Approving Turnover of Home of Defendant Frederic Elm and Relief Defendant Amanda Elm (the "Motion"), and the Court, having reviewed the Motion and the Court file, being advised that the Receiver, Defendant Frederic Elm, and Relief Defendant Amanda Elm are in agreement as to the form of the Agreed Order and the Securities and Exchange Commission ("SEC") does not oppose its entry, and being otherwise duly advised in the premises, this Court finds as follows:

1. On June 19, 2014, Defendant Frederic Elm and Relief Defendant Amanda Elm (collectively, the "Elms") purchased real property located at 2533 NE 26th Avenue, Fort Lauderdale, FL 33305 (the "Elm Home").

2. In connection with their purchase of the Elm Home, the Elms obtained a loan from BOFI Federal Bank ("BOFI"), identified on the Note (hereinafter defined) as loan number 3348449

and as identified by BOFI as loan number 70081344 (the "Loan"), which was evidenced by the Interest-Only Period Adjustable Rate Note (the "Note") dated June 10, 2014, and secured by the Mortgage dated June 10, 2014 and recorded June 19, 2014 with the Broward County Clerk as Instrument No. 112359133 (the "Mortgage") (the Note and Mortgage shall collectively be referred to as the "Loan Documents"). The Loan Documents include certain restrictions on the transfer by the Elms of the Elm Home to a third party.

3. The Receiver contends that the Elm Home should be included in the Receivership Estate. The Elms do not concede that the Elm Home should be included in the Receivership Estate. The Elms vacated the Elm Home on or about May 5, 2015.

In light of the foregoing and for good cause shown, IT IS HEREBY ORDERED as follows:

**Turnover of Possession and Control of the Elm Home
and Continuing Obligations of the Parties**

4. Within one (1) business day of the entry of this Order, the Elms shall transfer possession and control of the Elm Home (the "Transfer Date"), including all keys and alarm codes, to the Receiver and, with five (5) business days of the entry of this Order, the Elms shall take all steps necessary to transfer and place in the control of the Receiver any and all utilities and other services for the Elm Home and/or cooperate with the Receiver in effectuating the transfer of such services.

5. The Elms may not occupy the Elm Home and, upon transfer of possession and control of the Elm Home to the Receiver, the Elms shall not enter the Elm Home without the express written permission of the Receiver or Court order.

6. The Elms shall reasonably cooperate and sign all documents that are reasonably necessary to effectuate the transfer process.

7. The Elms' turnover of possession and control of the Elm Home to the Receiver shall not be considered a transfer of the Elm Home for any purposes under the Loan Documents.

8. The Receiver, and not the Elms, shall make all payments to BOFI (including any late payments, penalties, and other payment obligations) and other third parties, such as taxes or insurance, as required by the Loan, which are incurred and become due on or after May 1, 2015. The Receiver shall also assume all payment obligations set forth in the Loan Documents. The Receiver shall not be obligated to comply with any requirements pursuant to Section 6 of the Mortgage, entitled "Occupancy." The Receiver's obligations shall continue until the earlier of the date on which the Elm Home is sold, as set forth herein, all payments due under and related to the Loan are paid in full, or further order by the Court. The Receiver may, in her discretion, seek to claim a credit for any payments made hereunder that became due prior to the date of this Order against any amounts adjudicated to be owed to the Elms from the sale or disposition of any assets deemed part of the Receivership Estate, and the Elms reserve their right to object to such a credit.

9. Upon the entry of this Order, the Receiver, and not the Elms, shall be required to maintain the Elm Home, and shall be responsible for the payment of all expenses associated with such maintenance, including, but not limited to, all expenses associated with utilities, lawn care, pool maintenance, insurance, and any other maintenance and repair that becomes due on or after the date of the entry of this Order. The Receiver will not be responsible for any cable, internet, wifi, telephone bills, or other bills and/or liabilities for services previously provided to the Elms and the Elms are permitted to terminate those services or transfer them solely in their individual names to a new residence if they have not already done so.

Sale of the Elm Home

10. The Receiver shall be entitled to list the Elm Home for sale with an agent of her choosing and shall list the Elm Home for sale as soon as reasonably practicable after the entry of this Order. The Receiver shall notify the Elms and BOFI in writing if the Receiver intends to enter into an agreement to sell the Elm Home and the Receiver shall not sell the Elm Home without first filing a motion seeking the approval of the sale and obtaining an appropriate Order from this Court. All interested parties shall have five (5) days from the date of filing of the Receiver's motion seeking approval of the sale to file a response to the motion.

11. Upon an Order from the Court approving a sale of the Elm Home, the Elms shall (i) convey their rights, title, and interest to the Elm Home to the purchaser; and (ii) execute a deed and other documents necessary to effectuate such transfer and as required by the title company insuring title of the Elm Home in connection with such sale and such other documents as are reasonably required to cause the Elm Home and/or any contents therein, to be conveyed to the purchaser including, but not limited to, any bill(s) of sale.

12. Upon sale of the Elm Home, the Receiver shall pay to BOFI from the funds received from the purchase price all outstanding amounts due under the Loan Documents, and the remaining proceeds, if any (the "Net Proceeds"), shall be paid to the Receiver, subject to the terms of this Order.

No Interference by Third Parties

With Respect to the Elm Home

13. By virtue of this Court's January 16, 2015 Temporary Restraining Order, January 16, 2015 Order Appointing Receiver, and January 28, 2015 Preliminary Injunctions, no third party

including, but not limited to, BOFI shall seek to accelerate under the Loan Documents or otherwise take any other action against the Elms, the Elm Home and/or the Receiver without prior permission from this Court. However, if the Loan goes into default for any reason under the Loan Documents, BOFI shall be entitled to seek permission from the Court to: (i) enforce the Loan Documents against all necessary and proper parties; and/or (ii) otherwise exercise its rights and remedies under the Loan Documents, at law, or in equity.

14. The Elms shall be entitled to file any appropriate motion with the Court in the event that BOFI or any other party seeks to recover from the Elms any payments that the Receiver is obligated to make under this Order or otherwise seeks to recover from the Elms any amounts under the Loan Documents that became due on or after May 1, 2015.

Home Furnishings

15. In connection with the Turnover of the Home, the Elms also shall turn over to the Receiver certain of the Home's fixtures, furnishings and decorations as agreed to between the Receiver and the Elms and listed on the attached Schedule "A" (the "Home Furnishings") which the Receiver shall be entitled to market and seek to sell with the Elm Home. The Elms preserve, and do not waive, their right to assert ownership claims with respect to the Home Furnishings; however, the Elms shall not be entitled to a return of any of the Home Furnishings without the consent of the Receiver or an order from this Court, which consent or order from the Court must be obtained by the Elms prior to the Court's issuance of the order approving the sale of the Elm Home as described in Paragraph 8 of this Order.

Reservation of Rights

16. The Elms shall have six months from the date of the entry of this Order to submit a claim to the Court for return of the Net Proceeds (which Net Proceeds shall be in the amount set

forth on Line 603 of the HUD-1 Settlement Statement as “Cash to Seller”). If the Net Proceeds at issue on a claim by the Elms are determined not to be funds belonging to the Receivership Estate and/or investor funds, then they will be returned to the Elms, but will be subject to the terms of the asset freeze set forth in Section II of the Agreed Order of Preliminary Injunction and Other Relief Against Defendant Frederic Elm and Relief Defendant Amanda Elm, entered on January 28, 2015 [DE 23], but only if and to the extent the asset freeze remains in place at the time the Subject Assets are returned to the Elms. The Elms reserve the right to seek an extension of that six-month deadline. In connection with any claim submitted to the Court: (a) the Elms will be precluded from arguing Frederic Elm and Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree ‘e’conomy Fund LP, and Elm Tree Motion Opportunity LP did not violate the federal securities laws as alleged in the Complaint; (b) the Elms may not challenge the validity of the Consents they executed and the Judgment the Court entered thereon [DE 53-1, 53-2, 55, 56]; and (c) for the purposes of such claim, the allegations of the Complaint shall be accepted as and deemed true by the Court. In addition, the Elms agree to resolve any such claim as part of the additional proceedings they have agreed to as part of the Consents they executed and the Judgment the Court entered thereon [DE 53-1, 53-2, 55, 56]. If the Court denies any claim by the Elms with respect to the Net Proceeds and determines that the Net Proceeds will not be returned to the Elms, or under any other circumstances, the Elms reserve their right to argue the Net Proceeds should be credited against any disgorgement or civil penalty they are ordered to pay in this matter.

DONE AND ORDERED in Chambers in Fort Lauderdale, Florida, this 22nd day of June, 2015.


LURANA S. SNOW
UNITED STATES MAGISTRATE JUDGE

Copies to: Counsel of Record

Schedule A
Elm Home Fixtures and Furnishings

Qty	Description
Family Room	
1	sectional white leather sofa (by: Village) with two matching chairs with chrome arms and base (by: Arizona), chrome end table
2	Vulcan cocktail tables, 71"x32"x11"H, black glass top with wood sides
1	Area Rug made from cow hides 10x13 foot, By: Yerra (Mod: Stripes)
1	Sharp 70" Quattron HD flat panel TV, #:LC-70UQ17U (Vertical line defect going across screen)
1	Samsung DVD player
1	DVR (no name)
3	Sonos connect amplifiers
1	Sonos center channel speaker
1	Sonos sub woofer
Dining Room	
1	Glass top dining table, 9x4 foot with wood base (by: Bloom)
Butlers' Station	
1	Frigidaire S/S under counter wine cooler
1	Frigidaire S/S under refrigerator
Kitchen	
1	Electrolux Icon S/S double oven
1	Frigidaire professional refrigerator/freezer, #: WPRH19D7LF1, FPUH19D7LF1
1	Sonos speaker, Model #: Play5
1	Dark wood kitchen table 83"x38", with six gray leather chairs with matching wood frame and buffet table 71"x19"
1	Framed black and white photo of a flower, 24"x24"
Closet	
1	Whirlpool stacked washer/dryer
Office	
1	55" LG flat panel HD TV
1	Black Walnut desk with return, brown leather sides, 88"x19" with matching credenza 71"x19" and one 2 drawer file cabinet
1	HP printer
1	Lot, misc networking items
1	Glass shelf book case with "leg" lamp

Schedule A
Elm Home Fixtures and Furnishings

Qty	Description
1	Floor Lamp
Upstairs Bedroom 1	
1	Desk with Matching Table
1	High Back Leather Chair
1	Sharp Aquos 42" TV
Upstairs Hallway	
1	White Leather Sectional with Sofa Bed - (Adams Interiors)
1	White Leather Ottoman
1	6' Coffee Table - Distressed Wood Top
1	Toshiba 55" Flat Screen TV
Upstairs Bedroom 2	
1	Full Bed with Leather Headboard
Lot	Consisting of Dresser with 2 Matching Nightstands
2	Decorative Lamps
1	Decorative Area Rug measures approximately 6 1/2' x 9 1/2'
1	Sharp Aquos 46" TV
2	Abstract Framed Art - Oil on Canvas - 38 1/2" x 38 1/2" (artist name indiscernible)
Upstairs Hallway (continued)	
2	Lexan Wall Murals - 4' x 8'
Master Suite	
1	GE Glass Front Beverage Refrigerator
1	Sharp Aquos Quattron 60" Flat Screen TV
Upstairs Terrace	
Lot	Matching Patio Furniture: 2 Reclining Lounges, 2 Chairs with Cushions, Table
1	Everlast Punching Bag
Upstairs Laundry Room	
1	LG Inverter Direct Drive Steam Washer
1	LG True Steam Sensor Dry
1	Security Cameras, DVR with Insignia TV

Schedule A
Elm Home Fixtures and Furnishings

Qty	Description
1	Con Air Clothes Steamer
	Downstairs Outside Patio Area
1	Decorative Fountain
1	Glass Top Rattan Style Patio Table with 6 Chairs
Lot	Matching Rattan Style Patio Furniture: Couch, 2 Oversized Chairs with Cushions, Table
1	Genesis Stainless Steel Bar-b-que
2	Rattan Style Reclining Chairs with Cushions, 2 Tables