

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CIVIL ACTION No. 12 cv 15062

JOEL I. WILSON, et al.,

HON. Thomas L. Ludington

Defendants.

**ORDER TEMPORARILY APPOINTING SPECIAL MONITOR AND
CORPORATE MANAGER**

WHEREAS the Securities and Exchange Commission (“SEC,” “Commission,” or “Plaintiff”) has conducted an investigation of Joel Wilson and entities with whom he is associated and has commenced this action alleging various violations of the securities laws, including fraud with respect to selling investments and in the operation of the related companies;

WHEREAS in order to preserve the assets available for recovery by investors, the SEC filed a motion for the freeze of the assets of Defendant American Realty Fund Corporation (“American Realty” or the “Company”) and the appointment of a Receiver over the assets of American Realty;

WHEREAS American Realty filed an opposition to the SEC’s motion for a receivership due to its belief that American Realty’s assets, value, and ability to meet its obligations will be adversely impacted by the imposition of a receivership;

WHEREAS the SEC and American Realty agree that assets of American Realty should be preserved and options to maximize the value of American Realty’s operations and assets is in the best interest of creditors, investors, and shareholders of the Company;

WHEREAS the SEC and American Realty agree that it is in the interest of creditors, investors, and shareholders for an examination of American Realty's finances and options and recommendations be made to the Court about alternatives to maximize the operations and asset value of American Realty;

WHEREAS for the purpose of (a) performing an assessment of the viability of American Realty as a going business enterprise and options and alternatives for the future of the Company and (b) recommending to the Court the appropriate course of action for American Realty, the temporary appointment of a Special Monitor is desirable;

WHEREAS for the purpose of (a) preserving assets of American Realty and (b) permitting American Realty to continue normal business operations, the temporary appointment of a Corporate Manager is desirable; and

WHEREAS this Court has subject matter jurisdiction over this action and personal jurisdiction over American Realty, and venue properly lies in this district.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The SEC's motion for the appointment of a receiver is DENIED without prejudice.

2. The SEC's motion for the freeze of assets is GRANTED in part and DENIED in part as set forth below.

I. Appointment of Special Monitor and Corporate Manager

3. Until further order of this Court, Thomas McDonald is hereby approved to serve without bond as Special Monitor for American Realty.

4. Until further order of this Court, Michael Thomas is hereby approved to serve without bond as Corporate Manager for American Realty.

5. American Realty's current Corporate Monitor, David Jarvis, will continue his position for a two-month period and assist the Special Monitor and Corporate Manager.

6. The current Board of Directors of American Realty will be available to assist and advise the Special Monitor and Corporate Manager, but will not exercise its traditional functions or assume its traditional duties during the interim period that the Special Monitor and Corporate Manager are appointed. American Realty may add additional Board members with the approval of the Court during this interim period.

II. Asset Freeze

7. The Court hereby temporarily takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of American Realty for the purpose of preserving the assets of the Company, including accounts held in the name of the Diversified Group LLC.

Those accounts include, but are not limited to:

FINANCIAL INSTITUTION	ACCOUNT NUMBER	ACCOUNT HOLDER
Fifth Third	9290	The Diversified Group LLC
Fifth Third	8946	The Diversified Group LLC
Fifth Third	2411	The Diversified Group LLC
Fifth Third	7486	The Diversified Group LLC
Fifth Third	8278	The Diversified Group LLC
Fifth Third	0285	Diversified Group Management
American Chartered Bank	1299	The Diversified Group LLC
Frankenmuth Credit Union	4487	The Diversified Group
Frankenmuth Credit Union	8620	The Diversified Group
Frankenmuth Credit Union	9276	Diversified Group Bruno J

FINANCIAL INSTITUTION	ACCOUNT NUMBER	ACCOUNT HOLDER
		Nolte LLC
Sterne Agee	9498	Diversified Group Part Mgt LLC
Sterne Agee	8834	Diversified Group Land Contract Limited Partnership 1
Sterne Agee	3377	Diversified Group Land Contract Limited Partnership 2
Sterne Agee	0275	Diversified Group Land Contract Limited Partnership 3
Sterne Agee	8706	Diversified Group Land Contract Limited Partnership 4
Sterne Agee	3537	Diversified Group Land Contract Limited Partnership 5
Sterne Agee	3768	Diversified Group Land Contract Limited Partnership 6
Sterne Agee	3190	Diversified Group Land Contract Limited Partnership 7
Sterne Agee	5419	Diversified Group Land Contract Limited Partnership 8
Sterne Agee	2920	Diversified Group Land Contract Limited Partnership 9
Sterne Agee	8703	Diversified Group Land Contract Limited Partnership 10

FINANCIAL INSTITUTION	ACCOUNT NUMBER	ACCOUNT HOLDER
Sterne Agee	6367	Diversified Group Land Contract Limited Partnership 11
Sterne Agee	2081	Diversified Group Land Contract Limited Partnership 12
Sterne Agee	8883	Diversified Group Land Contract Limited Partnership 13
Sterne Agee	8254	Diversified Group Land Contract Limited Partnership 14
Sterne Agee	2912	Diversified Group Land Contract Limited Partnership 15
Sterne Agee	9245	Diversified Group Land Contract Limited Partnership 16
Sterne Agee	4002	Diversified Group Land Contract Limited Partnership 17
Frankenmuth Credit Union	4490	American Realty Funds Corporation
Fifth Third	9823	American Realty Funds Corp
Fifth Third	0301	American Realty Funds Corp

8. Except as otherwise specified herein, all assets of American Realty are frozen until further order of this Court. Accordingly, all persons and entities with direct or indirect control over any assets of American Realty, other than the Corporate Manager, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing,

selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets. This freeze shall include, but not be limited to, assets of American Realty that are on deposit with financial institutions such as banks, brokerage firms and mutual funds.

III. General Powers and Duties

9. The Corporate Manager shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, and managers of American Realty under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements.

10. The powers of the trustees, directors, officers, managers, employees, investment advisors, accountants, and other agents of American Realty are hereby suspended. Such persons and entities shall have no authority with respect to American Realty's operations or assets, except to the extent as may hereafter be expressly granted by the Corporate Manager. The Corporate Manager shall assume and control the operation of American Realty and shall pursue and preserve all of its claims.

11. No person holding or claiming any position of any sort with American Realty shall possess any authority to act by or on behalf of American Realty, unless so instructed by the Corporate Manager.

12. Subject to the specific provisions in Sections IV through XV, below, the Corporate Manager shall have the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location and value of all property interests of American Realty, 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 American Realty owns, possesses, has a beneficial interest in, or controls directly or indirectly;
- B. To take custody, control and possession of all American Realty's property and records relevant thereto; to sue for and collect, recover, receive and take into possession from third parties all property of American Realty and records relevant thereto;

- C. To manage, control, operate and maintain American Realty and hold in his possession, custody and control all property of American Realty, pending further Order of this Court;
- D. To use property of American Realty, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Corporate Manager in maintaining the ordinary operations of the Company;
- E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of American Realty with respect to maintaining the ordinary operations of the Company;
- F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder and to continue the normal operations of the Company, including, but not limited to, accountants, attorneys, financial or business advisers, real estate agents, forensic experts, or brokers;
- G. To take such action as necessary and appropriate for the preservation of property of American Realty or to prevent the dissipation or concealment of property of American Realty;
- H. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against American Realty; and,
- I. To take such other action as may be approved by this Court.

13. Within 5 days of the entry of this Order, the Corporate Manager shall report to the SEC as to what actions he will undertake to fulfill his duties as the Corporate Manager.

IV. Access to Information

14. American Realty and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants and employees of American Realty, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Special Monitor and Corporate Manager forthwith all paper and electronic information of, and/or relating to, American Realty and/or its property; such information shall include but not be

limited to books, records, documents, accounts and all other instruments and papers.

15. American Realty's past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Special Monitor and Corporate Manager all questions which the Special Monitor and Corporate Manager may put to them and produce all documents as required by the Special Monitor and Corporate Manager regarding the business of American Realty, or any other matter relevant to the operation or administration of American Realty or the collection of funds due to American Realty. In the event that the Special Monitor or Corporate Manager deems it necessary to require the appearance of the aforementioned persons or entities, the Special Monitor or Corporate Manager shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.

V. Access to Books, Records and Accounts

16. The Special Monitor and Corporate Manager are authorized to take immediate possession of all bank accounts or other financial accounts, books and records and all other documents or instruments relating to American Realty.

17. Any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records, accounts or assets of American Realty are hereby directed to deliver the same to the Special Monitor and Corporate Manager, their agents and/or employees.

18. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of American Realty that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

- A. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of American Realty except upon instructions from the Corporate Manager;
- B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Corporate Manager's control without the permission of this Court; and
- C. Cooperate expeditiously in providing information and transferring funds, assets and accounts to the Corporate Manager or at the direction of the Corporate Manager.

VI. Access to Personal Property

19. The Corporate Manager is authorized to take immediate possession of all personal property of American Realty, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment. The Corporate Manager shall make all records of American Realty available to the Special Monitor.

20. The Corporate Manager is authorized to open all mail directed to or received by or at the offices or post office boxes of American Realty, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

21. Upon the request of the Corporate Manager, the United States Marshal Service, in any judicial district, is hereby ordered to assist the Corporate Manager in carrying out his duties to take possession, custody and control of, or identify the location of, any assets, records or other materials belonging to American Realty.

VII. Notice to Third Parties

22. The Special Monitor and Corporate Manager shall promptly give notice of their appointments, as the Special Monitor and Corporate Manager deem necessary or advisable to effectuate the operation of their appointments.

23. All persons and entities owing any obligation or debt to American Realty shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Corporate Manager and its receipt for such payments shall have the same force and effect as if American Realty had received such payment.

24. The Corporate Manager is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of American Realty (the "Corporate Manager's Mail"), including all mail addressed to, or for the benefit of, American Realty. The Postmaster shall not comply with, and shall immediately report to the Corporate Manager, any change of address or other instruction given by anyone other than the Corporate Manager concerning the Corporate Manager's Mail. American Realty shall not open any of the Corporate Manager's Mail and shall immediately turn over such mail, regardless of when received, to the Corporate Manager. All personal mail of any individual, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Corporate Manager, shall be released to the named addressee by the Corporate Manager. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business or service, or mail courier or delivery service, hired, rented or used by American Realty. American Realty shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository or courier service.

25. The Corporate Manager is authorized to assert, prosecute and/or negotiate any

claim under any insurance policy held by or issued on behalf of American Realty, or its officers, directors, agents, employees or trustees, and to take any and all appropriate steps in connection with such policies.

VIII. Injunction Against Interference

26. The Defendants and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Special Monitor and Corporate Manager, which would:

- A. Interfere with the Corporate Manager's efforts to take control, possession, or management of any American Realty property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any American Realty property;
- B. Hinder, obstruct or otherwise interfere with the Special Monitor and Corporate Manager in the performance of their duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;
- C. Dissipate or otherwise diminish the value of any American Realty property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any American Realty property, enforcing judgments, assessments or claims against any American Realty or its property, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by American Realty or which otherwise affects any of its property; or,
- D. Interfere with or harass the Special Monitor and Corporate Manager, or interfere in any manner with the exclusive jurisdiction of this Court over American Realty.

27. The Defendants shall cooperate with and assist the Special Monitor and Corporate Manager in the performance of their duties.

28. The Special Monitor and Corporate Manager shall promptly notify the Court and

SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

IX. Stay of Litigation

29. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, are stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Special Monitor and Corporate Manager, in their capacities as Special Monitor and Corporate Manager; (b) any American Realty property, wherever located; (c) American Realty, including subsidiaries, partnerships, and entities owned or controlled by American Realty; or, (d) any of American Realty's past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

30. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

31. All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of American Realty against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

X. Managing Assets

32. The Corporate Manager may establish one or more custodial accounts at a federally insured bank to receive and hold all funds of American Realty. Such deposit accounts shall be entitled "Corporate Manager's Account for American Realty."

XI. Conflicts of Interest

33. The Special Monitor and Corporate Manager have a continuing duty to ensure that there are no conflicts of interest between the Special Monitor, Corporate Manager, their agents, and American Realty.

XII. Limitations on Liability of Special Monitor, Corporate Manager and Directors

34. Until further Order of this Court, the Special Monitor and Corporate Manager shall not be required to post bond or give an undertaking of any type in connection with their fiduciary obligations in this matter.

35. During the interim period of this Order, the Special Monitor, Corporate Manager and their agents, or any member of the Board of Directors of the Company (“Director”) acting within scope of such agency are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Special Monitor, Corporate Manager or their agents or Director be liable to anyone for their good faith compliance with their duties and responsibilities as Special Monitor, Corporate Manager or their agents, or Director, nor shall the Special Monitor, Corporate Manager or their agents or Director be liable to anyone for any actions taken or omitted by them except upon a finding by this Court that they acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties. This provision does not apply to any actions or failure to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of the Director’s duties prior to the Commission’s lawsuit in this matter.

36. This Court shall retain jurisdiction over any action filed against the Special Monitor, Corporate Manager or their agents or a Director based upon acts or omissions committed in their representative capacities.

37. In the event the Special Monitor or Corporate Manager decides to resign, the Special Monitor or Corporate Manager shall first give written notice to the Commission's counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Special Monitor and Corporate Manager shall then follow such instructions as the Court may provide. Board members may resign with notice to or approval of the Court.

XIII. Recommendations and Reports

38. Upon his appointment, the Special Monitor shall perform an assessment of the viability of American Realty as a going business enterprise and options and alternatives for the future of the Company.

39. Within 30 days of the entry date of this Order, the Special Monitor shall file with the Court and serve on the parties a report of his conclusions and recommendations.

40. In order to avoid the appearance of partiality, the Special Monitor will not serve as trustee or receiver if the Company should file for bankruptcy or the Court order a receivership.

41. The Court will hold a hearing on the recommendation of the Special Monitor after appropriate notice to interested parties who have standing to assert their support or objection to the recommendation of the Special Monitor.

XIV. Fees, Expenses and Accountings

42. The Special Monitor and Corporate Manager need not obtain Court approval prior to the disbursement of American Realty's funds for expenses in the ordinary course of the administration and management of American Realty. Further, prior Court approval is not required for payments of applicable federal, state or local taxes.

43. The Corporate Manager shall consult with the SEC in advance of any expenditure of \$2,000 or more and/or the disposition or acquisition of any real or personal

property.

44. As the Court determines, the Special Monitor and Corporate Manager are entitled to compensation deemed to be reasonable and appropriate for their work and the work of their agents. The Special Monitor and Corporate Manager shall petition the Court for payment of such compensation.

XV. Preservation of Rights and Privileges

45. Nothing in this Order shall be construed to require that Defendant Wilson abandon or waive any constitutional or legal privilege which he may have available to him.

SO ORDERED:

Dated: December 13, 2012

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Stipulated and Approved as to Form and Substance:

/s/John E. Birkenheier
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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 13, 2012.

s/Tracy A. Jacobs
TRACY A. JACOBS