THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS SUPERIOR COURT

Docket No. 08-E-0053

In the Matter of the Liquidation of
Noble Trust Company

AFFIDAVIT OF ROBERT A. FLEURY IN SUPPORT OF LIQUIDATOR'S MOTION FOR APPROVAL OF SETTLEMENT AGREEMENTS WITH RONALD P. KAUFFMAN AND RELATED ENTITIES, PNC BANK AND OHIO ATTORNEY GENERAL

I, Robert A. Fleury, hereby depose and say:

1. I am the former Deputy Bank Commissioner for the State of New Hampshire and former liquidator of Noble Trust Company ("Noble Trust"). I have been retained as Special Deputy Liquidator by Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as liquidator (the "Liquidator") of Noble Trust. I am involved in and have oversight of the liquidation of Noble Trust. I have familiarity with the books and records of Noble Trust and have participated in numerous meetings associated with the matters set forth herein.

2. I submit this affidavit in support of the Liquidator's Motion for Approval of Settlement Agreements With Ronald P. Kauffman and Related Parties, PNC Bank and the Ohio Attorney General (the "Motion"). As set forth more fully in the Motion, the Liquidator has entered into three separate, but related settlement agreements arising out of a dispute concerning real property in Ohio and associated litigation. The settlement agreements are by and between the Liquidator[1] and each of the entities as follows: (i) Ronald P. Kauffman ("Mr. Kauffman") in

[1] At the time of the execution of the Settlement Agreements with PNC and the Ohio AG, Robert A. Fleury was the Liquidator of Noble Trust. On February 1, 2013, Glenn A. Perlow was appointed by order of this Court the successor Liquidator of Noble Trust. As successor Liquidator, Mr. Perlow endorses the Settlement Agreements and hereby moves for their approval.

his individual capacity and, in his capacities as purported trustee of the Ronald P. Kauffman Charitable Trust dated December 21, 2007 (the "Unitrust") as grantor of the Ronald P. Kauffman Irrevocable Trust dated September 6, 2007, and as grantor of the Ronald Kauffman Trust (the CS Trust), executed by the parties on May 8, 2014 and June 1, 2014 (the "Kauffman Settlement Agreement"); (ii) the Ohio Attorney General (the "Ohio AG") executed by the parties on May 25, 2012 and June 4, 2012 (the "Ohio AG Settlement Agreement"); and (iii) PNC Bank, National Association ("PNC") executed by the parties on October 13, 2011 and October 21, 2011 (the "PNC Settlement Agreement"). See Motion, Exhibits 1-3 of the Motion for copies of the Kauffman Settlement Agreement, the Ohio AG Settlement Agreement and the PNC Settlement Agreement (collectively, the "Settlement Agreements").

3. Prior to the commencement of the Liquidation Proceeding, Mr. Kauffman, formed the Unitrust on December 21, 2001, see Motion, Exhibit 4, and funded it with the conveyance of the real estate known as 1470 West Sandusky Avenue, Bellefontaine, Ohio (the "Real Estate") to the Trustee, National City Bank ("National City"). The deed funding the Unitrust was recorded on December 28, 2001 at the Logan County, Ohio Recorder's Office. See Motion, Exhibit 5.

4. The Unitrust initially named National City as trustee. The provisions of the Unitrust provided for an annual payment to Ronald P. Kauffman of 10% of the net fair market value of the assets of the trust, with a remainder interest going to Grace Brethren Church (the "Church") and Cedarville University (the "University") (collectively, the "Charities").

5. The Unitrust (paragraph 15) reserved to Mr. Kauffman the contractual right to remove any trustee of the Unitrust and designate a successor corporate trustee of the Unitrust. On September 10, 2007, Mr. Kauffman removed National City as Trustee of the Unitrust and designated Noble Trust as Successor Trustee of the Unitrust by delivery of a Notice of Change of

Trustee, which was received by National City's authorized representative on September 14, 2007. See Motion, Exhibit 6. As a result, Noble Trust became the Trustee of the Unitrust and, thus, the legal owner of the Real Estate. Mr. Kauffman expected Noble Trust to sell the Real Estate and invest the resulting proceeds on behalf of the Unitrust.

6. At the time that Noble Trust became the trustee of the Unitrust, the Real Estate was not generating any income. At no time between the time that Noble Trust became the trustee and the time that Noble Trust came under the control of first a conservator and then the Liquidator did the Real Estate generate any income. During the time period when the Real Estate was not generating any income, Mr. Kauffman received $13,333.32 from Noble Trust (the "Transferred Cash") through four monthly payments of $3,333.33 each. Noble Trust did not receive reasonably equivalent value or fair and adequate consideration for the Transferred Cash from Mr. Kauffman or the Unitrust.

7. On October 15, 2007, National City, by its officer, executed a Quit Claim Deed prepared by Mr. Kauffman purporting to transfer the Real Estate to the Unitrust. See Motion, Exhibit 7. Following the entry of the Liquidation Order, the Liquidator sent a notice to all Noble Trust clients, of which Mr. Kauffman was one, advising them of his appointment as Liquidator and enclosing the Liquidation Order. See Motion, Exhibit 8. Notwithstanding the notice of the Liquidation Proceeding and the Liquidation Order, on April 1, 2008, Mr. Kauffman purported to remove Noble Trust as trustee of the Unitrust and to appoint himself as Trustee. See Motion, Exhibit 9. Mr. Kauffman intended the Notice of Removal to divest Noble Trust of its interest in the Unitrust and the Real Estate.

8. The Liquidator contends that the removal of Noble Trust as Trustee was ineffective because the act violated the terms of the Liquidation Order. To this end, on April 4,

2008, the Liquidator, through counsel, sent Mr. Kauffman a letter reminding him of the entry of the injunction and enclosing a copy of the Liquidation Order. The letter advised him that he was enjoined from removing Noble Trust as trustee and informed him that the Liquidator would take such actions as were necessary to secure the property. See Motion, Exhibit 10. On April 21, 2008, the Liquidator sent a Notice of Possession of Noble Trust to Mr. Kauffman. See Motion, Exhibit 11.

9. On June 25, 2008, Mr. Kauffman responded to the Liquidator by letter. Among other things, Mr. Kauffman asserted that he did not need the consent of Noble Trust or the Liquidator to appoint a successor trustee. He further claimed that the Liquidation Order did not preclude him from transferring title to the Real Estate to a new trustee. He also stated that there would be "no proceeds of the sale to be held by the Merrimac (sic) County Superior Court," asserting that the contract buyer's $320,000 (sic) balloon payment obligation was not an asset derived from the sale of the Real Estate. See Motion, Exhibit 12. At no time did Mr. Kauffman file a motion with the Merrimack County Superior Court asking for a modification of the Liquidation Order or leave to transfer the Real Estate.

10. On August 19, 2008, National City, acting by its Vice President and in concert with Mr. Kauffman, executed what purported to be a corrective deed prepared by Mr. Kauffman providing for the transfer of the Real Estate to himself as Successor Trustee of the Unitrust. See Motion, Exhibit 13. Mr. Kauffman subsequently executed a deed for the Real Estate on September 23, 2008 to Pinnacle Management Group LLC ("Pinnacle"). See Motion, Exhibit 14.

11. In 2010, the Real Estate was the subject of multiple transactions. On February 18, 2010 Mr. Kauffman executed a Land Contract for the sale of the Real Estate to the Solid Rock Baptist Church ("Solid Rock"). See Exhibit 15. On or about June 18, 2010, Pinnacle conveyed

the Real Estate back to Mr. Kauffman by limited warranty deed. See Exhibit 16. On July 16, 2010, Mr. Kauffman executed an additional Land Contract for the sale of the Real Estate to Solid Rock. See Exhibit 17.

12. On a matter separate to Mr. Kauffman's designation of Noble Trust as trustee of the Unitrust, on July 17, 2007, Mr. Kauffman established the Ronald P. Kauffman Irrevocable Life Insurance Trust (individually, the "Beneficiary Trust"), which designated Noble Trust as the trustee. On August 17, 2007, Mr. Kauffman established the Ronald P. Kauffman CS Trust (individually, the "CS Trust") (collectively, the "Life Insurance Trusts"), of which Wells Fargo was the trustee and Noble Trust was the trust protector. The CS Trust borrowed money from Credit Suisse to fund premiums for a life insurance policy on the life of Mr. Kauffman, issued by PHL Variable Insurance Company ("PHL") to the Beneficiary Trust on September 6, 2007. The Beneficiary Trust was the beneficiary of the CS Trust. By order dated October 17, 2013, this Court approved a settlement between the Liquidator and PHL that terminated numerous life insurance policies issued by PHL to Noble Trust clients, including the policy issued to Mr. Kauffman.

13. Mr. Kauffman has filed a Proof of Claim in the Liquidation Proceeding.

14. On September 14, 2010, the Liquidator initiated an action in the Common Pleas Court of Logan County, Ohio (the "Ohio Court"), which action is known as Robert A. Fleury v. Ronald P. Kauffman, et al., CV 10-099-0462 (the "Ohio Action"). The Complaint was brought against Mr. Kauffman, Solid Rock and PNC and seeks rents and profits, declaratory relief, an accounting, appointment of a receiver, and alleged tortious interference. The Ohio Action also named the Charities as indispensable parties. When the Charities subsequently disclaimed their

interest in the Unitrust, the Charitable Division of the Ohio AG's office stepped in as representative of the charitable interests in the Ohio Action.

15. Mr. Kauffman, Solid Rock and PNC have answered the Complaint denying liability and asserting numerous defenses.

16. Between the time when Noble Trust sustained the undisclosed loss of approximately $15 million due to the soured investments in Sierra Factoring, LLC (the "Sierra Investments"), and the time when the Banking Department took control of Noble Trust, Noble Trust continued to solicit and accept funds from clients totaling at least $4.5 million under the same promise of 12% returns that had been made to existing clients. Instead of investing the new clients' money in legitimate investments, however, Noble Trust used some of these funds to pay fictitious profits to other clients and to redeem principal and pay interest to clients who terminated their relationship with Noble Trust. However, it became subsequently evident to Lindsey that the flow of incoming investments was insufficient to maintain the concealment of the Sierra Investment losses.

17. Lindsey then devised a fraudulent and illegal scheme involving the procurement of a number of life insurance policies with face values generally between $3 million and $10 million. At Lindsey's direction, Noble Trust, acting as trustee or trust protector, caused applications to be submitted to various insurers. Many of the applications misrepresented the applicants' net worth or income, or averred that coverage was being sought as a means of individual estate planning. Many of the insurance policy applications misstated the source of the premium financing, the terms of the premium financing, or both. In reality, many of the individual insureds were persuaded to apply for insurance in part through promises of profits from the sale of their policies on the lucrative secondary market after the contestability period

expired. These insureds had little or no expectation that either they, or any other person with an insurable interest in their lives, would ever receive any death benefit from the policies.

18. In most cases, once the policies were procured and issued, the insureds were not required to pay *any* premiums to keep the policies in force through the end of the two year contestability period. (Following expiration of the contestability period, it is much more difficult for the insurance company to contest the validity of the policy.) Instead, the premiums were paid on their behalf by means of limited-recourse premium financing loans (the "Premium Finance Loans"). Generally, neither the insured nor any other individual had personal liability for repayment of the Premium Finance Loans; recourse was limited to the insurance trust, the sole asset of which was the life insurance policy. The Premium Finance Loans were often funded by other Noble Trust clients and their trusts, investment management accounts or individual retirement accounts. Thus, the insureds under the policies were promised and received "something for nothing" – they paid no premiums, incurred no personal liability for the Premium Finance Loans, and were promised large windfalls for selling their policies after the contestability period expired. In the case of some of policies financed by Credit Suisse, as Mr. Kauffman's policy was, the insureds were required to give a limited personal guarantee of twenty-five percent of premiums paid.

19. When these policies were ultimately placed in force, Lindsey, Balcarres Group, LLC[2] and others were paid substantial commissions (the "Commissions") directly by the insurers or indirectly by the agents and producers that submitted the policy application. In turn, Lindsey used some of the proceeds of these commissions and some of the newly solicited money to fund

[2] Lindsay also served as president or managing member of Balcarres Group, LLC, a Nevada limited liability company. Both Lindsey and Balcarres were licensed by the New Hampshire Insurance Department and acted as insurance brokers in procuring insurance policies for the benefit of Noble Trust's clients. Pursuant to this Court's Order dated November 13, 2009, the assets of Balcarres were declared to be property of the Liquidation Proceeding.

payments of premiums on insurance policies previously issued for the benefit of some of Noble Trust's other clients. Lindsey used other proceeds to attempt to cover up the loss of the Sierra Investment through distributions of fictitious profits or the repayment of principal to Noble Trust clients who had been invested in Sierra, thus making it appear that the Sierra Investments were still performing according to their terms. It appears to me that Lindsey also intended to sell some of these policies (or the beneficial interests therein) to third parties, and use the sale proceeds to perpetuate the Noble Trust Ponzi scheme and continue to cover up the Sierra losses.

20. Thus, Noble Trust was operated as a Ponzi Scheme that utilized fresh investment funds from its clients and the Commissions to pay fictitious profits to its existing investors, to return principal to investors and to fund limited recourse Premium Finance Loans.

21. To resolve the Ohio Action, the Liquidator has reached three separate but related Settlement Agreements: (i) the Kauffman Settlement Agreement; (ii) the Ohio AG Settlement Agreement; and (iii) the PNC Settlement Agreement. Upon this Court's approval of the Settlement Agreements, the Ohio Action will be dismissed.

22. Under the Kauffman Settlement Agreement, the Liquidator has reached a settlement with Mr. Kauffman, pursuant to which he is entitled to keep the funds already paid by the Church pursuant to its contract. Whether those funds will ultimately be treated as rent or credited towards any purchase price paid by the Church is yet to be determined. Mr. Kauffman has agreed that the Real Estate shall constitute property of the liquidation estate and shall be subject to sale by the Liquidator in the course of these proceedings. The Liquidator has also agreed that, upon the sale of the Real Estate, Mr. Kauffman is entitled to keep the first $13,000 of the sale proceeds to compensate him for improvements he made to the property since the appointment of the Liquidator. Subject to a $34,000 cap and after the payment of certain costs,

Mr. Kauffman would also receive funds being paid into escrow by Solid Rock while it continues to occupy the Real Estate. Upon the sale of the Real Estate, the Liquidator and Mr. Kauffman would then share in the proceeds such that the Liquidator would retain 47.75% of any net proceeds and Mr. Kauffman would retain the balance. Any funds that the Liquidator receives would be property of the liquidation estate and be available for distribution.

23. Under the Ohio AG Settlement Agreement, the Liquidator and the Ohio AG reached an agreement pursuant to which the two parties have agreed that the present value of the charitable remainder interest is $7,500. In order for the Liquidator to come to a final settlement with respect to any charitable interest in the Real Estate, whether or not the Real Estate is ultimately sold, the Liquidator has agreed to pay the Ohio AG $7,500, in return for which the Ohio AG has agreed to transfer any residual interests in the Real Estate to the Liquidation Estate. Upon final approval of the Ohio AG Settlement Agreement by this Court and the Ohio Court, the Liquidator shall move to dismiss with prejudice the Ohio Action as it pertains to the Charities.

24. Under the PNC Settlement Agreement, upon final approval, PNC shall pay a confidential sum to the Liquidator in exchange for the releases being given. Once approved by the Court, the Liquidator shall move to dismiss with prejudice his claims in the Ohio Action against PNC. The funds would then become part of the liquidation estate and available for general distribution.

25. By their terms, the Settlement Agreements do not become effective unless and until the entry of a final order (the "Approval Order") by the Court in the Liquidation Proceeding approving the Settlement Agreements. The Approval Order shall become final on the date that it shall have become non-appealable or, in the event of an appeal(s), on the date that it has been affirmed after all appeals therefrom have been exhausted.

26. In the absence of the Settlement Agreements, the Liquidator would seek to have the Real Estate and the proceeds thereof declared property of the liquidation estate available for ratable distribution to the creditors of Noble Trust. Mr. Kauffman would contend that the Real Estate is the property of the Trust that he established and that the Real Estate and its proceeds should be set apart from the other assets of the liquidation estate and distributed exclusively to the Trust. PNC would deny all liability defend against the Ohio Action. Finally, the settlement with the Ohio AG and the resolution of the charitable interest in the Real Estate is instrumental in allowing the disposition of the property to go forward without issue.

27. The Settlement Agreements are the result of arms-length negotiations between the parties and their counsel and are fair, reasonable and adequate resolution of the parties' disputes. The Settlement Agreements maximize the value of the liquidation of Noble Trust by relieving further costs and potential risk of continued litigation with the parties, and provides for, among other things, (i) payment from any sale of the Real Estate (in accordance with the terms of the Kauffman Settlement Agreement), eliminating any collection risk if the Liquidator were compelled to obtain judgments against Mr. Kauffman, (ii) release of any and all of the claims in the Liquidation Proceeding that Mr. Kauffman filed or could have filed. The Settlement Agreements also clarify the Liquidator's control over the disposition of the Real Estate. The Liquidator believes that entering into the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment.

Signed under the pains and penalties of perjury this 30th day of July, 2014.

Robert A. Fleury

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

Signed before me on July 30, 2014 by Robert A. Fleury.

Nancy Toli
Notary Public/~~Justice of the Peace~~
My Commission Expires:

NANCY TOLI
STATE OF
MY
COMMISSION
EXPIRES
JULY 28,
2015
NEW HAMPSHIRE
NOTARY PUBLIC