

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SAM LIPSON, on behalf of himself and all others
similarly situated,

Plaintiff,

- against -

MARTIN J. SIMON et al.,

Defendants.

CV 98 4573 (TCP)

**ORDER PRELIMINARILY
APPROVING SETTLEMENT**

The parties having made application, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order approving the settlement of the above-captioned class action (the "Action") in accordance with a Stipulation of Settlement dated as of November 4, 2004 (the "Stipulation") and entered into between and among the representative Plaintiff individually, by Plaintiff's Counsel, and defendant McGladrey & Pullen, LLP ("McGladrey"), the remaining defendant in this Action, by its counsel, which, with the exhibits annexed thereto, set forth the terms and conditions for a proposed settlement of this Action (the "Settlement") and for dismissal of this Action as to McGladrey; and the Court having read and considered the Stipulation and the exhibits annexed thereto; and all parties having consented to the entry of this Order; it is hereby ORDERED:

1. The terms of the Settlement are preliminarily approved as fair, reasonable and adequate to the Class (as defined below), subject to further consideration at the hearing (the "Settlement Hearing") described at paragraph 2 of this Order, and the Court, for purposes of this Order adopts all defined terms in the Stipulation.

2. The Settlement Hearing shall be held before the undersigned at 2:00 ~~a.m.~~/p.m. on JANUARY 7, 2005 in Courtroom 1040 at the United States Courthouse, Eastern District of New York, 834 Federal Plaza, Central Islip, NY 11722 to determine (a) whether a the Settlement is fair, reasonable, and adequate and should be approved by the Court; (b) whether a final judgment should be entered dismissing the Action with prejudice as against McGladrey; and (c) whether the request by Plaintiff's Counsel for an award of attorneys' fees and reimbursement of costs and expenses should be approved. .

3. Briefs in support of the Settlement and in support of the request for attorney's fees and reimbursement of expenses shall be filed on or before ten (10) days prior to the Settlement Hearing. The Court may adjourn the Settlement Hearing from time to time without further notice, and may approve the Settlement and consider Plaintiff's Counsel's request for attorneys' fees and reimbursement of expenses at or after the Settlement Hearing.

4. For purposes of this Settlement only, a Class is hereby certified to include all purchasers of common stock of First Central Financial Corporation ("First Central") during the period July 6, 1995 through and including September 6, 1997 (the "Class Period"). Excluded from the Class are McGladrey, the Individual Defendants, members of their immediate families, any entity in which any defendant has a controlling interest, and the legal representatives, heirs, successors, or assigns of any such excluded party. Also excluded from the Class are those persons who timely and validly request exclusion from the Class pursuant to the Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing.

5. The Court hereby appoints the Plaintiff Sam Lipson as representative of the Class (the "Representative Plaintiff") and appoints Plaintiff's Counsel as counsel for the Class.

6. With respect to the Class and for purposes of this Settlement, the Court finds that (a) the members of the Class are so numerous that joinder of all Class members in the Action is

impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual questions; (c) the claims of the Representative Plaintiff are typical of the claims of the Class; (d) the Representative Plaintiff and Plaintiff's Counsel have fairly and adequately represented and protected the interests of all of the Class Members; and (e) this Action is superior to other available methods for the fair and efficient adjudication of the controversy.

7. The Court approves, as to form and content, the Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing substantially in the form of Exhibit A attached (the "Notice"), and the Summary Notice substantially in the form of Exhibit B attached (the "Summary Notice").

8. Plaintiff's Counsel and their Claims Administrator, in connection with the administration of the Individual Defendants Settlement dated March 20, 2003, have already made reasonable efforts to identify all persons who are members of the Class, including identifying beneficial owners whose shares of First Central common stock were held by banks, brokerage firms, or other nominees who had records that identified the members of the Class. The Claims Administrator has compiled a list of Authorized Claimants who have submitted timely and valid Proof of Claim and Release Forms in connection with the administration of the Individual Defendants Settlement.

9. Within ten (10) days after entry of this Order, the Claims Administrator shall mail (a) the Notice and the Release Form, annexed in the form of Exhibit D hereto, to Authorized Claimants at their last known address, and (b) the Notice and the Proof of Claim form and Release Form, substantially in the form of Exhibit C attached (the "Proof of Claim"), to all persons identified by the Claims Administrator as purchasers of First Central common stock during the Class Period. All costs incurred in providing notice to the Class and administering the

Settlement shall be paid from the Settlement Account as that term is defined in the Stipulation. Prior to the date of the Settlement Hearing, Plaintiff's Counsel is authorized to expend up to the maximum sum of \$75,000.00 from the Settlement Account in providing notice to the Class and facilitating the administration of the Settlement. Additional copies of the Notice and Proof of Claim shall be made available upon written request to the Settlement Administrator at a Post Office Box address as provided in paragraph 17(a) below.

10. Within fifteen (15) days after entry of this Order, the Claims Administrator shall cause the Summary Notice to be published once in *The Wall Street Journal* (Eastern edition) and *Newsday*.

11. Plaintiff's Counsel are using the firm of Complete Claim Solutions, Inc. as Settlement Administrator to supervise and administer the notice and claims procedures. This firm supervised and administered the notice and claims procedure in connection with the Settlement with the Individual Defendants. The Settlement Administrator shall be responsible, under the direction of Plaintiff's Counsel, for the dissemination of the Notice in accordance with this Order, for processing Proofs of Claim and Release Forms, identifying and locating Class Members, and distributing the Net Settlement Fund to Authorized Claimants, in accordance with further order of the Court.

12. Prior to the Settlement Hearing, Plaintiff's Counsel shall cause the filing of a sworn statement evidencing compliance with the provisions of this Order relating to dissemination and publication of the Notice.

13. Notice to the Class in compliance with this Order is hereby found to be the best notice practicable under the circumstances and constitutes due and sufficient notice of the Settlement and the Settlement Hearing to all persons entitled to receive such notice as members of the Class, in full compliance with the notice requirements of Rule 23 of the Federal Rules of

Civil Procedure.

14. Class Members may request exclusion from the Class on or before fourteen (14) days prior to the Settlement Hearing by following the procedures specified in the Notice ("Requests for Exclusion"). Requests for Exclusion shall be deemed to have been made in each and every capacity in which the person requesting the exclusion is acting. If a Request for Exclusion does not include substantially the information and documentation specified in the Notice and/or is not executed or timely submitted to the Settlement Administrator, it shall not be a valid Request for Exclusion and any person who tenders an invalid Request for Exclusion shall be a member of the Class, shall be included in the Settlement and shall be bound by any final judgment entered in this Action pursuant to the terms thereof. Persons who timely and validly request exclusion from the Class shall not be bound by the Settlement.

15. Plaintiff's Counsel shall file with the Court a list of names and addresses of the Class Members submitting Requests for Exclusion and shall furnish counsel for McGladrey with copies of all Requests for Exclusion promptly after their receipt, but in no event later than five (5) business days following the last day on which Requests for Exclusion must be submitted.

16. Any Class Member who does not duly request exclusion may appear at the Settlement Hearing in person or by counsel, if an appearance is filed and served as provided by law, and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement and the requested award of attorneys' fees and reimbursement of expenses; provided, however, that no person shall be heard in opposition to the proposed Settlement and, if approved, the judgment entered thereon, or to the requested award of attorneys' fees and reimbursement of expenses, and no papers or briefs submitted by any such person shall be accepted or considered by the Court unless, on or before fourteen (14) days prior to the Settlement Hearing, such person: (a) has filed with the Clerk of

the court a notice of such person's intention to appear together with a written statement that indicates the basis for such opposition or support, along with any supporting documentation, and a list of any and all witnesses or experts whom such person shall present to the Court (which filing may be done by mail), and (b) has served copies of such notice, statement, documentation, and list together with copies of any other papers or briefs which such person files with the Court, either in person or by mail, (i) upon counsel for Plaintiff: J. James Carriero, Esq., 29-53 Butler Street, East Elmhurst, NY 11369; and (ii) upon counsel for defendants: Williams & Connolly, 725 Twelfth Street N.W., Washington, DC 20005-5901, Attn.: Steven M. Farina, Esq. Any Class Member who does not make an objection in the manner provided in this paragraph shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement or the fee and expense request of Plaintiff's Counsel.

17. In order to be deemed an Authorized Claimant entitled to participate in the Net Settlement Fund as defined in the Stipulation in the event the Settlement is effected in accordance with all of the terms and conditions thereof, Class Members who previously filed a timely and valid Proof of Claim in connection with the Individual Defendants Settlement do not have to file the attached Proof of Claim, but must mail the annexed Release Form on or before March 15, 2005. Class Members who have not requested exclusion, and have not previously filed a timely and valid Proof of Claim in connection with the Individual Defendants Settlement, must submit a completed and duly executed Proof of Claim and Release on or before March 15, 2005 in the manner set forth below. Any Class Member who has not requested exclusion and who does not submit a Proof of Claim shall not be entitled to participate in the Net Settlement Fund, but nonetheless shall be barred from asserting, and shall be conclusively deemed to have released any of the claims which have been or might have been asserted in this Action.

18. The submission and filing of Proofs of Claim shall be subject to the following conditions:

a. A properly executed Proof of Claim must be submitted to the Settlement Administrator at the following address:

FCFC Securities Litigation
c/o Complete Claim Solutions, Inc.
P.O. Box 24648
West Palm Beach, FL 33416

b. not later than March 15, 2005 (unless such time is extended by the Court).

Each Proof of Claim shall be deemed to have been submitted when postmarked (if properly addressed and mailed by no less than first class mail, postage prepaid) provided such Proof of Claim is actually received prior to the order of the Court approving distribution of the Net Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been filed when it is actually received at the address designated in the Notice.

c. The Proof of Claim filed by each Class Member must: (i) be properly filled out, signed and filed in a timely manner in accordance with the provisions of the preceding subparagraph, (ii) be accompanied by adequate supporting documentation (*e.g.*, broker's confirmation slips, brokerage account statements, letters from brokers, Schedule D from an applicable tax return, or such other documentation that is deemed adequate by Plaintiff's Counsel or their designated agent) of the relevant purchases and/or sales of First Central common stock during the Class Period; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of his current authority to act on behalf of the Claimant must be included in the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein.

d. As part of the Proof of Claim, each Claimant shall submit to the jurisdiction of the Court with respect to the claim submitted and agrees that the submitted Proof

of Claim shall be subject to examination, investigation and discovery pursuant to the Federal Rules of Civil Procedure as to status and the allowable amount of the claim.

19. Upon completion of administration of the Settlement, the Settlement Administrator shall file a report and accompanying order with the Court. The report and accompanying order shall list those claims which have been allowed and the amounts to be distributed to each Claimant, and a list of those claims that have been disallowed.

20. The determination of the Court with respect to the allowance of claims and the amounts of distribution shall be final and binding upon the parties and the respective Claimants.

21. In the event that additional recoveries become available from the Settlement Fund in the future, the Settlement Administrator may make additional distributions to the Class, without requiring the submission of a new Proof of Claim, upon such notice as directed by the Court.

22. Pending the final determination of the fairness, reasonableness and adequacy of the proposed Settlement, no Class Member may either directly, representatively, or in any other capacity, prosecute, institute or commence, on behalf of the Class, any claim which has been or could have been asserted in this Action, or any other claim arising out of, or in any way related to, any facts, transactions, occurrences, representations or omissions or other subject matter set forth, alleged or embraced in the Complaint.

23. All Requests for Exclusion and Proofs of Claim shall be administered by or on behalf of Plaintiffs Counsel, subject to Court Order. For purposes of facilitating processing, the Settlement Administrator may lease and maintain a numbered post office box. The Notice and all other communications to the Class shall designate the post office box as the return address.

24. All proceedings in the Action against McGladrey, other than such as may be necessary to carry out the terms and conditions of the Settlement or the responsibilities related or

incidental thereto, are stayed and suspended, until further order of this Court.

25. All reasonable costs incurred in notifying Class Members of the proposed Settlement, as well as administering the Settlement and the Settlement Fund, shall be paid in the manner set forth in the Stipulation.

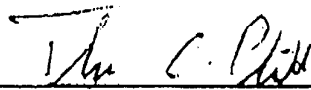
26. Plaintiff's Counsel are authorized to retain tax counsel and accountants in connection with the determination of any tax liability of the Settlement Fund, which liability is to be paid from the Settlement Fund.

27. Upon consummation and approval of the Settlement, the Stipulation and each and every term and provision so far as it relates to the Plaintiff, the Class, McGladrey, and this Action shall be deemed incorporated herein as if explicitly set forth and shall have the full force and effect of an order of this Court.

28. If the Settlement shall not be approved or consummated for any reason whatsoever, or if the parties fail to obtain an Order and Final Judgment as described in paragraph 1(f) of the Stipulation, then the Settlement and all proceedings and negotiations had in connection therewith shall be without prejudice to the *status quo ante* rights of the Plaintiff, the Class and McGladrey existing as of the date of the Stipulation. The Settlement Fund shall be returned to McGladrey, except for the costs incurred in providing notice to the Class.

29. The Court reserves the right to approve the Stipulation with such modifications as may be agreed upon by counsel to the parties to the Stipulation and without further notice to the members of the Class.

Dated: November 4, 2004



United States District Judge