

Civil Action No.
CV 98-4573 (TCP)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

Plaintiff,

-against-

MARTIN J. SIMON, SAUL ERDMAN, HERBERT
V. FRIEDMAN, HARVEY MASS, JOSEPH P.
CIORCIARI, RALPH J. DRABKIN, JOAN M.
LOCASCIO, ANDREW W. ATTIVISSIMO,
HARVEY S. JACOBS, LOUIS V. SIRACUSANO,
SEYMOUR D. USLAN, JOEL I. DOLLINGER,
ALLAN R. GOODMAN, RAYMOND BRANCACCIO,
LOUIS GOTTLIEB and McGLADREY & PULLEN, LLP,

Defendants.

-----x

**ORDER PRELIMINARILY APPROVING
PARTIAL SETTLEMENT**

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SAM LIPSON,

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**ORDER
PRELIMINARILY
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COPY

The parties having made application, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order approving the partial settlement of the above-captioned class action (the "Action") in accordance with a Stipulation of Settlement dated as of March 20, 2003, the Global Settlement Agreement dated November 1, 2002 (the "Global Settlement Agreement"), the Memorandum of Understanding dated as of June 28, 2002, as extended through May 31, 2003, reviewed by the Court *in camera*, (collectively, the "Stipulation") entered into between and among the representative plaintiff individually, plaintiff's counsel, Martin J. Simon, Saul Erdman, Herbert V. Friedman, Harvey Mass, Joseph P. Ciorciari, Ralph J. Drabkin, Joan M. Locascio, Andrew W. Attivissimo, Harvey S. Jacobs Louis V. Siracusano, Seymour D. Uslan, Joel

I. Dollinger, Allan R. Goodman, Raymond Brancaccio and Louis Gottlieb (the "Individual Defendants"), individually and by their duly authorized counsel, the New York State Superintendent of Insurance acting as Liquidator and the Trustee appointed in *In re First Central Financial Corporation*, Case No. 98-12846 (Bankr. E.D.N.Y.) (both as to the Global Settlement Agreement and the Memorandum of Understanding), which, together with the exhibits annexed thereto, set forth the terms and conditions for a proposed partial settlement of this Action and for dismissal of this Action as to the Individual Defendants (the "Settlement"); 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 herein), subject to further consideration at the hearing (the "Settlement Hearing") described at paragraph 2 of this Order, and the Court, for purposes of this preliminary order adopts all defined terms in the Stipulation.

2. The Settlement Hearing shall be held before the undersigned at 1:30 ~~a.m.~~/p.m. on 7/7/03, 2003 in Courtroom 1040 at the United States Courthouse, Eastern District of New York, 834 Federal Plaza, Central Islip, NY 11722 (1) to determine whether the Settlement is fair, reasonable and adequate and should be approved by the Court; (2) whether a final judgment should be entered dismissing the Action as against the Individual Defendants only; and (3) to consider the application of Plaintiff's Counsel for an award of attorneys' fees and reimbursement of expenses. 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 6/27/03, 2003.

The Court may adjourn the Settlement Hearing from time to time without further notice, and may approve the Settlement and consider Plaintiff's request for attorneys' fees and reimbursement of expenses at or after the Settlement Hearing.

3. For purposes of this Settlement only, a "Class" is hereby certified to include all purchasers of common stock of First Central Financial Corporation ("FCFC") during the period July 6, 1995 through and including September 6, 1997 (the "Class Period"). Excluded from the Class are 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.

4. The Court hereby appoints the Plaintiff Sam Lipson as representative of the Class and appoints Plaintiff's Counsel (as defined in the Stipulation) as counsel for the Class.

5. 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 his 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.

6. 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 "Class Notice"), and the Summary Notice substantially in the form of Exhibit B attached (the "Summary Notice"), to be published once in the national edition of Business Wire and once in Newsday.

7. In accordance with the terms of the Settlement, Plaintiff's Counsel or their designee shall make reasonable efforts to identify all persons who are members of the Class, including beneficial owners whose shares of FCFC common stock were held by banks, brokerage firms, or other nominees. Within twenty (20) days after entry of this Order, the Individual Defendants, the Trustee and the Liquidator will provide Plaintiff's Counsel with records in their possession, custody and control that will enable Plaintiff's Counsel to reasonably identify members of the Class, and will cooperate with Plaintiff's Counsel in requesting from Depository Trust Company and other record holders of FCFC common stock information calculated to identify the brokers and other nominee entities who held FCFC common stock at the beginning and end of the Class Period. Within twenty (20) days thereafter, Plaintiff's Counsel shall cause delivery of the Proof of Claim form, substantially in the form of Exhibit C attached (the "Proof of Claim") and the Class Notice, to all such persons and all purchasers of FCFC common stock during the Class Period, at their last known addresses appearing on the records of FCFC's stock transfer agent. All costs incurred in providing notice to the Class and administering the Settlement shall be paid from the Settlement Fund as that term is defined in the Stipulation of Settlement dated March 20, 2003. Prior to the date of the Settlement Hearing, Plaintiff's Counsel is authorized to expend up to the maximum sum of

\$50,000.00 from the Settlement Fund in providing notice to the Class and facilitating the administration of the Settlement. All Nominees who held shares of FCFC common stock of record for beneficial owners who are class members, are directed either (a) to supply to the Settlement Administrator (defined below), within 20 days of receipt of the Class Notice, with a list of the names and addresses of such beneficial owners in which case the Settlement Administrator/Plaintiff's Counsel shall mail the Class Notice and Proof of Claim to such persons; or (b) to forward the Class Notice and Proof of Claim to the beneficial owners of those shares. Nominees may seek reimbursement of their reasonable expenses in complying with this Order. Additional copies of the Class Notice and Proof of Claim for transmittal to beneficial owners shall be made available upon request to the Settlement Administrator at a Post Office Box address as provided in paragraph 16 below.

8. Plaintiff's Counsel are hereby authorized to retain a reputable firm of their choice as Settlement Administrator to supervise and administer the notice and claims procedures. The Settlement Administrator shall be responsible, under the direction of Plaintiff's Counsel, for the dissemination of the Class Notice in accordance with this Order, for processing Proofs of Claim, identifying and locating Class Members, and distributing the Net Settlement Fund to Authorized Claimants, in accordance with further order of the Court.

9. 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 Class Notice.

10. 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.

11. Class Members may request exclusion from the Class on or before 6/20/03, 2003 by following the procedures specified in the Class 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 Class 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.

12. 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 Individual Defendants 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.

13. 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 4/20/03, 2003, 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: Solomon, Zauderer, Ellenhorn, Frischer & Sharp, 45 Rockefeller Plaza, New York, NY 10111. Any member of the Class 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.

14. In order to be deemed an Authorized Claimant entitled to participate in the Net Settlement Fund as defined in paragraph 7[C] of the Stipulation of Settlement dated March 20, 2003 in the event the Settlement is effected in accordance with all of the

terms and conditions thereof, Class Members who have not requested exclusion must submit a completed and duly executed Proof of Claim on or before 10/17/03, 2003 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.

15. 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 at the address/Post Office Box indicated in the Class Notice, not later than 10/17/03, 2003 (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.

b. 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 FCFC 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.

c. As part of the Claimant's 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.

16. 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.

17. 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.

18. In the event that additional recoveries become available from the Settlement Fund in the future, Plaintiff 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.

19. Pending the final determination of the fairness, reasonableness and adequacy of the proposed Settlement, no member of the Class 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.

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

21. All proceedings in the Action as against the Individual Defendants only, 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.

22. All reasonable costs incurred in locating, identifying and 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.

23. 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.

24. 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, the

Individual Defendants 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.

25. If the Settlement shall not be approved as provided in paragraph 14 of the Global Settlement Agreement, or consummated for any reason whatsoever, or if the parties fail to obtain a Final Judgment as described in paragraph 13 of the Stipulation of Settlement dated March 20, 2003, 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 the Individual Defendants existing as of the date of the Global Settlement Agreement.

26. The Court reserves the right to approve the Stipulation of Settlement dated March 20, 2003 and the Global Settlement Agreement with such modifications as may be agreed upon by counsel to the parties to the Stipulation and the Settlement Agreement and without further notice to the members of the Class.

Dated: April 4, 2003.



United States District Judge

THIS ORDER IS TO BE MAILED BY MOVANT
TO ALL COUNSEL IMMEDIATELY UPON RECEIPT,