

FILED
Clerk
District Court

OCT 24 2014

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS

for the Northern Mariana Islands
By 
(Deputy Clerk)

BETTY JOHNSON, on behalf of herself,
and as a representative of a class of
similarly-situated persons,

Plaintiffs,

v.

ELOY S. INOS, Governor of the
Commonwealth of the Northern Mariana
Islands (“CNMI”), *et al.*,

Defendants.

CIVIL CASE NO. 09-0023

ORDER

This matter came before the court for a hearing on September 9, 2014 on the NMI Settlement Fund Trustee’s request that the Court approve the Settlement Fund to substitute as the claimant in an arbitration proceeding styled as *Taitano et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (Case No. 12-02942) before the Financial Industry Regulation Authority (“Merrill Lynch Litigation”). The court approved the Trustee’s request in principle by an Order dated September 11, 2014 [ECF 677], deferred ruling on the proposed Assignment of Claims Agreement [ECF 672-8], and rejected the proposed Engagement Agreement [ECF 672-9].

The Trustee has now submitted for the Court’s approval a revised Assignment of Claims Agreement [ECF 683-1] and revised Engagement Agreement [ECF 683-2].

The court has carefully reviewed these proposed agreements and the record, and makes the following findings:

1. The Merrill Lynch Litigation asserts claims that Merrill Lynch is liable to the benefit of the Fund for the adverse financial consequences of its investment advice to the Fund.

2. By an Assignment Agreement dated December 2, 2011 [ECF 672-7], the Board of Trustees of the Northern Mariana Islands Retirement Fund (“NMIRF”) assigned to Mariano Taitano, Roman Tudela, and Patricia Guerrero (“Assignees”) the claims asserted in the Merrill Lynch Litigation.

3. The Assignees, the attorneys for the Assignees (O’Connor Berman Dotts & Baner “O’Connor Firm”), and all parties to this action and the Assignment Agreement and any agreements relating thereto acknowledge that the Assignees and their attorneys have at all times been acting as constructive trustees for the Fund, and holding all rights to the claims in a constructive trust for the NMIRF and later the Settlement Fund and their respective members and beneficiaries.

4. Paragraph 1.1 of the Class Settlement Agreement approved by the Court in this action, transferred “[a]ny and all rights the Fund has relating in any way to the proceeds arising from” the Merrill Lynch Litigation to the Settlement Fund created by the Settlement [ECF 468-1].

5. The Assignees and the O’Connor firm, who have been acting as constructive trustees for the ultimate benefit of the members, now wish to assign their interests in the Merrill Lynch Litigation to the Settlement Fund, so the Settlement Fund can prosecute that action in its own name.

6. Pursuant to the Order of September 11, 2014 [ECF 677], the Trustee has accepted assignment on the terms set forth in the revised Assignment of Claims Agreement submitted to the Court by the Trustee [ECF 683-1], which has been approved by the CNMI Government.

7. Pursuant to the Order of September 11, 2014 [ECF 677], the Trustee renegotiated the terms upon which the law firm of Levin, Papantonio, Thomas, Mitchell, Rafferty and Proctor, P.A. (the “Levin firm”) and associated counsel will represent the Settlement Fund in the Merrill Lynch Litigation. The Engagement Agreement supersedes and replaces any prior agreement regarding fees and costs that relate in any way to the Merrill Lynch Litigation and governs all of the fees and costs that the NMIRF and the Settlement Fund are liable to pay to all attorneys who may be engaged to work on the matter but does not restrict the Levin firm and the Settlement Trustee from engaging additional associated counsel in the event they conclude it is in the best interests of the Settlement Fund. [ECF 683-2] The Government reserves the right to object to the association of counsel and payments to the law firm of Bronster Hoshibata under Section 6.B of the Engagement Agreement.

THEREFORE, having reviewed the relevant agreements and considered the arguments of the parties, and finding good cause therefore, the Court orders as follows:

1. The Stipulation [ECF 683] is APPROVED.
2. The Assignment of Claims Agreement [ECF 683-1] is APPROVED.
3. The Engagement Agreement [ECF 683-2] is APPROVED.

SO ORDERED.



/s/ Frances M. Tydingco-Gatewood
Designated Judge
Dated: Oct 24, 2014