

IN THE UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:18-cv-23992-JEM

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

TIMOTHY JOSEPH ATKINSON, JAY
PASSERINO, ALL IN PUBLISHING, LLC,
& GASHER, INC.,

Defendants.

RECEIVER'S NINTH STATUS REPORT

Melanie E. Damian, the court-appointed Receiver (the "Receiver") in the above-captioned enforcement action, submits her ninth status report setting forth her activities and efforts to fulfill her duties, under the Orders pursuant to which she was appointed, for the period from January 1, 2022 through July 31, 2022 (the "Reporting Period").

I. INTRODUCTION

Since her appointment, the Receiver has worked diligently with the Commodity Futures Trading Commission (the "CFTC") and Defendants Timothy Joseph Atkinson ("Atkinson"), All In Publishing LLC ("AIP"), Jay Passerino ("Passerino") and Gasher, Inc. ("Gasher") to identify and marshal all known assets and records of the Defendants. During prior reporting periods, the Receiver and her professionals swiftly took action to review all available documents associated with the Defendants for the purpose of identifying and investigating their assets and business operations, located and froze at least 76 accounts held by the Defendants at various financial

institutions, obtained and analyzed account statements and created a consolidated account reconstruction to assist with further asset recovery efforts, liquidated real and personal property, including investments and cryptocurrencies, and deposited \$3,607,901.09 into the Receiver's fiduciary accounts for the Estate.¹ Further, the Receiver marketed for sale and sold all of the Defendants' real property and most of the Defendants' personal property pursuant to the Court's orders authorizing and approving the sales. And, the Receiver formulated and submitted to the Court for approval a Claims Process and Distribution Plan and then implemented the Court-approved Claims Process and made an initial distribution to the claimants holding the 94 allowed claims totaling \$4,360,767.21 in an amount representing 42.4% of their losses.

During the Reporting Period, to increase these allowed claimants' recoveries, the Receiver sought and obtained Court authority to have the unpaid portions of their claims submitted and allowed in the Court-approved claims process in another related CFTC enforcement action and receivership pending in the Southern District of Florida in which the business operations and customers of the defendants overlapped with those in this enforcement action and receivership. Further, the Receiver continued to pursue her fraudulent transfer and unjust enrichment claims against an insider who received significant transfers from AIP without providing reasonably equivalent value (and the relative through which he received those transfers), engaging in motion practice to reopen and transfer the case to the appropriate venue. Finally, the Receiver marketed for sale a default final judgment that she obtained against an associate of AIP and Atkinson who

¹ The only assets that were identified by the Receiver but not transferred to the Estate were funds totaling approximately \$9,300 in an account of a company owned by Atkinson at Boslil Bank in St. Lucia. Boslil Bank has refused to recognize the Appointment Order or transfer the funds to the Estate despite multiple written and verbal requests by the Receiver's counsel, Mr. Atkinson, and Mr. Atkinson's counsel. The Receiver has determined that it would cost the Estate more than \$9,300 to seek to compel the institution to recognize the Appointment Order and transfer the funds to the Estate; therefore, the Receiver has not taken such action.

had received significant transfers from AIP without providing reasonably equivalent value to AIP and resides in Pakistan, making collection extremely difficult and costly.

II. PROCEDURAL BACKGROUND AND THE APPOINTMENT AND DUTIES OF RECEIVER

On September 27, 2018, the CFTC filed a *Complaint for Injunctive Relief and Demand for Jury Trial* (the “Complaint”) against Atkinson and his business AIP, and Passerino and his business Gasher (collectively, “Defendants”), commencing the above-captioned enforcement action (the “CFTC Action”). The CFTC also filed and this Court granted the Emergency Motion for Statutory Restraining Order [ECF No. 6], the Emergency Motion for Preliminary Injunction [ECF No. 7], and the Emergency Motion for Appointment of Temporary Receiver [ECF No. 9], seeking to enjoin Defendants from continuing their operations and further violations of the Act, an inspection of Defendants’ records, the freeze of their assets, the appointment of a receiver, and other equitable relief.

On May 22, 2019, the Court granted the CFTC’s *Motion to Approve Consent Judgment Against Defendants Timothy Atkinson and All In Publishing LLC* [ECF Nos. 204 and 205] and entered the *Consent Order For Permanent Injunction, and Other Statutory and Equitable Relief Against Atkinson and AIP* (the “AIP Permanent injunction”). *See* ECF No. 206. On December 23, 2019, the CFTC filed a Motion for Entry of Proposed Consent Order for Permanent Injunction Against Defendants Jay Passerino and Gasher, Inc. *See* ECF No. 233. On February 12, 2020, the Court granted that Motion, deeming as entered the proposed Consent Permanent Injunction (the “Gasher Permanent Injunction” and, together with the AIP Permanent Injunction, the “Permanent Injunctions”). *See* ECF No. 237. The Permanent Injunctions authorized the Receiver to, among other things, bring fraudulent transfer recovery actions to increase the value of the Receivership Estate and directed the Receiver to, among other things, formulate and propose

to the Court a Claims Process and Distribution Plan for purposes of distributing the assets of the Estate to investors who were defrauded by the Defendants. *See* ECF No. 233 at Sections V, ¶ 30 and ¶ 34 and ECF No. 237 at Section V, ¶ 30 and ¶ 34.

III. THE RECEIVER'S ACTIVITIES AND EFFORTS DURING THE REPORTING PERIOD

A. Implementing the Distribution Plan and Administering the Allowed Claims in the Claims Process of Related CFTC Enforcement Action and Receivership

Towards the end of the prior reporting period, the Receiver completed her Initial Distribution which represented 42.4% of each claimant's allowed claim amount. The Receiver then obtained permission from the District Court for the Southern District of Florida for the claimants of this Estate to participate in a related receivership case's claims process and distribution plan (the "Fingerhut Claims Process and Distribution Plan"). *See Commodity Futures Trading Commission v. Daniel Fingerhut, Digital Platinum Inc., et al.*, Case No. 1:20-CV-21887-DPG (S.D. Fla.) (the "Fingerhut Case") at ECF No. 301. The Receiver was also appointed as Receiver in the Fingerhut Case. In investigating the operations and identifying potential claimants of Daniel Fingerhut, Digital Platinum Inc. and related defendants, the Receiver determined that those defendants worked with AIP and/or Gasher to market the binary option schemes and foreign currency and digital asset trading schemes. The defendants in the Fingerhut Case and the Defendants in this case shared marketing efforts and leads lists and, as such, defrauded many of the same customers. Accordingly, the Receiver granted all allowed claimants of this Estate an allowed claim in the Fingerhut Claims Process in the amount of the unpaid portion of their allowed claim in this case. And, the Receiver worked with claimants who wanted to supplement and increase their original claim amounts based upon additional evidence and support. On July 30, 2022, the Receiver sent to all claimants her final determinations of claims in the Fingerhut Claims

Process. Thereafter, in the Fingerhut Case, the Receiver began preparing a motion seeking authority to make a *pro rata* distribution to this Estate's claimants from the Fingerhut Estate.

After the Receiver sells the few remaining items of personal property of this Estate and completes the one remaining recovery action (described below), the Receiver will seek Court approval to make a final distribution of the remaining funds in the Estate (after payment of all outstanding administrative expenses) to allowed claimants.

B. Communications with Investors and Creditors

The Receiver maintains a website (www.allinpublishingreceivership.com) and set up a dedicated email address and telephone number for Defendants' customers and creditors to use to communicate with the Receiver and her counsel and stay apprised of the status of the Receivership and the CFTC's enforcement action. On the website, the Receiver has been posting Court filings, notices, orders and important dates and deadlines, and answering frequently asked questions.

F. The Estate's Remaining Claims Against Insider of AIP

Throughout the Reporting Period, the Receiver continued to pursue fraudulent transfer and unjust enrichment claims against an insider of AIP and the relative through which he received significant transfers from AIP. In particular, the Receiver pursued her claims against Yahia Meftah and Yahia Meftah Sole Prop. (collectively, the "Meftah Defendants"), which this Court had dismissed for lack of personal jurisdiction and the Receiver had revived during a prior reporting period. Pursuant to this Court's Order reopening the case, the Receiver, on March 1, 2021, filed a Second Amended Complaint [ECF No. 62] naming Yahia Meftah d/b/a Yahia Meftah Sole Prop. and Zak Meftah as defendants and adding allegations concerning those defendants' contacts to South Florida and Zak Meftah's significant role and involvement with AIP.

The Meftah Defendants filed a motion to dismiss the Second Amended Complaint [ECF No. 69] for lack of personal jurisdiction, which this Court granted [ECF No. 93] during the prior

Reporting Period. The Receiver then filed a motion to reopen the case and transfer venue to the Northern District of California where the Meftah Defendants reside and the Court granted that motion. *See* ECF No. 96. That case is now proceeding in the Northern District of California. The Meftah Defendants filed another motion to dismiss in the Northern District of California and the Receiver is preparing her response in opposition.

IV. CASH ON HAND AND ADMINISTRATIVE EXPENSES OF ESTATE

As of the end of the Reporting Period (July 31, 2022), the Receiver held a total of \$1,141,915.36 in cash-on-hand, in two fiduciary accounts at City National Bank in Miami, Florida.

Since the inception of the Receivership, the Receiver has made disbursements from the Receiver's fiduciary accounts for necessary expenses to preserve and administer the Estate, pursuant to the authority granted to the Receiver in the Court's Orders. During this Reporting Period, such expenses included, without limitation, fees for bank account services and fees for Stretto's claims administration and distribution services.

Pursuant to the Court's Orders, the Receiver has filed eight applications seeking approval of the fees and expenses she and her professionals incurred during the first through eighth reporting periods and seeking payment of such fees and expenses from the funds the Receiver has marshaled and deposited into her fiduciary accounts pursuant to the Court's Orders. During this Reporting Period, the Receiver filed her eighth fee application, and on May 26, 2022, this Court adopted the Magistrate Judge's Report and Recommendation approving the application. *See* ECF Nos. 279 (Application); 281 (R&R recommending approval of Application); and 283 (Order adopting R&R). A detailed statement of the Estate's Receipts and Disbursements during this Reporting Period is attached hereto as **Exhibit A**. In short order, the Receiver will file an application seeking approval and payment of the fees and expenses that she and her professionals incurred during this Reporting Period.

V. CONCLUSION

The Receiver and her professionals appreciate the opportunity to assist the Court in this matter. The Receiver and her professionals will continue their efforts to fulfill the Receiver's remaining duties under the Court's Orders, with the focus on maximizing the ultimate recovery by the Estate's allowed claimants before the Receiver completes the wind down of the receivership and seeks a discharge.

Respectfully submitted this 29th day of August 2022.

Respectfully submitted,

/s/Kenneth Dante Murena
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Court-Appointed Receiver*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission via this Court's CM/ECF filing system on August 29, 2022 on all counsel or parties who have appeared in the above-styled action.

/s/Kenneth Dante Murena
Kenneth Dante Murena,
Counsel for Receiver