

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 TENTH STATUS REPORT

Melanie E. Damian, the court-appointed Receiver (the "Receiver") in the above-captioned enforcement action, submits her tenth 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 August 1, 2022, through December 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, liquidated real and personal property, including investments and cryptocurrencies, and deposited \$3,607,901.09 into the Receiver's fiduciary accounts for the Estate. 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. Then, to increase these allowed claimants' recoveries, the Receiver sought and obtained Court authority to have the unpaid portions of AIP and Gasher allowed claims submitted and allowed in the Court-approved claims process in another related binary options trading CFTC enforcement action and receivership pending in the Southern District of Florida (against Daniel Fingerhut and Digital Platinum, Inc., among defendants) in which the business operations and customers of the defendants overlapped with those in this enforcement action and receivership.

During this Reporting Period, the Receiver administered that claims process in the related receivership case and made an additional distribution to the AIP and Gasher claimants from that related case. Further, the Receiver continued to prosecute her claims to recover the significant fraudulent transfers that AIP had made to Yahia Meftah Sole Prop. and Zak Meftah in the action that was transferred to the Northern District of California. Such claims are the only unliquidated claims of the Estate and that action is the only remaining recovery action in this case.

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].

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

In a prior reporting period, the Receiver 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 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 September 28, 2022, the Receiver filed a motion seeking authority to make a *pro rata* initial distribution to this Estate's claimants from the Fingerhut Estate, and the Court approved that Motion on October 13, 2022. *See* Fingerhut Case at ECF Nos. 326 (Motion) and 327 (Order). The Receiver then sent distributions equal to 45% of each claimant's unpaid, allowed claim. Therefore, claimants in this case have recovered 42.4% of their allowed claim from this Receivership Estate and an additional 45% of the unpaid balance on their allowed claims from the Fingerhut Case for a total recovery to date of just over 68% of their allowed claim amounts.

All distributions were sent from the Receiver's Fingerhut Case distribution account by November 13, 2022, by check, wire transfer, or PayPal transfer depending on the payment method selected by the claimant. The Receiver then assisted claimants who did not receive their checks to locate their payments and canceled checks, and issued wire transfers or PayPal payments to them. As of the close of the Reporting Period, Claimants from this Estate were sent distributions from the Fingerhut Case totaling \$1,807,062.46. During the next reporting period, the Receiver will work with claimants to assist them in receiving and depositing all Court-approved distributions.

After the Receiver completes the one remaining recovery action (mentioned above and 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.

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

The Receiver continued to pursue her claims against Yahia Meftah d/b/a Yahia Meftah Sole Prop. and Zak Meftah (collectively, the "Meftah Defendants") in the U.S. District Court for the Northern District of California, which held a case management conference on August 19, 2022. On August 24, 2022, the Meftah Defendants filed a Motion to Dismiss the Receiver's Second Amended Complaint [Case No. 3:22-cv-02573-JCS at ECF No. 118], alleging, among other things, expiration of the statute of limitations, which Motion was fully briefed by September 14, 2022. *See* Case No. 3:22-cv-02573-JCS at ECF Nos. 121 and 122.

On November 11, 2022, the District Court held a hearing on the Meftah Defendants' Motion to Dismiss and a second case management conference. During the hearing, the Court directed the Receiver to submit a declaration stipulating to the date that the Receiver and/or the Receiver's forensic accountants first received bank statements indicating that fraudulent transfers had occurred. On November 9, 2022, the Receiver filed a supplemental brief in support of her response to the Meftah Defendants' Motion to Dismiss [Case No. 3:22-cv-02573-JCS at ECF No. 128], and declarations from the Receiver's forensic accountant and paralegal who received the CFTC's production acknowledging the dates of receipt of the subject bank statements from CFTC. *See* Case No. 3:22-cv-02573-JCS at ECF Nos. 128-1 and 128-2.

Thereafter, the Court entered an Order granting the Meftah Defendants' Motion to Dismiss as to the Receiver's claims against Yahia Meftah Sole Prop. (the initial fraudulent transferee) but denied their Motion as to the Receiver's claims against Zak Meftah (the ultimate fraudulent transferee), and directed the parties to engage in discovery.

D. The Receiver's Periodic Status Reports

On August 29, 2022, the Receiver filed Receiver's Ninth Status Report. *See* ECF No. 284.

E. Receiver's Financial Advisor, Forensic Accountants, and Tax Professionals

During the initial reporting period, the Receiver retained Kapila Mukamal LLP ("Kapila") as her financial advisor, forensic accountants, and tax professionals to assist her to fulfill her duties under the Appointment Order. During the Reporting Period, Kapila assisted the Receiver by preparing a declaration regarding the dates Kapila had received certain bank records from the CFTC, among other facts relevant to the Meftah fraudulent transfer action.

IV. CASH ON HAND AND ADMINISTRATIVE EXPENSES OF ESTATE

As of the end of the Reporting Period (December 31, 2022), the Receiver held a total of \$1,105,557.34 in cash-on-hand in a fiduciary account 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 professional fees and costs, as authorized by this Court. *See* ECF 288. A detailed statement of the Estate's Receipts and Disbursements during this Reporting Period is set forth in a Standardized Fund Accounting Report attached hereto as **Exhibit A**.

Pursuant to the Court's Orders, the Receiver has filed nine interim applications seeking approval of the fees and expenses she and her professionals incurred during the first through ninth 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 ninth fee application [ECF No. 285], and on October 26, 2022, this Court adopted the Magistrate Judge's Report and Recommendation approving the application. *See* ECF No. 287 (Magistrate's Report) and ECF No. 288 (Court Order). *See* 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 9th day of March, 2023.

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 March 9, 2023, on all counsel or parties who have appeared in the above-styled action.

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