

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:18-cv-61991-BB

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

1 GLOBAL CAPITAL LLC, and
CARL RUDERMAN,

Defendants, and

1 WEST CAPITAL LLC,
BRIGHT SMILE FINANCING, LLC,
BRR BLOCK INC.,
DIGI SOUTH LLC,
GANADOR ENTERPRISES, LLC,
MEDIA PAY LLC
PAY NOW DIRECT LLC, and
RUDERMAN FAMILY TRUST,

Relief Defendants.

**RECEIVER'S MOTION FOR COURT APPROVAL OF:
(A) THE RECEIVER'S RECOMMENDATIONS CONCERNING CLAIMS;
(B) A DISTRIBUTION OF PRO RATA PERCENTAGES;
AND (C) THE RECEIVER'S PROPOSED OBJECTION SCHEDULE**

Jon A. Sale, not individually, but solely in his capacity as the Court-appointed receiver ("Receiver") for Bright Smile Financing, LLC ("Bright Smile"); BRR Block Inc. ("BRR Block"); Digi South LLC ("Digi South"); Ganador Enterprises, LLC ("Ganador"); Media Pay LLC ("Media Pay"); Pay Now Direct LLC ("Pay Now"); the Ruderman Family Trust; and the Bright Smile Trust (collectively, the "Receivership Entities"), respectfully submits this Motion for Court Approval of the Receiver's Recommendations Concerning Claims ("Motion"). *The Receiver is authorized to state that the Securities and Exchange Commission does not object to the relief requested.*

I. CLAIMS RECEIVED

Under the Court's Order Approving Claims Process ("Claims Order") [D.E. 245], all potential claimants needed to submit Proof of Claim Forms ("POC Forms") to the Receiver's office by March 3, 2020 ("Claims Bar Date"). The POC Form directed potential claimants to submit their claims in accordance with its instructions and the Claims Orders.

The Receiver received nine POC Forms (collectively, the "Claims," and each individually, a "Claim") from seven claimants (collectively, the "Claimants," and each individually, a "Claimant"). Claimant No. 7 submitted three Claims, accounting for the discrepancy between the number of Claimants and Claims.

Claimant No. 4 submitted its Claim two days after the Claims Bar Date. Based on equitable considerations, it is the Receiver's position that Claimant No. 4's late submission of this Claim should not disqualify it. It is a small Claim in comparison to the total loss, and the Receiver's counsel and the Claimant exchanged email communications before the Claims Bar Date, putting the Receiver on notice Claimant would be submitting a POC Form.

Several Claims contained incomplete information. The Receiver requested the missing information from Claimants to reduce the likelihood of having to object and to ensure Claimants received a fair and equitable opportunity to participate in distributions. While following up with Claimants was beneficial and informed the Receiver's final recommendations, it delayed the filing of this Motion by several weeks.

The Receiver's accountants and counsel reviewed each Claim, along with the supporting documentation provided by each Claimant. The Receiver relied on Claimants' sworn answers on their POC Forms and their representations in telephone calls and email correspondence, as well as

on the Receivership Entities' records, to prepare the following analysis and the attached documents.

The Receiver recommends, as discussed below, that the Court approve all the Claims in full. The Receiver has not found cause to object to any of the Claims.

II. SUMMARY OF REQUESTED RELIEF

The Receiver recommends that the Court—following notice and opportunity for objections—issue two rulings concerning the Receiver's Schedule of Claims (attached as **Exhibit A**).

First, the Receiver seeks an order from the Court **approving** the Claims listed in Exhibit A (by Claimant No.) and the corresponding amounts reflected in column 4 of Ex. A ("Approved Amounts").

Second, the Receiver seeks an order from the Court permitting a *pro rata* distribution of monies to Claimants, consistent with the percentages reflected in column 5 of Ex. A ("Pro Rata Percentages") and the distribution amounts in column 6 of Ex. A ("Proposed First Distribution Amounts").

III. ASSETS FOR DISTRIBUTION

As of May 26, 2020, the Receiver currently maintains approximately \$7,255,098.03 in the Receivership account. As the Receiver is recommending approval of over \$30 million in Claims, there are currently insufficient funds in the Receivership Estate to pay Claimants in full. The Receiver therefore proposes to distribute funds to Claimants based on a *pro rata* basis, with such percentages calculated in Ex. A.

The Receiver proposes to make a first distribution as soon as practicable, but no later than 30 days after the Court enters a final order on the Receiver's recommendations and Claimant

objections, if any. In this Motion, the Receiver seeks to distribute, *pro rata*, \$5,500,000.¹ The Receiver believes that sufficient funds (approximately \$1,750,000) will remain after the first distribution to complete the recovery efforts and administration of the Receivership, cover any unforeseen costs, and for the balance to be included in a meaningful second and final distribution closing out the Receivership.

IV. RECEIVER'S RECOMMENDATIONS

A. Receiver's Recommendations for Approved Amounts on Exhibit A

The Schedule of Claims (Ex. A) identifies, among other things: (1) Claimants by Claimant No.;² (2) whether the Receiver recommends approval; (3) the amount each Claimant has claimed; (4) the Receiver's proposed Approved Amount for each Claim; (5) the Pro Rata Percentage of each Claim; and (6) the amount of the proposed first distribution to each Claimant.

The Receiver recommends approval of all Claims.

B. Description of Claims

Claimant No. 1, a liquidating trust, submitted the largest Claim to the Receiver, totaling over \$30 million. This Claim represents approximately 99.7% of the total claimed amount. The Receiver recommends approval of this Claim in full, having confirmed the claimed amount is due and owing through the analysis described above.

¹ The Receiver recommends that any proposed distribution provided by this motion that goes unclaimed after six months following the date of distribution be included in the reserve for later distribution.

² The Receiver has made every effort to keep the identities of Claimants confidential throughout this case. As part of that effort, the Receiver uses Claimant No.'s on the Schedule of Claims, rather than names.

Claimant No.'s 2, 4, 5, and 6 all provided services to Bright Smile or Bright Smile's customers before the Receivership, without receiving compensation in return.³ The Receiver recommends approval of these Claims in full, having either confirmed the claimed amounts are due and owing through the analysis described above, or having determined that further review and analysis would not be prudent given the cost-benefit analysis of such an undertaking.

Claimant No. 3 is a former Bright Smile employee. Claimant No. 3 submitted a \$6,163.90 claim for commissions which Claimant No. 3 allegedly earned but was never paid during her time at Bright Smile. Claimant No. 3 provided the Receiver with documentation evidencing her historical receipt of commissions while employed at Bright Smile. The Receiver recommends approval of this Claim in full, having confirmed the claimed amount is due and owing through the analysis described above.

Claimant No. 7 submitted three Claims to the Receiver. Claimant No. 7 entered into assignment contracts with three of Bright Smile's service providers. Under those contracts, Claimant No. 7 bought the three providers' claims. Claimant No. 3 provided the Receiver with substantial documentation related to the assignments, including the contracts and other materials. The Receiver recommends approval of these Claims in full, having confirmed the claimed amounts are due and owing through the analysis described above.

³ As described in the Receiver's filings in this action, Bright Smile, a Receivership Entity, made loans for consumers to receive various dental and cosmetic procedures. Bright Smile's loans averaged from \$3,000 to \$4,000, but did not exceed \$10,000, and were for terms no longer than 24 months. Most borrowers made monthly payments on the loans through ACH transactions. Bright Smile is the only Receivership Entity that had ongoing, daily business operations at the time of the Receiver's appointment. After the Receiver's appointment, Bright Smile's business was limited solely to collecting outstanding loans. Bright Smile discontinued making new loans before the Receivership, around the time of 1 Global's bankruptcy.

C. Receiver's Recommendation for Pro Rata Percentage Amounts and Proposed First Distribution Amounts on Exhibit A

The Receiver recommends that the Court authorize the Pro Rata Percentages determined for each Claimant, reflected in column 5 of Ex. A, pending resolution of any objections. The Receiver determined each Claimant's Pro Rata Percentage by dividing each Claimant's claimed amount by the total amount of funds available for distribution.

The Receiver also recommends that the Court authorize the Proposed First Distribution Amounts to each Claimant, reflected in column 6 of Ex. A. The Receiver calculated the Proposed First Distribution Amounts by multiplying each Claimant's Pro Rata Percentage by the total proposed amount of the first distribution, \$5,500,000.00.

In sum, the Receiver respectfully requests that the Court enter an order approving the distribution of monies, reflected in column 6 of Ex. A, to Claimants, based on their Pro Rata Percentages.

V. PROPOSED OBJECTION PROCEDURE FOR DISPUTED CLAIMS

By returning executed POC Forms to the Receiver, all Claimants have submitted to the exclusive jurisdiction of this Court to resolve their claims, and the Court may conduct all necessary procedures and discovery. *Alexander v. Hillman*, 296 U.S. 222, 238-239 (1935).

The Receiver proposes that it is sufficient notice to e-mail Claimants (using their most recent contact information) a copy of this Motion, the proposed Order on Objection Procedure (attached as **Exhibit B**) (the "Objection Procedure Order"), their Claim numbers, and a written notice stating that deadlines for objections will be set by the Court.

The Receiver also proposes publishing this Motion, Objection Procedure Order, and the same written notice (without the identifying Claimant information) on the Receivership website at www.1globalreliefdefendants.com.

The Receiver recommends that the Court adopt the following objection procedure (“Objection Procedure”):

First, the Receiver recommends that Claimants have 20 days from the entry of the Court’s order approving the Objection Procedure to respond in writing to the Receiver’s recommendations. Claimants shall both file their objections with the Court and serve their objections to the Receiver by email, care of Christopher Cavallo, Esq. (chris.cavallo@nelsonmullins.com) and Trish Anzalone (trish.anzalone@nelsonmullins.com). The Receiver proposes that the Court approve his recommendations and find that any non-objecting Claimants’ rights to object have been irrevocably waived.

Second, the Receiver proposes that he have 20 days to submit responses to timely filed Claimant objections.

Third, the Receiver recommends that the Court, if necessary, set a hearing date to resolve objections and rule on the Receiver’s recommendations. The Receiver respectfully requests that the hearing be set for a date as soon as possible after the Receiver’s response to objections is due.

VI. SUPPORT FOR RECEIVER’S RECOMMENDATIONS

This Court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986). “[I]t is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.” *Id.*, citing *SEC v. Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978) and *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982) (a court overseeing a receivership is given “wide discretionary powers” because of “the concern for orderly administration”).

A. The Court's Use of Summary Proceedings Is Appropriate In Receivership Actions

Claimants opportunity to object to this Motion provides sufficient due process. The use of summary proceedings in equity receiverships, as opposed to plenary proceeding, is within the jurisdictional authority of the federal district courts. *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992); *Hardy*, 803 F.2d at 1040. “A summary proceeding reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets.” *Elliot*, 953 F.2d at 1566 (citation omitted). Summary proceedings may be used to allow, disallow and subordinate claims of creditors. *Hardy*, 803 F.2d at 1040. “[A] district court does not generally abuse its discretion if its summary procedures permit parties to present evidence when facts are in dispute and to make arguments regarding those facts.” *Elliot*, 953 F.2d 1567.

As a party to these summary proceedings, the Receiver may make recommendations to the Court in connection with distributions, and the Court may adjudicate any Claimant's objection. By filing their claims with the Receiver, Claimants have submitted themselves to the jurisdiction of this Court. *Alexander v. Hillman*, 296 U.S. 222, 238 (1935).

The Receiver believes these summary proceedings strike a proper balance between distributing the assets of the Receivership efficiently and providing all Claimants an opportunity to be heard on the distribution of those funds. The Claimants' due process rights are met by providing all Claimants notice and an opportunity to object to the Receiver's recommendations.

B. Pro Rata Distribution Of The Receivership Estate Is Equitable And Appropriate

The task of formulating a proper distribution plan is a sensitive undertaking because a plan that is “equitable” might not necessarily be popular with all Claimants. Federal law is clear, however, that securities receiverships, such as the instant proceeding, are governed by equitable

principles. *Elliot*, 953 F.2d 1560, 1572 (11th Cir. 1992); *SEC v. First Sec. Co.*, 528 F.2d 449, 454 (7th Cir. 1976); *SEC v. Credit Bancorp, Ltd.*, 194 F.R.D. 457, 464 (S.D.N.Y. 2000) (“the fundamental principal of a [receivership] distribution plan is that it should be equitable and fair, with similarly-situated investors treated alike”).

Under these principles, the Court may distribute the assets of a receivership estate in a manner that is fair and equitable to all the creditors. *See Elliot* at 1569-70. As with many fraudulent schemes, some assets may be “fortuitously identifiable by virtue of the liquidation or encumbering of the assets of [other investors],” but the traceability of a claimant’s funds does not distinguish that claim in a legally cognizable way. *See SEC v. Credit Bancorp*, 194 F.R.D. at 463; *See United States v. Real Property*, 89 F.3d 551, 552, 553 (9th Cir. 1996) (holding that it is inequitable to allow creditors to use tracing fictions to recover full amount of its claim at expense of equally innocent fraud victims).

As reported, there is one type of conduct at the core of this fraudulent scheme. Defendants were engaging in ongoing violations of the federal securities laws through their illegal activities in connection with their operation of 1 Global and the Receivership Entities. The investment raising activity and the operations of 1 Global and the Receivership Entities were under the control and direction of Defendants.

The Receiver’s investigation reveals that Defendants commingled funds in the various accounts of the Receivership Entities and related entities. Thus, all Claimants should share equally in the pooled assets in accordance with the Receiver’s distribution plan.

VII. CONCLUSION

The Receiver requests that this Court enter the proposed Objection Procedure Order, attached as **Ex. B**, establishing the Objection Procedure recommended in Section V above.

The Receiver respectfully requests that this Court, after the time for objections has passed, enter an order approving: (1) the Receiver's Recommendations Concerning Claims; (b) the proposed Pro Rata Percentages; (c) the Proposed First Distribution Amounts; and (d) any such other relief as is just and proper.

Dated: June 2, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

s/Daniel S. Newman
Daniel Newman

SERVICE LIST

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EXHIBIT A – Schedule of Claims

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Claimant No.	Claim No.	Claimed Amount	Approved Amounts	Pro Rata Percentage	Proposed First Distribution Amount
1	1-1	\$ 31,719,330.36	\$ 31,719,330.36	99.704 %	\$ 5,483,707.76
2	2-1	\$ 650.00	\$ 650.00	00.002 %	\$ 112.37
3	3-1	\$ 6,163.90	\$ 6,163.90	00.020 %	\$ 1,065.63
4	4-1	\$ 3,281.85	\$ 3,281.85	00.010 %	\$ 567.37
5	5-1	\$ 8,869.20	\$ 8,869.20	00.028 %	\$ 1,502.21
6	6-1	\$ 7,666.80	\$ 7,666.80	00.024 %	\$ 1,325.45
7	7-1	\$ 50,790.40	\$ 50,790.40	00.160 %	\$ 8,780.76
7	7-2	\$ 1,800.00	\$ 1,800.00	00.004 %	\$ 311.19
7	7-3	\$ 15,196.80	\$ 15,196.80	00.048 %	\$ 2,627.26
TOTALS		\$ 31,813,569.31	\$ 31,813,569.31	100 %	\$ 5,500,000.00

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1 GLOBAL CAPITAL LLC, and
CARL RUDERMAN,

Defendants, and

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DIGI SOUTH LLC,
GANADOR ENTERPRISES, LLC,
MEDIA PAY LLC
PAY NOW DIRECT LLC, and
RUDERMAN FAMILY TRUST,

Relief Defendants.

**ORDER APPROVING RECEIVER'S
RECOMMENDATION FOR OBJECTION PROCEDURE**

This matter comes before the Court on the Receiver's Motion for Court Approval of the Receiver's Recommendations Concerning Claims ("Motion"), filed on June 2, 2020, ECF No. [__]. The Securities and Exchange Commission does not object to the relief sought by the Receiver in the Motion.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The objection procedure proposed by the Receiver in the Motion, ECF No. [__], is **GRANTED**;
2. The Court approves the Receiver's recommended objection procedure as follows:

- a. Claimants shall have 20 days from the entry of this Order to respond in writing to the Receiver's Motion. Claimants shall both file their objections with the Court and serve their objections to the Receiver by email, care of Christopher Cavallo, Esq. (chris.cavallo@nelsonmullins.com) and Trish Anzalone (trish.anzalone@nelsonmullins.com).
- b. If a Claimant does not object within the time frame provided, the Receiver's recommendations will be deemed sustained with prejudice as to that Claimant, and the right of that Claimant to object will be deemed irrevocably waived.
- c. Within 20 days of the deadline for Claimant objections (*i.e.*, by _____, 2020), the Receiver shall file his responses to timely filed Claimant objections.
- d. To the extent necessary, the Court may set a hearing for a date after the Receiver's deadline to file responses.
- e. The Receiver shall serve a copy of this Order on each Claimant by email, using the most recent contact information available to him, and shall post a copy of this Order on the Receivership website.

DONE AND ORDERED in Chambers at Miami, Florida on _____, 2020.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record