

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 SEVENTH STATUS REPORT

Jon A. Sale, not individually, but solely in his capacity as the Court-appointed receiver (the "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 Seventh Status Report covering the period of August 21, 2020 through April 13, 2021 ("Reporting Period").

I. INTRODUCTION

The Receiver and his retained professionals achieved significant results for the benefit of the Receivership Estate during the Reporting Period by: (1) negotiating, litigating, and settling clawback (fraudulent transfer) claims against several third-parties; and (2) attending to general maintenance of the Receivership.

II. RECEIVER'S APPOINTMENT AND DUTIES

On August 23, 2018, the United States Securities & Exchange Commission ("SEC") initiated this action against Defendants 1 Global Capital, LLC ("1 Global") and Carl Ruderman, and Relief Defendants 1 West Capital LLC ("1 West"), Bright Smile, BRR Block, Ganador, Media Pay, Pay Now, and the Ruderman Family Trust. [D.E. 1]. The SEC alleges that Defendants engaged in a four-year long unregistered securities fraud totaling more than \$287 million, victimizing thousands of investors nationwide. *Id.*, ¶ 1. The SEC seeks, among other relief, permanent injunctive relief, civil penalties, and disgorgement. *Id.*, pp. 33-34. The same day, the SEC requested an asset freeze and the appointment of a receiver over Relief Defendants Bright Smile, BRR Block, Digi South, Ganador, Media Pay, and Pay Now. [D.E. 6; D.E. 7]. The Court entered a sealed order appointing Jon A. Sale, Esq. as Receiver for the Receivership Entities (the "Receivership Order").¹ [D.E. 12]. The Court also entered an order freezing Defendants' assets (the "Freeze Order"). [D.E. 13].

Pursuant to the Receivership Order, the Receiver is obligated to, among other things: (1) take immediate possession of the Receivership Entities' property, assets, and estates of every kind;

¹ The Court later expanded the Receivership over the Ruderman Family Trust and the Bright Smile Trust, on November 21, 2018, and the Receivership Order is controlling over them as well. [D.E. 115.]

and (2) investigate the way the affairs of the Receivership Entities were conducted and institute actions and proceedings for the benefit of investors and other creditors. [D.E. 12, ¶¶ 1-2].

The Receivership Order requires the Receiver to prepare status reports. [D.E. 12, ¶ 3]. This Seventh Report summarizes the Receiver's and his professionals' relevant activities during the Reporting Period.

III. ACTIVITY DURING REPORTING PERIOD

On September 10, 2020, the Receiver filed his Sixth Status Report with this Court, which covered the period of March 21, 2020 through August 20, 2020. [D.E. 265]. In it, the Receiver explained the results he and his team of retained professionals achieved in connection with: (1) making a first distribution of funds to approved claimants through the Court-approved claims process; (2) recovering funds in connection with previously-reported-upon settlements; and (3) negotiating, litigating, and settling clawback actions against third-parties. *Id.*

In this Seventh Status Report, the Receiver addresses similar issues, including the updated status of clawback negotiations and litigations, the final factors associated with the Receiver's first distribution of funds to approved claimants through the claims process, and the general maintenance of the Receivership Estate.

A. Pending Litigation

1. Original Seven Lawsuits

As previously reported, on August 23, 2019, Damian & Valori LLP ("Special Counsel"), the Receiver's contingency counsel, filed seven lawsuits against defendants that received funds from the Receivership Entities (the "Clawback Actions"), including: (1) Bank of America, N.A.; (2) J.P. Morgan Chase Bank, N.A., for recovery of credit card payments; (3) J.P. Morgan Chase Bank, N.A., for recovery of mortgage payments; (4) Citibank, N.A.; (5) Mercedes Benz Financial

Services, USA, LLC (“Mercedes Benz”); (6) American Express Company (“AmEx”); and (7) Ferrari Financial Services Inc. (“Ferrari”).

As previously reported, the Court has approved the Receiver’s settlements with three of these entities: (1) Citibank, N.A. [D.E. 246] (resulting in a greater than 60% recovery for the Receivership); (2) Bank of America, N.A. [D.E. 248] (resulting in a 55% recovery for the Receivership); and (3) JP Morgan Chase Bank related to credit card payments [D.E. 250] (resulting in a 59% recovery for the Receivership). The Receiver has obtained settlement funds from all three of these entities.

In this Reporting Period, the Receiver obtained additional Court-approved settlements with: (1) AmEx [D.E. 270] (resulting in a 78% recovery of funds transferred to and retained by AmEx); and (2) Mercedes Benz [D.E. 269] (resulting in a 52% recovery for the Receivership). Moreover, the Receiver has reached a settlement in principle with Ferrari, and a motion for approval of that settlement is forthcoming. The Receiver has obtained settlement funds from these entities.

As for the suit against J.P. Morgan Chase Bank, N.A. related to mortgage payments, the Receiver previously reported that he agreed to dismiss that action without prejudice, pending attempts to sell Carl Ruderman’s condominium. This claim is subject to a tolling agreement. The Receiver’s understanding is that the condominium has not yet sold.

2. Additional Settlements

During the Reporting Period, the Receiver also obtained Court-approval of settlements with two additional clawback entities for which no lawsuit was ever filed: (1) a law firm, which received payments made from Digi South, LLC, for a settlement amount of \$105,000 [D.E. 277] (resulting in more than a 40% recovery); and (2) Bella Vista Mid-Rise North Condo. Association

(“Bella Vista”), for monies paid to it in connection with condominium fees for Defendant Carl Ruderman’s residence, for a settlement amount of \$62,500 [D.E. 279] (resulting in more than 46% recovery). The Receiver has obtained partial payment from the law firm, with the remainder due in May 2021. The Receiver has obtained full payment from Bella Vista.

3. Lawsuit Against Jumbleberry

As previously reported, on February 19, 2020, the Receiver filed a clawback lawsuit against Jumbleberry, a Canadian entity. [Jumbleberry Docket, D.E. 1] (hereafter cited as “[JB D.E.]”). On August 6, 2020, the Receiver believed in good faith that it served Jumbleberry in accordance with the Hague Convention. It took the Receiver several months to serve Jumbleberry given COVID-19 related business closures, Jumbleberry’s prior counsel’s refusal to respond to requests to waive or accept service, and other government restrictions in Toronto, Ontario, Canada where Jumbleberry’s principal address is located.

On August 27, 2020, Jumbleberry filed a motion to dismiss the Receiver’s complaint, or in the alternative for summary judgment (“Dismissal Motion”). [JB D.E. 13]. Jumbleberry argued in its Dismissal Motion that service upon it was improper and that, notwithstanding a tolling agreement entered between the parties, the applicable statute of limitations had expired on the Receiver’s claims. The Court referred the Dismissal Motion to Magistrate Judge Edwin Torres. [JB D.E. 29]. On February 19, 2021, Magistrate Torres entered a report and recommendation (“R&R”) that the Dismissal Motion should be granted given that the Receiver had not properly served Jumbleberry under the Hague Convention. [JB D.E. 39]. Rather than quash service, Magistrate Torres dismissed the Receiver’s complaint without prejudice. Magistrate Torres did not address the statute of limitations arguments in the Dismissal Motion.

On March 5, 2021, the Receiver filed an objection to the R&R, making numerous arguments, including that service was proper under the Hague Convention, Federal Rule 4(m) does not apply in this case given Jumbleberry is a foreign defendant, and that that it was clear error to dismiss the complaint rather than quash service where Jumbleberry had raised statute of limitations arguments. [JB D.E. 40]. Jumbleberry responded in opposition to the objection on March 14, 2021. [JB D.E. 41].

On March 22, 2021, the Court entered an order sustaining the Receiver's objection to the R&R and finding that service should have been quashed as opposed to the Receiver's complaint being dismissed. [JB D.E. 45]. Since that time, counsel for the parties have agreed that Jumbleberry's counsel will accept service of the Receiver's complaint if the Receiver will agree to stay discovery pending the resolution of the remainder of the Dismissal Motion, namely Jumbleberry's statute of limitations arguments. On April 5, 2021, the parties filed a joint stipulation and agreed order to effectuate their agreement [JB D.E. 48], which was approved and entered by the Court on April 12, 2021 [JB D.E. 49].

4. Lawsuit Against Valentina Radchuk

As previously reported, on August 14, 2020, the Receiver filed a clawback lawsuit against Valentina Radchuk. The Receiver was engaged in settlement discussion with Ms. Radchuk's counsel but learned in August 2020 that her counsel was no longer representing her. After several unsuccessful attempts to contact Ms. Radchuk to discuss settlement or the extension of the tolling agreement concerning claims against her, the Receiver filed suit. On September 25, 2020, the Receiver obtained a default as to this defendant for failure to answer the complaint as required by law.

Defendant Radchuk has since contacted the Receiver, claiming she went to the Ukraine to get healthcare, where she contracted Covid-19. She further claims that as a result, she was unable to answer the Receiver's Complaint. The Receiver continues to evaluate the potential recovery options for this claim and will report his conclusions to the Court in his next status report.

5. Lawsuit against Nutra Specialists, Inc.

On February 18, 2021, the Receiver filed a clawback lawsuit against Nutra Specialists, Inc. ("Nutra") for fraudulent transfers in the amount of \$617,862. The Complaint was served on Nutra on March 17, 2021. Nutra filed a motion to dismiss the Complaint on April 5, 2021, which remains pending. The Receiver is preparing a response in opposition and is also negotiating for Nutra to withdraw the motion to dismiss given that the Receiver takes issue with representations in it.

6. Remaining Potential Litigation

Rather than initiating litigation, when able the Receiver has entered into tolling agreements to provide the parties the opportunity to further investigate and discuss a consensual resolution of potential claims relating to subject transfers received from the Receivership Entities (collectively the "Tolled Entities"). At this time, the Receiver's counsel is no longer engaged in settlement discussions with any known Tolled Entities and has instituted litigation against, or settled with, all known Tolled Entities.

B. Claims Process and First Distribution

As previously reported, in or about early August 2020, the Receiver made distribution payments to approved claimants. There remains one claimant who has failed to cash its distribution payment. The Receiver's counsel and paralegal spoke with the claimant and has initiated a cancellation of the check to this claimant. The Receiver will issue this claimant a replacement

check. The Receiver anticipates making a second and final distribution to all claimants after closing out all clawback litigation.

IV. BANK ACCOUNTS

In connection with his duty to marshal the Receivership's assets, the Receiver opened Receivership bank accounts at BankUnited. The following is a list of bank accounts and their corresponding balances:²

Jon Sale as Receiver for Bright Smile Financing, LLC	\$ 607,601.82
Jon Sale as Receiver for Ganador Enterprises LLC	\$2,067,781.25
Jon Sale as Receiver for BRR Block Inc.	\$ 586,747.49
Jon Sale as Receiver for Pay Now Direct LLC	\$ 326,097.85
<u>Jon Sale as Receiver for Digi South LLC</u>	<u>\$ 206,417.78</u>
TOTAL	\$3,794,646.19

V. ASSET IDENTIFICATION

A. Bright Smile

As explained in the Receiver's prior reports, the Receiver sold Bright Smile's assets to Buyers, which sale was approved by the Court on February 20, 2019. The Receiver has investigated whether there are any additional claims or other sources of recovery available as it relates to Bright Smile. Currently, the Receiver does not believe there are any additional claims or other sources of recovery related to Bright Smile.

B. BRR Block

The Receiver has liquidated most of the Receivership's digital currency holdings, which were purchased using funds from BRR Block. The Receiver retained a digital currency consultant to assist with the liquidation, as approved by the Court on October 15, 2019 [D.E. 240]. The

² The account balances are as of the afternoon of March 30, 2021.

Receiver is strategizing with the consultant to determine the most effective means of liquidating the remaining crypto currencies, last valued at approximately \$15,000-\$20,000.

C. Digi South

As explained in prior reports, the Receiver's professionals investigated Digi South to identify possible sources of recovery for the benefit of the Receivership Estate. The Receiver obtained tolling agreements from several entities that received transfers from Digi South, which are included within the Tolled Entities. The Receiver has settled all known litigation related to Digi South. Currently, the Receiver does not believe there are any additional claims or other sources of recovery related to Digi South.

D. Media Pay

The Receiver's professionals investigated Media Pay and reviewed related documents to locate possible sources of recovery for the benefit of the Receivership Estate. The Receiver is pursuing the claims that he believes are currently in the best interests of the Receivership Estate. The Receiver's lawsuit against Jumbleberry is for recovery of fraudulent transfers the Receiver contends were made by Media Pay. That lawsuit is pending. The Receiver's lawsuit against Nutra, filed on February 18, 2021, is also for recovery of fraudulent transfers the Receiver contends were made by Media Pay. Currently, the Receiver does not believe there are any additional claims or other sources of recovery related to Media Pay.

E. Pay Now

As explained in the Receiver's prior reports, there are no remaining assets related to Pay Now. Pay Now never had any business operations and was only used to pay Defendant Ruderman's personal and family expenses including his mortgage and condominium related fees. Pay Now had a bank account at Bank of America, which was closed in early August 2018 before the Receiver's

appointment. The bank account contained approximately \$2,348.00, which funds were remitted by 1 Global representatives to the Receiver after the Receiver's appointment. The cash was transferred to a Receivership bank account.

As stated above, the Receiver has a tolling agreement with J.P. Morgan Chase Bank, N.A. The Receiver has not initiated litigation against the Bank, pending attempts to sell Carl Ruderman's condominium. The Receiver's understanding is that the condominium has not sold. The Receiver is determining how best to proceed. The Receiver has settled all other known litigation related to Pay Now.

F. The Ruderman Family Trust and Bright Smile Trust

The Receiver's professionals investigated the Ruderman Family Trust and Bright Smile Trust and reviewed related documents to locate other possible sources of recovery for the benefit of the Receivership Estate. Currently, the Receiver does not believe there are any additional claims or other sources of recovery.

G. Witness Interviews

As previously reported, the Receiver and his counsel interviewed several witnesses to determine whether there are any additional sources of recovery that could benefit the Receivership Estate. Those interviews were productive in providing the Receiver with information about existing and potential claims.

VI. FEES AND COSTS

The Receiver and his team are especially cognizant of the impact their professional fees have on the return of monies to defrauded investors. The Receiver and his team have worked diligently through complex issues to maximize recoveries while billing at substantially discounted rates. In addition, the Receiver has sought to work collaboratively with the SEC and 1 Global in

sharing information, identifying recovery sources and targets, and reducing duplication of efforts. Thus far, the Receiver has utilized his and his team's collective experience to avoid costly litigation while also securing significant cash recoveries. In certain instances where litigation has become necessary, the Receiver has obtained counsel to pursue those claims under a contingency fee agreement, where such counsel only receives payment for fees if there is a recovery to the Receivership Estate.

CONCLUSION

The foregoing is a summary of the Receiver's and his retained professionals' activities during the Reporting Period. Further information is available upon request. The Receiver will be filing additional reports with the Court on a quarterly basis, as required by the Receivership Order.

Dated: April 14, 2020.

NELSON MULLINS BROAD AND CASSEL

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2021, 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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