

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 THIRD 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 (the "Receivership Entities"), respectfully submits this Third Status Report covering the period of March 1, 2019 through July 10, 2019 (the "Reporting Period").

I. INTRODUCTION

The Receiver and his professionals achieved significant results for the benefit of the Receivership Estate during the Reporting Period by recovering millions of dollars in funds in connection with the previously-reported-upon sale of Bright Smile's assets and settlement of claims related to Ganador. In addition, among other things, the Receiver: (1) began the process of planning a claims process for distribution of recovered funds; (2) continued litigation against Bridge Bank regarding reciprocal requests for an award of attorneys' fees; and (3) issued subpoenas and continued to investigate potential claw-back actions against non-parties.

In sum, during this Reporting Period, the Receiver recovered portions of a total anticipated approximate \$10 million recovery related to Bright Smile and Ganador. During the Reporting Period, the Receiver also has defended against claims by Bridge Bank seeking attorneys' fees, asserted his own claim for attorneys', and sought and obtained the release of certain funds held by Bridge Bank, which monies were previously held as alleged collateral in connection with automated clearing services it performed for Bright Smile.

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: (i) take immediate possession of the Receivership Entities’ property, assets, and estates of every kind; and (ii) investigate the manner in which 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 quarterly status reports. [D.E. 12, ¶ 3]. This Second Report summarizes the Receiver’s and his professionals’ relevant activities during the Reporting Period.

III. ACTIVITY DURING REPORTING PERIOD

On March 12, 2019, the Receiver filed his Second Status Report with this Court, which covered the period of November 13, 2018 through February 28, 2019. [D.E. 172]. In it, the Receiver explained the results he and his team of retained professionals achieved in connection with: (1) the sale of certain Bright Smile’s assets; (2) the settlement of claims held by Ganador; and (3) the conflict with Bridge Bank regarding Bright Smile’s ongoing operations and related accounts.

In this Third Status Report, the Receiver addresses similar issues including recoveries in connection with the aforementioned sale of Bright Smile assets and the settlement of claims held

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.]

by Ganador, as well as continued litigation with Bridge Bank over competing claims for attorneys' fees and costs. The Receiver also addresses discovery and investigation of potential claw-back litigation, the litigation between the SEC and Carl Ruderman, the anticipated claims process, and the impact on the Receivership Estate of 1 Global's Joint Plan of Liquidation of 1 Global Capital and 1 West Capital LLC under Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors (the "Plan.

A. Recoveries Related to Bright Smile Asset Sale

As previously reported, on January 17, 2019, the Receiver and specified third parties ("Buyers") agreed to and finalized the Purchase and Sale Agreement memorializing the terms of sale of certain of Bright Smile's assets to Buyers (the "PSA"), subject to Court approval. On January 21, 2019, the Receiver filed his Motion to Approve Bright Smile Asset Sale and Purchase Agreement (the "Motion for Approval"), [D.E. 132], attaching a copy of the PSA. In the Motion for Approval the Receiver set forth the essential terms of the sale of certain of Bright Smile's assets to Buyers, as memorialized in the PSA, including:²

- Buyers agreed to pay the Receiver a total purchase price of \$3 million, to be paid as follows:
 - \$150,000 deposit upon execution of PSA and filing of the Motion for Approval, to be released at closing;
 - A minimum of \$900,000 on closing paid towards the purchase of the loan portfolio; and
 - The remaining \$1,950,000³ to be paid towards the purchase of the loan portfolio over 14 months;

² The following is only a summary of the salient terms of the PSA. Additional terms are described in the Motion for Approval and the PSA itself.

³ \$1,950,00 was calculated based upon a \$3 million purchase price minus a deposit of \$150,000 and the payment of \$900,000 at closing. Any additional funds over the \$900,000 received by the Receiver at closing reduced the purchase price dollar for dollar, as reflected in the amended payment schedule filed with the Court on March 7, 2019. [D.E. 168].

- If a release from 1 Global is not received within 90 days of January 17, 2019, the purchase price is reduced by \$250,000, accomplished by reducing and eliminating payments owed over the 14 months; and
- Bright Smile's assets were sold "as is/where is" without any representations, warranties, or covenants made by the Receiver or his professionals.⁴

After the Receiver spent significant time and money dealing with Bridge Bank's objection to the sale, [*see* D.E. 172, pp. 6-7], the Court entered an order approving the sale to Buyers (the "Approval Order") on February 20, 2019. [D.E. 162]. The Receiver and Buyers closed on the transaction two days later, on February 22, 2019. The Receiver filed a notice alerting the Court to the closing on February 25, 2019.⁵ [D.E. 166].

To date, Buyers have complied with the PSA and made payments as scheduled. On February 26, 2019, one day after the closing, \$996,053.97 of the expected \$3 million purchase price was transferred to Bright Smile's Receivership bank account at BankUnited. Since that time, the Receiver has recovered an additional \$744,377.32 in payments related to the sale of Bright Smile's assets.⁶

The Receiver anticipates an additional approximately \$1 million in recoveries related to the sale of Bright Smile's assets over the next eight months, as set forth under the terms of the PSA.⁷

⁴ The Receiver came to no conclusions as to the validity or enforceability of the loan portfolio.

⁵ As noted, the Receiver and Buyers entered into the Second Amendment to the PSA on March 7, 2019, which made a minor modification to the payment schedule. [D.E. 168].

⁶ As further discussed below, the Receiver also recovered \$2,517,463.12 on May 28, 2019, and \$501,572.70 on July 9, 2019, related to the alleged cash collateral Bridge Bank was holding in connection with its clearing services on behalf of Bright Smile.

⁷ Because 1 Global opted not to release Buyers, the purchase price was reduced by \$250,000, to \$2,750,000.

B. Recoveries Related to Ganador Settlement

As previously reported, on December 10, 2018, the Receiver agreed to and finalized a written settlement agreement (the “Ganador Settlement”) with Unified Analytics, LLC (“Unified”) and National Techmark Inc. (“Techmark”), subject to Court approval. On December 12, 2018, the Receiver filed his Motion to Approve the Ganador Settlement (the “Ganador Motion”), [D.E. 120], including a copy of the Ganador Settlement. In the Ganador Motion, the Receiver set forth the essential terms of the Ganador Settlement, including among other things:⁸

- Total payment to the Receiver of \$4,000,000;
- \$750,000 paid by Unified and Techmark “up front”;
- The remaining \$3,250,000 to be paid within 13 months, with monthly interest payments of \$20,312.50 paid during the interim;
- The Receiver received a blanket security interest in Unified and Techmark’s assets to secure their payment;
- In the event of default, Unified and Techmark receive 5 days’ written notice to cure; and
- If Unified and Techmark fail to satisfy any default within 5 days, Unified and Techmark consent to entry of an order expanding the Receivership over them, and the Receiver may seek recourse in the collateral provided by the security interests.

On December 27, 2018, the Court entered its order approving the Ganador Settlement. [D.E. 124].

To date, Unified and Techmark have complied with the Ganador Settlement and made payments required thereunder. The first interest payment of \$20,312.50 was made to the Receiver on February 26, 2019. The \$750,000 “up front” payment was made to the Receiver on March 21, 2019, and additional interest payments, each in the amount of \$20,312.50, were made to the

⁸ The following is only a summary of the salient terms of the Ganador Settlement. Additional terms are described in the Ganador Motion and Ganador Settlement itself.

Receiver on March 29, 2019, April 29, 2019, May 23, 2019, and June 27, 2019. In total, the Receiver has recovered approximately \$851,562.50 in connection with the Ganador Settlement, for the benefit of the Receivership Estate.

C. Litigation with Bridge Bank

The Receiver's Second Status Report describes the Receiver's successful resolution of various conflicts with Bridge Bank. [D.E. 172, pp. 8-10]. Unfortunately, the Receiver's conflicts with Bridge Bank continued through this Reporting Period.

On April 5, 2019, allegedly in accordance with Local Rule 7.3, Bridge Bank served the Receiver with its Verified Motion to Offset Cash Collateral to Recover Its Attorney's Fees and Costs (the "Bank's Motion for Fees"). Counsel for the Receiver and Bridge Bank met and conferred on multiple occasions during the 21-day safe harbor period, both in-person and otherwise, in an attempt to resolve the Bank's Motion for Fees. Those efforts were unsuccessful. Thereafter, on April 29, 2019, Bridge Bank filed the Bank's Motion for Fees. [D.E. 181].

On May 13, 2019, the Receiver filed his response in opposition to Bridge Bank's Motion for Fees. [D.E. 186]. As explained in detail in his response, it is the Receiver's position that the Bank's Motion for Fees should be denied because: (1) the Receiver did not assume the Banking Agreements; (2) the fees and costs sought did not benefit the Receivership Estate; (3) the fees and costs sought were unnecessary and incurred in bad faith; (4) the Bank failed to comply with the spirit of Local Rule 7.3; and (5) the fees and costs sought are unreasonable considering the market, legal community, and the *Johnson* factors. Indeed, the Receiver contends that the attorneys' fees Bridge Bank incurred in this matter were directly attributable to its unreasonable and overly aggressive tactics. The positions Bridge Bank took were not based on solid factual or legal predicates, and Bridge Bank totally dismissed the Receiver's efforts to maximize the Bright Smile

recoveries for those investors whose collective investment of approximately \$280 million was caught up in the 1 Global fraudulent investment scheme.

The following is a chronological summary of other filings made in connection with this dispute:

- On May 14, 2019, in compliance with Local Rule 7.3, the Receiver served Bridge Bank with his Verified Motion for Attorney's Fees and Costs Incurred in Connection with Bridge Bank Disputes (the "Receiver's Motion for Fees").
- On May 15, 2019, the SEC joined in the Receiver's opposition to the Bank's Motion for Fees. [D.E. 187]. Therein, the SEC requested that the Court compel the Receiver and Bridge Bank to mediation to resolve their competing requests for attorneys' fees.⁹
- On May 20, 2019, Bridge Bank filed its reply in support of the Bank's Motion for Fees. [D.E. 188].
- On May 29, 2019, Bridge Bank filed its Motion for Comfort Order Authorizing Retention of Portion of Cash Collateral pending ruling on the Bank's Motion for Fees. [D.E. 192]. In this filing, Bridge Bank sought leave to retain \$500,000 belonging to the Receivership Estate in contravention of the Court's previous orders on the issue, including the Approval Order.
- On June 5, 2019, the Court ordered the Receiver and Bridge Bank to mediation related to their competing requests for attorney's fees. [D.E. 195].
- On June 6, 2019, the Receiver filed his Motion for Fees against Bridge Bank. [D.E. 198].
- On June 7, 2019, Bridge Bank filed its response in opposition to the Receiver's Motion for Fees. [D.E. 199].
- On June 12, 2019, the Receiver filed his response in opposition to the request for comfort order. [D.E. 201]. Among other things, the opposition reflected Bridge Bank's refusal to the Receiver's good faith compromise that the \$500,000 at issue be held in the trust account of either the Receiver's counsel or Bridge Bank's counsel.

⁹ At that point, the Receiver had served his own motion for attorneys' fees against Bridge Bank but had not yet filed it pursuant to Local Rule 7.3.

- On June 14, 2019, the Receiver filed his reply in support of the Receiver's Motion for Fees. [D.E. 202].
- On June 21, 2019, the Receiver and Bridge Bank filed their notice of mediator selection and mediation. [D.E. 207].
- On June 24, 2019, the Court entered its order scheduling mediation on August 28, 2019 with Harry Schafer. [D.E. 208].
- On July 8, 2019, the Court entered an order denying Bridge Bank's Motion for Comfort Order, finding the Bank violated the Court's Approval Order by refusing to return \$500,000 in funds belonging to the Receivership Estate. [D.E. 211].

To date, the Receiver has recovered approximately \$3,000,000.00 that Bridge Bank was holding as alleged cash collateral in connection with clearing house services to Bright Smile, as follows: (1) on May 28, 2019, Bridge Bank wired the Receiver \$2,517,463.12; and (2) on July 9, 2019, Bridge Bank wired the Receiver the remaining \$501,572.70, which it was improperly withholding in violation of the Court's orders. [*See* D.E. 211].

The Receiver and Bridge Bank will prepare a joint report after mediation is completed and by no later than September 4, 2019. If mediation is not successful, the Receiver anticipates that an evidentiary hearing and expedited discovery schedule will be necessary to resolve the competing motions for attorneys' fees.

D. Anticipated Claims Process and 1 Global Bankruptcy

On June 17, 2019, 1 Global filed its Plan and Disclosure Statement. The hearing to approve the Disclosure Statement is set for July 24, 2019. A hearing on confirmation of the Plan will be set upon approval of the Disclosure Statement.

In respect to the Receivership, the Plan as currently constituted contemplates that the Receiver will conduct his own Court supervised claims administration process in the Receivership case. 1 Global, which is the Receivership's largest creditor, will receive its distribution through

this claims administration process, and will subsequently distribute the proceeds received through the Receivership to 1 Global's creditors through a liquidating trustee who will be appointed and governed by a liquidating trust.

It is currently anticipated that the Receiver will support confirmation of the 1 Global Plan. The Receiver anticipates initiating the claims process by submitting a motion for approval of the claims process to the Court within the next several months.

E. Receiver's Discovery and Potential Litigation

The Receiver continues to request and review documents received from non-parties to analyze and investigate potential sources of recovery, including claw-back (fraudulent transfer) claims. To date, tens of thousands of documents have been produced in response to the Receiver's requests, all of which the Receiver's professionals are in the process of reviewing and analyzing. The Receiver anticipates the production of additional documents by the end of July in response to several outstanding subpoenas.

The Receiver anticipates initiating claw-back demands, and if necessary, litigation against several entities and individuals who appear to have received fraudulent transfers from Receivership Entities within the next several months.

F. Litigation Between SEC and Carl Ruderman

The SEC and Carl Ruderman continued to litigate this action during the Reporting Period, including: (1) Ruderman answering the complaint and the SEC seeking to strike his affirmative defenses [D.E. 167; 176; 177; 185; 189]; (2) various filings related to Ruderman's request for relief from the asset freeze [D.E. 169; 170; 171]; (3) the SEC moving for summary judgment [D.E. 194]; and (4) the SEC and Ruderman attending mediation [D.E. 200]. Most recently, the Court stayed

the litigation between the SEC and Ruderman to allow them to consider a proposed settlement. [D.E. 204].

The Receiver and his professionals have been involved only in certain discovery matters involving the SEC and Ruderman, to the extent necessary.

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:¹⁰

Jon Sale as Receiver for Bright Smile Financing, LLC	\$4,388,254.09
Jon Sale as Receiver for Ganador Enterprises LLC	\$851,163.75
Jon Sale as Receiver for BRR Block Inc.	\$300,614.99
<u>Jon Sale as Receiver for Digi South LLC</u>	<u>\$153,983.38</u>
TOTAL	\$5,694,016.21

V. ASSET IDENTIFICATION

A. Bright Smile

As explained in the Receiver's reports, the Receiver sold Bright Smile's assets to Buyers, which sale was approved by the Court on February 20, 2019. [D.E. 162]. The Receiver is in the process of investigating whether there are any additional claims or other sources of recovery available as it relates to Bright Smile. The Receiver anticipates bringing any additional claims related to Bright Smile within the next several months.

B. Ganador

As explained in the Receiver's reports, in December 2018, the Receiver settled claims that Ganador had against Unified and Techmark, two entities to which it transferred a total of

¹⁰ The account balances are as of the afternoon of July 9, 2019.

approximately \$5.8 million. The Ganador Settlement was approved by the Court on December 27, 2018. [D.E. 124]. Currently, the Receiver does not believe there are any additional claims or other sources of recovery available as it relates to Ganador.

C. BRR Block

As explained in the Receiver's reports, the Receiver is in the process of: (1) determining how and when to liquidate the digital currencies; and (2) investigating whether there are any additional claims or other sources of recovery available as it relates to BRR Block. The Receiver continues reviewing documents and information received from several sources and anticipates retaining one or more individuals in connection with the liquidation of the digital currencies. The Receiver anticipates bringing any additional claims related to BRR Block within the next several months.

D. Digi South

The Receiver's professionals continue to investigate Digi South to locate other possible avenues of recovery for the benefit of the Receivership Estate. The Receiver anticipates bringing any additional claims related to Digi South within the next several months.

E. Media Pay

Based on the Receiver's investigation to date, there are no remaining assets related to Media Pay. Media Pay's bank account at Bank of America had a zero balance at the time of the entry of the Freeze Order. The Receiver's professionals continue to investigate Media Pay to identify other possible avenues of recovery for the benefit of the Receivership Estate. The Receiver anticipates bringing any additional claims related to Media Pay within the next several months.

F. Pay Now

As explained in the Receiver's 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 transmitted by 1 Global representatives to the Receiver after the Receiver's appointment. The cash is currently held in a lockbox by the Receiver's counsel. The Receiver will transfer those funds to a Pay Now Receivership account at Bank United once an account is opened.

The Receiver's professionals continue to investigate Pay Now and review related documents to locate other possible avenues of recovery for the benefit of the Receivership Estate, including records made available to the Receiver by 1 Global. The Receiver anticipates bringing any additional claims related to Media Pay within the next several months.

G. The Ruderman Family Trust and Bright Smile Trust

The Receiver's professionals continue to investigate the Ruderman Family Trust and Bright Smile Trust, and to review related documents to locate other possible avenues of recovery for the benefit of the Receivership Estate. The Receiver does not anticipate that this will be a time consuming or expensive process and does not believe that his efforts in this regard will be duplicative of the efforts of the SEC and 1 Global. The Receiver will work with them to avoid duplication of claims and efforts wherever possible.

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 and through complex issues to maximize recoveries while working 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, other than his disputes with Bridge Bank, the Receiver has utilized his and his team's collective experience to avoid costly litigation while also securing cash recoveries. Any litigation that may become necessary will be described in future reports.

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 continues to encourage investors and other non-parties who may be in possession of relevant information that is helpful to contact the Receiver or his counsel. The Receiver will be filing additional reports with the Court on a quarterly basis, as required by the Receivership Order.

Dated: July 16, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2019, 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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