

FILED DISTRICT COURT
Third Judicial District

DEC 28 2009

By _____
SALT LAKE COUNTY
Deputy Clerk

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Ascendus Capital Management, LCC,
and Smith Holdings, LLC

IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

R. WAYNE KLEIN, AS COURT-APPOINTED
RECEIVER FOR FFCF INVESTORS, LLC,
ASCENDUS CAPITAL MANAGEMENT,
LLC, AND SMITH HOLDINGS, LLC,

Plaintiff,

vs.

ALEX MURILLO,

Defendant.

COMPLAINT

Case No. 09092181

Judge ~~Denise P. Lindberg~~ Quinn

Plaintiff R. Wayne Klein (the "Receiver"), as duly court-appointed Receiver for FFCF Investors, LLC ("FFCF"), Ascendus Capital Management, LLC ("Ascendus"), and Smith Holdings, LLC ("Smith Holdings") (collectively the "Receivership Entities"), by and through his counsel, Manning Curtis Bradshaw & Bednar LLC, hereby files this action against Defendant Alex Murillo ("Murillo"), and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. The Receiver was appointed Receiver for the Receivership Entities by the Honorable Denise P. Lindberg, Third Judicial District Court of Salt Lake County, State of Utah, pursuant to an Order dated March 28, 2009 (the "Order"), entered in the action *A. David Barnes, M.D., P.C. v. FFCF Investors, LLC et al.*, Case No. 08922273. Pursuant to Utah Code Ann. § 48-2c-1212 (1), Judge Lindberg and the Third Judicial District Court have exclusive jurisdiction over the Receivership Entities and all of their property, wherever located.

2. Under the terms of the Order, the Receiver is authorized to investigate the affairs of the Receivership Entities, to marshal and safeguard their assets, and to institute legal proceedings for the benefit of the Receivership Entities and their investors and creditors against individuals or entities which the Receiver claims have wrongfully or improperly received funds or other proceeds from the Receivership Entities.

3. Jurisdiction and venue are properly vested with this Court pursuant to Utah Code § 78A-5-102 and Utah Code § 48-2c-1212.

4. Upon information and belief, Murillo is a resident of Utah County, State of Utah.

GENERAL ALLEGATIONS

5. Documents reviewed by the Receiver reveal that, beginning in approximately 2002, Ascendus collected millions of dollars from investors as part of a "Ponzi" scheme.¹

¹ Utah case law has defined a Ponzi scheme as "a fraudulent investment scheme in which money contributed by later investors generates artificially high dividends for the original investors, whose example attracts even larger investments." *State v. Bolson*, 2007 UT App 268, ¶ 4, 167 P.3d 539 (citing Black's Law Dictionary 1180 (7th ed.1999)).

6. Ascendus, through its agents, solicited money from investors, and told these investors to open brokerage accounts where Ascendus would have authority to buy and sell options (the "Ascendus Funds").

7. Ascendus would receive commissions based on the profits supposedly earned through its trading.

8. Ascendus regularly communicated to its investors through statements and invoices that their investments had performed positively and had not generated losses. The investors would then owe a percentage of these profits to Ascendus as commissions. These statements falsely reported profits. Over time it appears that the options trading lost money for the investors; however, Ascendus reported profits to the investors to claim its commissions through falsified account statements sent to investors.

9. Investors who attempted to withdraw alleged profits from their accounts actually withdrew portions of their remaining principal.

10. In or about 2005, Ascendus, through its agents, reported that the options market no longer provided the profitable opportunities that had existed earlier and that Ascendus would be closed down.

11. At that time, investors were told that a new investment program was being created through another entity, FFCF, and that the investors would be able to continue to realize profits through investments with FFCF, an entity operated and controlled by the same individuals that operated and controlled Ascendus.

12. Many investors in Ascendus then invested their money with FFCF.

13. Unlike the investment funds in Ascendus, investment funds in FFCF were combined into one investment pool.

14. FFCF operated as another Ponzi scheme, and over the next two years, investors began to withdraw money until the investment scheme operated by FFCF collapsed.

15. Documents reviewed by the Receiver reveal that Murillo introduced potential investors in Ascendus to Ascendus' promoters, and that he received commissions or finder's fees based on investments made by these individuals with Ascendus.

16. Murillo used Ascendus letterhead and identified himself as a Director of Ascendus as he pitched the investment scheme to potential investors.

17. Murillo was not, at any time, licensed to sell securities as required by Utah Code § 61-1-3.

18. Although the Receiver is still investigating the complete scope of the improper transfers to Murillo, the spreadsheet attached as Exhibit A, and incorporated for all purposes herein, details the currently known improper transfers in the amount of \$58,512 to Murillo from the Receivership Entities.

19. The Receiver has demanded that Murillo pay to the Receiver all amounts that he received from the Receivership Entities, but Murillo has refused to do so.

FIRST CLAIM FOR RELIEF

(Fraudulent Transfer – Utah Code § 25-6-1 *et seq.*)

20. The Receiver incorporates each and every allegation contained in the foregoing paragraphs.

21. The transfers of funds to Murillo from the Receivership Entities were inherently fraudulent because they were made as part of a Ponzi scheme, and were made with the intent to hinder, delay, or defraud the creditors and/or investors of the Receivership Entities.

22. None of the Receivership Entities received a reasonably equivalent value from Murillo for goods or legitimate and lawful services in exchange for the transfers.

23. The Receivership Entities were insolvent at the time the transfers were made to Murillo.

24. Pursuant to Utah Code § 25-6-1 *et seq.*, the Receiver is entitled to avoid and recover the transfer of money from the Receivership Entities to Murillo as an actual or constructively fraudulent conveyance.

SECOND CLAIM FOR RELIEF

(Unjust Enrichment)

25. The Receiver incorporates each and every allegation contained in the foregoing paragraphs.

26. Murillo received at least \$58,512 from the Receivership Entities for introducing potential investors to the promoters of the Ascendus Ponzi scheme.

27. Murillo was never licensed to sell securities as required by Utah Code § 61-1-3.

28. Notwithstanding a demand that he do so, the money Murillo received from the Receivership Entities has not been paid to the Receiver, nor has the Defendant provided goods or legitimate and lawful services to the Receivership Entities in exchange for the \$58,512.

29. Murillo knowingly and voluntarily accepted and retained a benefit when the

funds of the Receivership Entities were transferred to him.

30. The money transferred to Murillo by the Receivership Entities continues to be wrongfully retained by Murillo.

31. The Receiver is entitled to disgorgement of the funds transferred from the Receivership Entities to Murillo, and the circumstances present in this action render Murillo's retention of those benefits inequitable.

32. Murillo has been unjustly enriched at the expense of the Receivership Entities and the Receiver is entitled to judgment in the amount of the money transferred to Murillo.

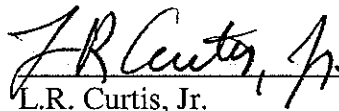
PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for judgment against Murillo as follows:

1. For damages against Murillo in the amount of the transfers from the Receivership Entities to him, believed to be at least \$58,512;
2. For an order requiring Murillo to disgorge the total amount of the transfers to him from the Receivership Entities;
3. For pre-judgment and post-judgment interest to the fullest extent permitted;
4. For costs and attorneys' fees expended in recovering funds from Murillo; and
5. For such other and further relief as the Court may deem just and proper.

DATED this 29th day of December, 2009.

**MANNING CURTIS BRADSHAW & BEDNAR
LLC**



L.R. Curtis, Jr.

David C. Castleberry

Attorneys for Receiver for FFCF Investors, LLC,
Ascendus Capital Management, LCC, and Smith
Holdings, LLC

Plaintiff:

Wayne Klein

Court-Appointed Receiver for FFCF Investors, LLC,

Ascendus Capital Management, LCC,

and Smith Holdings, LLC

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EXHIBIT A

