

FILED
THIRD DISTRICT COURT

2010 JUN 21 PM 1:24

SALT LAKE COUNTY

BY _____
DEPUTY CLERK

R. WAYNE KLEIN #3819
RECEIVER FOR FFCF, ASCENDUS, SMITH HOLDINGS
299 South Main, Suite 1300
Salt Lake City, UT 84111
Telephone (801) 534-4455
Facsimile (801) 961-4001
wklein@kleinutah.com

IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

A. DAVID BARNES, M.D., P.C.,

Plaintiff,

vs.

FFCF INVESTORS, LLC, et al.

Defendants.

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

**EIGHTH REPORT OF
R. WAYNE KLEIN, RECEIVER
(FOR PERIOD ENDING JUNE 21, 2010)**

Case No. 080922273

Judge: Denise P. Lindberg

R. Wayne Klein, the Court-Appointed Receiver of FFCF Investors, LLC, Ascendus Capital Management, LLC, and Smith Holdings, LLC (the "Receivership Entities") submits this Eighth Report of the Receivership, for the period March 2, 2010 through June 21, 2010. A separate report is being filed with the Court with recommendations on the claims process.

DEVELOPMENTS SINCE THE LAST REPORT

A. Settlements

1. Since the date of the last report, the Receiver has entered into four new settlements:
 - a. A settlement agreement was signed on March 18, 2010 with FRT, an entity that was an investor which withdrew from Ascendus in 2004. FRT paid the Receiver \$40,000.00 in settlement of the Receiver's claim that FRT was paid more by Ascendus than amounts it paid to Ascendus.
 - b. On March 23, 2010, investors Steven and Bonnie Rogers paid \$8,000.00 in settlement of the Receiver's claim that they had been overpaid by \$11,337.76. The Receiver accepted the lower settlement amount based on demonstrated financial hardship.
 - c. A settlement agreement was signed on March 31, 2010 with Robert Workman. Workman paid \$288,000.00 to settle a lawsuit in which the Receiver asserted that Workman had been overpaid. As part of the settlement, the lawsuit will be dismissed.
 - d. On April 9, 2010 the Receiver signed a settlement agreement with VF, an investor that the Receiver claimed was overpaid. VF paid the receiver \$48,056.00 in settlement of claims the Receiver might assert. This amount represents approximately 70% of the \$68,500.00 paid to VF by FFCF relating to VF's participation in Ascendus.
2. The Receiver also collected \$90,043.20 as partial payments relating to settlements previously negotiated with JS Geldt, Richard Young, and Rod Hulse.

B. Litigation: New Lawsuits Filed and Developments in Earlier Litigation

3. Fourteen lawsuits were filed by the Receiver since the date of the last report.
 - a. On March 18, 2010, the Receiver sued Allied Telesis, seeking \$82,007.50 in payments from Receivership Entities for which the Receivership Entities received no benefit. These payments are believed to be related to the operation of Superwire, an unrelated company.
 - b. The receiver sued Bush & Sons Capital on March 18, 2010, alleging the company was paid at least \$30,000.00 for services it provided for Superwire and other companies, where the services did not provide any benefit to Ascendus or FFCF.
 - c. A lawsuit was filed against Family First Federal Credit Union on March 18 seeking recovery of \$21,933.64 paid to the credit union for a vehicle purchased by Richard Smith.
 - d. On March 18, the Receiver sued Heritage West Federal Credit Union seeking recovery of \$23,361.10 paid to the credit union by Receivership Entities as loan payments for a vehicle purchased by Jennifer Taylor.
 - e. Karl Stammen, a Massachusetts attorney, was sued on March 18 for \$17,000.00 paid to him by Receivership Entities. The Receiver believes the payments were for legal work Stammen performed for Superwire.
 - f. A lawsuit was filed on March 18 against Kays Creek Capital Management. The suit seeks recovery of at least \$126,869.72 paid to it by Ascendus for its services trading

options for Ascendus.

- g. Also on March 18, the Receiver sued Logistic Management Corporation and its president, Scott Nauert. The suit seeks to recover \$12,000.00 paid to them by Receivership Entities without any benefit to the Receivership Entities.
- h. A lawsuit was filed on March 18 against Robert Alsop, an attorney, seeking to recover \$164,256.80 in payments to Alsop by Receivership Entities and also seeking to determine the location of artwork purchased with funds from Receivership Entities. The Receiver believes most of the services performed by Alsop were for Superwire and other business unrelated to Ascendus and FFCF and that Alsop's work did not benefit the Receivership Entities.
- i. The Receiver sued two related companies (Sancuro Wound Care Systems and National Hyperbaric Rehab Centers) and three individuals (Jerry Gines, Matthew White and Jill White) on March 18 to recover the more than \$290,000.00 paid to them by Receivership Entities.
- j. Susan Smith was sued on March 18 in an effort to recover \$382,881.48 paid to her by Receivership Entities when the companies received little or no benefit from Susan Smith.
- k. A lawsuit was filed March 18 against TDI Energy Partners seeking recovery of \$167,500.00 paid to it by Receivership Entities. The Receiver alleges these payments were made without any benefit accruing to the Receivership Entities.

- l. On March 18, a lawsuit was filed against Tripod Holdings and three others for \$130,544.25 they received from Receivership Entities in excess of any amounts they paid to Ascendus or FFCF.
 - m. The Receiver sued Utah Community Credit Union on March 18, seeking to recover \$13,407.14 paid to the credit union as loan payments for an automobile purchased by T. Courtney Smith.
 - n. On June 1, 2010, the Receiver sued Sara Pfrommer, a former attorney for FFCF and Ascendus. The lawsuit seeks to recover \$29,078.95 paid to Pfrommer from the Receivership Entities.
4. Developments in litigation filed by the Receiver includes:
- a. On March 3, the Lighted Candle Society stipulated to dismiss its lawsuit against Ascendus and FFCF. This followed the Receiver filing a brief with the court arguing for dismissal of the lawsuit.
 - b. In the Receiver's lawsuit against Alex Murillo, Judge Quinn issued an order on May 3, 2010 denying Murillo's motion for partial summary judgment. The order found that the Receiver's complaint sufficiently alleged fraudulent intent. The court also ruled that the statute of limitations had not run due to the discovery rule and the principle of adverse domination.
 - c. On June 3, the Receiver stipulated to dismiss the lawsuit he had filed against Heritage West Credit Union when the Receiver was informed that Heritage West had been

taken over by regulators and the new operators of Heritage West were not related to the prior entity. Instead, the Receiver has filed a claim with the National Credit Union Administration for recovery of payments made to the original credit union.

- d. On April 23, the Receiver filed a motion for default judgment against Steven James, based on his failure to file an answer to the amended complaint against him. The Court has entered the requested default. The Receiver has deposited \$3,741.56 with the court as a bond against improper entry of a default judgment. The Receiver is asking that the court release this bond back to the Receiver.
- e. On June 9, the Receiver filed a memorandum of points and authorities in opposition to Rowley's motion to dismiss the lawsuit against her. A date has been set for the deposition of Rowley.
- f. The Receiver has had some settlement discussions with two other defendants in the December 2008 lawsuit against overpaid investors, as well as with some of the defendants in the lawsuits filed by the Receiver in March 2010.
- g. The Receiver has continued participating in some litigation and discovery proceedings in the federal litigation brought by investors Al Wirth and Annette Kay Donnell.
- h. In the lawsuits filed by the Receiver (described above), the Receiver has submitted motions for default in several cases where answers are past due and is working to get litigation schedules in place for cases where answers have been filed.

C. Analysis Performed

5. Since the date of the last report, many investors have provided copies of account statements from Penson, Ascendus, and FFCF to the Receiver, in connection with their claim submissions. Those records have enabled the Receiver to perform additional analysis, including:
 - a. Comparing the investment returns reported on account statements given to investors by Penson Financial Services and Ascendus, to determine the extent to which the reported results were consistent;
 - b. Calculating the actual profits and losses of options trading in particular investor accounts;
 - c. Determining the extent to which the actual profits and losses in some investor accounts can be used as proxies for the trading results of all investors;
 - d. Determining the amount of principal sent to Penson by some investors;
 - e. Calculating the profits, losses, and changes in principal amounts in the Penson accounts; and
 - f. Determining the amount of commissions paid to Ascendus by investors.
6. The Receiver engaged a firm that specializes in analysis of options trading to calculate the profits and losses in the Ascendus Growth Fund account (the trading account held in the name of Ascendus). This, in turn, validated the analysis methodology the Receiver was using and provided a base from which trading in other accounts could be compared.

7. The Receiver was able to determine that a number of recipients of funds were related to other recipients. Accordingly, the Receiver has analyzed the extent to which the recipients should have their transactions evaluated together.
8. In connection with lawsuits he has filed, settlements achieved, and negotiations, the Receiver has identified the sources of the funds used to pay those entities the Receiver alleges were overpaid.

D. Informing Investors

9. The Receiver has continued to post information and court filings on its website to keep investors informed of progress in this case. This included copies of the claim form and instructions.
10. At their request, information has been provided to a number of investors and their attorneys.
11. The Receiver has provided significant information requested by governmental authorities.

E. Financial Developments

12. Since March 1, the Receiver has recovered \$474,099.20 as a result of the four settlements described above and additional payments pursuant to three earlier settlement agreements.
13. The Receiver has expended \$274,983.89 of Receivership funds since the date of the last report. These expenses are:

Date	Amount	Recipient	Purpose
3/4/10	\$765.00	Depomax	Deposition transcript, Susan Smith
3/26/10	\$45,472.75	Manning Curtis law firm	Legal fees, Jan & Feb 2010
3/26/10	\$100.00	PRS	Title report for Smith home

4/1/10	\$10.00	Wells Fargo Bank	Wire transfer fee
4/6/10	\$80.00	Diana Marshall	Broker's opinion of value on home
4/12/10	\$77,386.78	Receiver	Balance of fees owed for 9/30/09
4/16/10	\$2,396.25	Investment Forensics	Analysis of Growth Fund trades
4/28/10	\$10.00	Wells Fargo Bank	Wire transfer fee
4/30/10	\$28,970.83	Manning Curtis law firm	Legal fees, March 2010
5/4/10	\$3,741.56	Third District Court	Bond to secure default judgment
5/19/10	\$25,232.35	Manning Curtis law firm	Legal fees, April 2010
6/2/10	\$73,344.00	Receiver	Partial fees for Sep. 09–Mar. 2010.
6/9/10	\$17,474.37	Manning Curtis law firm	Legal fees, May 2010
Total	\$274,983.89		

14. On January 18, 2010, the Court approved the Receiver's request for payment of fees and expenses totaling \$152,440.78 for work performed between March 18 and September 30, 2009. Pursuant to the Receiver's pledge not to take more than 30% of the amounts recovered toward payment of this fee request, the Receiver took \$75,000.00 in January and the remaining amount in April. On May 10, 2010, the Court approved the Receiver's second fee and expense application, totaling \$106,820.36.¹ The Receiver again pledged not to take more than 30% of the amounts recovered toward payment of his fee request. On June 2, 2010, the Receiver paid himself \$73,344.00 as partial payment of the amount approved by the Court.

15. After taking account of these deposits and expenditures, the current balance in the Receivership bank account is \$355,862.51. This is a net increase of \$199,115.31 over the March 1, 2010 account balance.

¹ In his second fee application, the Receiver identified an additional \$151,387.50 in services that were being donated to the Receivership effort, because there are not sufficient funds being recovered to pay for all of the time being spent by the Receiver and his staff in recovering assets.

F. Areas of Focus for Ongoing Research and Analysis.

16. The next phase of the Receiver's financial analysis will focus on proving:
- a. That Ascendus and FFCF were insolvent during virtually all periods of their existence;
 - b. Individual instances of Ponzi payments, where monies given to one of the companies was used to make distribution payments to other investors;
 - c. That Ascendus and FFCF were operated as Ponzi schemes on a comprehensive basis, by showing that distribution payments to investors could not have been funded by profits earned from options trading or interest income from LBS and must, therefore, have been paid – at least partially – from funds deposited by other investors;
 - d. That significant portions of the funds given to Ascendus and FFCF by investors were not used for options investing or sent to LBS Advisors, as was represented to investors; and
 - e. The ways in which investor money not employed in investments was used by the promoters of Ascendus and FFCF.

TOPICS FOR JUNE 28, 2010 STATUS HEARING

The Receiver requests that the Court address the following matters at the status hearing on June 28:

1. Consolidation of Receiver Litigation. The Receiver will solicit direction from the Court regarding any additional steps the Receiver should take to have the lawsuits he has filed

transferred to Judge Quinn.

2. Whether Bonds will be Required of the Receiver for Default Judgments. The Receiver will request that the Court release the \$3,741.56 bond posted by the Receiver in order to obtain a default judgment against Steven James and provide instructions on any procedure the Receiver should follow to avoid the necessity of posting a bond for future default judgments.
3. Progress of the Claims Process, Selection of a Distribution Plan. A separate report is being submitted concurrently with this status report. That report suggests a schedule for submission of any objections to the Receiver's recommendations as to the allowable claimants and the allowable claims. The claims process report also recommends a distribution plan and suggests a schedule for submission of any objections to that plan.
4. Set Date for Next Status Hearing. The Receiver will request a status hearing in early September to address issues relating to the claims process.

CONCLUSION

The Receiver respectfully submits this Eighth Report for the period from March 2, 2010 through June 21, 2010.

The Receiver verifies under penalty of perjury that the foregoing is true and correct.

DATED this 21st day of June, 2010.



WAYNE KLEIN, Receiver