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SALT LAKE DEPARTMENT

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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.

**SEVENTH REPORT OF
R. WAYNE KLEIN, RECEIVER
(FOR PERIOD ENDING MAR 1, 2010)**

Case No. 080922273

Judge: Denise P. Lindberg

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

R. Wayne Klein, the Court-Appointed Receiver of FFCF Investors, LLC, Ascendus Capital Management, LLC, and Smith Holdings, LLC (the "Receivership Entities") submits this Seventh Report of the Receivership, for the period January 22, 2010 through March 1, 2010.

DEVELOPMENTS SINCE THE LAST REPORT

A. Settlement with Overpaid Investor

1. Since the date of the last report, the Receiver has entered into one new settlement. On February 19, 2010, Elliott Lee Packer paid the Receiver \$25,000 to settle claims the Receiver might bring against him. Packer had opened a trading account at Penson Financial Services and authorized Roger Taylor to trade options in his individual account. Ascendus had reported to Packer that the trading in his account was profitable and charged him a percentage of his reported profits as commissions. Packer later discovered that his account was losing money and threatened suit against Ascendus and Taylor. As a result, Taylor and Ascendus signed an agreement to compensate Packer for his trading losses and Ascendus paid funds to Packer.¹

B. New Lawsuit Filed

2. Lawsuit Filed Against Roger Taylor, Jennifer Taylor, and Taylor Holdings. On March 1, 2010, the Receiver filed a lawsuit against Roger Taylor, his wife Jennifer, and a company he controlled, Taylor Holdings. The complaint in that lawsuit provides significant details about the operations of Ascendus and FFCF and the basis for the Receiver's claims that both companies were insolvent and operated as Ponzi schemes. The lawsuit seeks the return of \$2.5 million paid to the Taylors and their company. In addition, the lawsuit seeks to have Taylor Holdings placed in receivership, so the Receiver will be able to recover payments

¹The Receiver has discovered that most of the money used to pay Packer came from other investors.

made by Taylor Holdings to others using funds belonging to investors. A copy of this lawsuit will be posted on the Receiver's website.

C. Developments in Existing Litigation

3. Lawsuit Previously Filed Against Investors/Insiders. The lawsuit filed by counsel for Roger Taylor in December 2008 accusing some investors of being overpaid still is pending against five defendants. The Receiver has had communications with all these defendants about possible settlement, but it does not appear that those discussions will be fruitful.
4. Lawsuit Against Alex Murillo. In response to a lawsuit filed against him by the Receiver on December 28, 2009, Alex Murillo has filed a motion for partial summary judgment in the case against him. On March 1, the Receiver filed a memorandum in opposition to that motion and attached a detailed affidavit describing the efforts undertaken by the Receiver in analyzing this matter and his findings that the companies were insolvent and operating as Ponzi schemes.
5. Lighted Candle Society. The Receiver filed a motion to have the Receivership Entities dismissed in this separate lawsuit. The Receiver's motion argues that all claims against the Receivership Entities should be considered by this Court. As a result of that motion, the Lighted Candle Society has notified the Receiver that it will dismiss the Receivership Entities from that litigation.
6. Lawsuit Against JS Geldt and Proposed Settlement. The Receiver filed a lawsuit against JS Geldt Investments, of Idaho Falls on January 8, 2010. In response to the lawsuit, the

company has made a settlement offer that the Receiver intends to accept. Under the settlement offer, the company will pay to the Receiver approximately \$24,000, deliver to the Receiver a security interest in real estate, and waive any claims against the Receivership for repayment of \$750,000 that JS Geldt paid to FFCF.

The Receiver notes for the Court that he currently is also acting as Receiver in another case, *SEC v. Daren L. Palmer and Trigon Group*, CV-09-75-S-EJL (Idaho Federal District Court) and *CFTC v. Daren L. Palmer and Trigon Group*, CV-09-76-S-EJL (Idaho Federal District Court). JS Geldt, LLC, and its owner, Steve Crandall, were lenders to and investors in Trigon Group, Inc. and participated in transactions that the Receiver is challenging in that case. In the Trigon action, the Receiver has made demand against JS Geldt and Crandall, challenging their receipt of \$187,500 in compensation payments and their role in soliciting investors for the Trigon investment program.

Crandall and JS Geldt seek to settle claims by the Receiver in both the Trigon and the FFCF cases, tendering to the Receiver all of his funds and his non-cash claims related to those two cases. This creates a conflict of interest for the Receiver in determining how to allocate monies and other assets between the two Receiverships. At the suggestion of the SEC, the Receiver has determined to allocate cash to be recovered from Crandall and JS Geldt on a pro-rata basis, based on the size of the likely recovery by the Receiver in each case. The Receiver calculated his most likely recovery from Crandall in the Trigon case to be the \$187,500 Crandall and JS Geldt received as compensation for arranging loans to, and

their investments in, Trigon. The Receiver calculated his most likely recovery from JS Geldt in the FFCF case as \$110,527.31, the amount of interest paid to JS Geldt on the loans made to affiliates of FFCF. This results in 62.9% of Crandall's cash being allocated to Trigon and 37.1% being allocated to FFCF Investors. Non-cash claims being waived or delivered to the Receiver will be allocated to the particular case to which the claims relate.²

The Receiver requests the Court's approval of this allocation plan.

7. Federal Court Litigation. Investor Al Wirth has dismissed the Receivership Entities from his federal court action. The Receiver believes the other plaintiff, investor Annette Kay Donnell, will also dismiss the Receivership Entities from her portion of that suit. The Receiver has been participating in some litigation and discovery proceedings in that federal action, including the depositions of T. Courtney Smith, Richard Smith, and Susan Smith. Additional depositions are planned in that action.

D. Claims Process

8. On February 17, the Court granted the Receiver's request for approval of the claims process and a Notice of Claim Form. On February 18, the Receiver mailed approximately 50 claim forms to investors and other potential claimants. Some completed claim forms have already been submitted to the Receiver.

² Accordingly, the claims that Crandall is waiving against the Trigon Receivership will be allocated solely to the Trigon case. A real estate security interest that Crandall obtained to secure loans made to persons affiliated with FFCF Investors will be allocated to the FFCF Receivership along with Crandall's waiver of a claim for recovery of \$750,000 paid to FFCF. To do otherwise would result in assets that exist solely as a result of one receivership affecting the amount to be recovered by an unrelated receivership.

9. The Receiver used the claim form mailing to also request that investors send to the Receiver copies of account statements they received from Penson, Ascendus, and FFCF.
10. It appears that there will be more claimants than initially expected. In addition to investors whose money was in FFCF when it collapsed, the Receiver has identified other investors whose money was initially invested with Ascendus and continued to be held by Ascendus, even after the creation of FFCF.

E. Analysis

11. Analysis of financial transactions has reached a point where the Receiver has been able to draw conclusions about the manner in which Ascendus and FFCF were operated. Some of these conclusions are described in the lawsuit against Roger Taylor and include:
 - a. While most Ascendus investors put their funds into brokerage accounts they controlled, another group of investors gave their money directly to Ascendus where the money was pooled and deposited by Ascendus into a brokerage account controlled by the company (Ascendus Growth Fund). Ascendus made the same options trades for the Growth Fund as for individual investor accounts. Analysis of the Growth Fund trading shows that at least a fourth of the months suffered losses and over the entire three-year investment period, the fund earned only a small profit. Less than one-tenth of one percent of the investor money sent to Growth Fund was repaid to these investors from the Growth Fund.
 - b. There was a clear pattern in which Ascendus reported profits to investors when there

were trading losses. This included reporting profits and collecting commissions from investors in months in which the actual trading resulted in losses in the accounts.

- c. Many instances were found in which distribution payments were made to investors using funds provided by other investors.
- d. The Receiver found a number of cases where investors complained when they discovered that their accounts did not actually earn the profits reported by Ascendus. Ascendus paid many hundreds of thousands of dollars to settle and avoid lawsuits by these investors. Much of this money came from other investors.
- e. FFCF was insolvent from the beginning and structured in a manner that destined it to fail. Investors who joined FFCF in the first months transferred \$7.8 million to FFCF, but were given investment credits of more than \$13 million. In other words, FFCF was using \$7.8 million to try and earn enough profits to repay the \$13 million promised to investors.
- f. A significant portion of funds received from investors or owed to investors was paid to principals of the company, used for personal expenses, or used to pay expenses unrelated to the investment programs of the companies.

F. Informing Investors

- 12. The Receiver has continued to post information and court filings on its website to keep investors informed of progress in this case.
- 13. The claim form also has been posted on the website to make it easily available to investors.

The Receiver has responded to a number of inquiries about the claim form and claim process from investors and potential claimants.

14. Information has been provided to a number of investors and their attorneys.

15. The Receiver has provided information requested by governmental authorities.

G. Financial Developments

16. Since January 22, the Receiver has recovered \$27,500.00 as a result of the Packer settlement described above and an additional payment pursuant to an earlier settlement agreement.

17. The Receiver has expended \$105,188.95 of Receivership funds since the date of the last report. These expenses are:

Date	Amount	Recipient	Purpose
1/28/10	\$29,730.20	Manning Curtis Law	Attorneys Fees (Nov., Dec.)
1/28/10	\$75,000.00	Klein Associates/LBF	Partial Receiver Fees
2/16/10	\$458.75	Depomax	Deposition Transcript
Total	\$105,188.95		

18. The court order dated January 18, 2010 approved the Receiver's request for payment of fees and expenses totaling \$152,440.78. Pursuant to the Receiver's pledge not to take more than 30% of the amounts recovered toward payment of this fee request, the Receiver has only taken \$75,000 at this time towards the payment of the fees and expenses due him. This is the only payment the Receiver has taken since being appointed in March 2009.

19. After taking account of these deposits and expenditures, the current balance in the Receivership bank account is \$156,747.20.

TOPICS FOR MARCH 4, 2010 STATUS HEARING

The Receiver will suggest that the Court consider the following matters at the status hearing on March 4:

1. Litigation Management. The Receiver will solicit direction from the Court regarding how lawsuits filed by the Receiver and the request to expand the Receivership should be coordinated with this Court's oversight of the Receivership action.
2. Approval of Settlement and Resolution of Conflict of Interest. The Receiver will request the Court's approval for his plan for resolving the conflict of interest arising from a proposed settlement with JS Geldt in which assets will be divided between this case and a separate Receivership.
3. Set Date for Next Status Hearing.

CONCLUSION

The Receiver respectfully submits this Seventh Report for the period from January 22, 2010 through March 1, 2010.

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

DATED this 1st day of March, 2010.



WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March, 2010, a true copy of the foregoing Seventh

Report of Receiver was mailed to the following:

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