

FILED DISTRICT COURT
Third District

MAY 20 2011

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IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY
STATE OF UTAH

<p>A. DAVID BARNES, M.D., P.C., Plaintiff, vs. FFCF INVESTORS, LLC, et al. Defendants.</p>	<p>ELEVENTH REPORT OF R. WAYNE KLEIN, RECEIVER (FOR THE PERIOD DECEMBER 11, 2010 TO MAY 20, 2011)</p> <p>Case No. 080922273</p> <p>Judge: Deno Himonas</p>
<p>FFCF INVESTORS, LLC, Plaintiff, vs. RICHARD SMITH, et al. Defendants.</p>	

R. Wayne Klein, the Court-Appointed Receiver of FFCF Investors, LLC ("FFCF"), Ascendus Capital Management, LLC ("Ascendus"), and Smith Holdings, LLC ("Smith Holdings") (collectively, the "Receivership Entities") submits this Eleventh Report of the Receivership, for the period December 11, 2010 through May 20, 2011.

I. PROCEDURAL HISTORY OF THE CASE

1. This litigation began on October 15, 2008, when Dr. A. David Barnes filed suit against the Receivership Entities and its managers (Roger Taylor and Richard Smith), seeking recovery of monies Barnes had invested with FFCF Investors, LLC.
2. On March 18, 2009, the Court granted Dr. Barnes' motion for the appointment of a receiver and appointed R. Wayne Klein as receiver ("Receiver") for the Receivership Entities. The Receiver was authorized to take control over all records, and to act as the sole authorized representative of the Receivership Entities. The Receiver was also charged to determine whether funds had been expended improperly and recover funds for the benefit of innocent investors.
3. Over the next several months, the Receiver succeeded in recovering business records of the Receivership Entities that were in the possession of Taylor's attorney, James Warner, and obtaining an order disqualifying Warner from further participation in the case.
4. A substantial number of other lawsuits has been filed relating to the conduct at issue in this case:
 - a. In December 2008, Warner filed a lawsuit – ostensibly as counsel for Ascendus and FFCF – against Richard Smith and twelve of the investors. This suit appears to have been designed to defeat Barnes' motion for the appointment of a receiver. The suit accused Smith of misconduct for his actions taken on behalf of Ascendus and FFCF and alleged that the investors had received excessive payments from

the Receivership Entities. In July 2009, the lawsuit against Smith and the investors was consolidated into the instant action. The Receiver has pursued claims against some of the investor-defendants, but dismissed other investors when the Receiver determined they were not overpaid.

- b. Two lawsuits had been filed against Receivership Entities in federal court by investors seeking recovery for their losses. These suits were later consolidated into one federal action. Since that time, the plaintiffs in those cases have agreed to dismiss the Receivership Entities from the consolidated federal action.
- c. The Lighted Candle Society (“LCS”) filed its own action against the Receivership Entities and others in state court. LCS has dismissed the Receivership Entities from that action, but is pursuing claims against other defendants. That action is pending before Judge Toomey.
- d. Since being appointed, the Receiver has filed 22 lawsuits against insiders, salespersons who solicited funds from investors, attorneys who assisted the Receivership Entities, financial institutions who received investor funds, and securities brokerage firms who conducted trading at the request of Taylor. Many of these lawsuits have been settled, resulting in recoveries of funds for the Receivership Entities. These settlements are described in the ten status reports that have been filed previously in this action. Other lawsuits filed by the Receiver are still being litigated.

II. BRIEF SUMMARY OF THE MISCONDUCT FOUND BY THE RECEIVER

5. The prior ten reports by the Receiver describe the results of his investigation conducted to date. In brief, the Receiver found the investment scheme had three stages: Ascendus, FFCF, and Superwire. In the Ascendus stage:
 - a. Ascendus was managed by defendants Taylor and Smith. Until December 2005, Ascendus was a registered investment adviser under the control of Taylor.
 - b. Beginning in 2003, several dozen investors put around \$10 million into brokerage accounts under the control of Taylor at Penson Financial Services. The investors were told that Taylor was a skilled options trader who would earn high returns with little risk.
 - c. Ascendus sent monthly account statements to investors. These account statements reported significant profits being earned each month. In reality, the options trading incurred substantial losses.
 - d. By the end of 2005, investors were told their accounts had an aggregate value of \$12.8 million. In reality, the accounts were worth only \$7.5 million, a difference of \$5.2 million.
6. In late 2005 and early 2006, investors were encouraged to move their investments from their brokerage accounts to FFCF, a new entity created by Taylor and Smith.
 - a. At FFCF, the investor funds were pooled and invested in the name of FFCF. In most cases, Penson sent the investor funds directly from the investor's brokerage

accounts to entities controlled by Smith or Taylor. Penson sent some of the transfer payments to Consilium Trading Company and others to FFCF. The Receiver believes these payments were sent directly to Consilium or FFCF, so the investors would not know the true value of their brokerage account balances.

- b. FFCF sent the pooled funds to LBS Advisors, a California company that touted its access to successful money managers.
- c. FFCF sent regular account statements to the investors, telling them how their funds were increasing in value. These reports of profits were based on the principal amounts the investors believed was invested, not the actual value of their accounts.
- d. During this time period, some investors withdrew the funds they were told they had in FFCF, seriously depleting the amount invested. Taylor also withdrew large amounts for his personal expenses, payments to Smith and other insiders, and a new business venture being pursued by Taylor and Smith. By June 2008, the fund had less than \$100,000.

7. During 2006 and 2007, Smith and Taylor controlled a penny-stock technology company named Superwire. Several million dollars from the Receivership Entities, including investor funds, were used for the operation of Superwire and to acquire other technology companies. These companies now are all defunct.

8. In July 2008, Smith attempted suicide. Taylor drafted a letter that Smith signed, telling

investors the investment money was all gone. Taylor withdrew the \$82,000.00 balance of funds in the investment account and sent \$80,000.00 of it to his attorney, James Warner.

9. Ironically, the money sent to LBS Advisors was placed into another Ponzi scheme, which collapsed in early 2009. However, all the FFCF funds had been withdrawn from the California Ponzi scheme before it collapsed.¹
10. The instant action and the other suits followed.

III. OTHER DEVELOPMENTS

11. The Receiver created and maintains a website containing copies of notable legal filings in the case and information about new developments in the Receivership.
12. Criminal charges were filed by the Utah Attorney General's Office against Taylor and Smith in August 2010. Those charges are pending.
13. The Receiver has completed analyses of the more than 3,500 financial transactions of the Receivership Entities in nine bank accounts located at four banks. The prior status reports summarize the results of those analyses.
14. The Receiver has engaged experts to prepare tax returns for the Receivership Entities.

IV. INITIAL DISTRIBUTION OF FUNDS TO INVESTORS

15. By October 2010, the Receiver had recovered sufficient funds to make an initial distribution to a group of the investors. The Court approved the payment of initial distributions to investors on October 14, 2010. On October 19, 2010, the Receiver

¹ One of the FFCF investors had separated his investment funds from FFCF, moving it into a separate account with the California investment manager. This money was lost when the California scheme collapsed.

mailed cashier's checks totaling \$400,000.00 to ten of the 18 allowable claimants.²

V. DEVELOPMENTS SINCE THE LAST REPORT

16. Since December 10, 2010, the date of the prior status report, the following significant developments have occurred in this case:

Legal Proceedings

17. The Receiver filed three new lawsuits:

- a. On December 10, 2010, the Receiver filed suit against Penson Financial Services, of Texas, alleging that Penson facilitated the misconduct of Taylor and Smith, in violation of FINRA rules and in contravention of its own compliance manual. Penson initiated legal proceedings to remove the case to federal court. On April 28, 2011, the federal court granted the Receiver's motion to remand the case back to state court. A motion filed by Penson is currently pending before this Court.
- b. The Receiver filed suit against American Express on December 22, 2010, alleging that Receivership funds were used to pay credit card expenses of Taylor and Smith. As noted below, American Express settled this lawsuit on May 11, 2011.
- c. The Receiver also sued Capital One on December 22, 2010, seeking a return of monies paid to Capital One for personal expenses of Richard Smith. This case is still pending.

² This initial distribution targeted investors who had received less than 30.11% return of their investment principal. These distribution payments brought the returns of all eligible claimants to 30.11% of their investment losses. An additional \$16,032.92 was paid to Plaintiff, A. David Barnes, as partial reimbursement of the legal fees he expended in getting a Receiver appointed.

18. The Receiver has entered into four settlements since December 2010:
- a. On December 24, 2011, the Receiver obtained \$17,483.24 from Steven James in settlement of the Receiver's claim that he received more in funds from Receivership Entities than the principal amount of his investment.
 - b. On January 13, 2011, the National Credit Union Administration paid the Receiver \$11,680.55 in settlement of a claim the Receiver filed against Heritage West Credit Union for car payments paid by Receivership Entities.
 - c. On April 8, 2011, the Receiver agreed to settle his lawsuit against Kathryn Rowley for \$5,000.00, based on her demonstrated inability to pay more.
 - d. On May 11, 2011, American Express paid \$90,000.00 to settle the lawsuit filed against it by the Receiver. The lawsuit against American Express has been dismissed.
19. The Receiver recently dismissed the lawsuit it filed against Karl Stammen, a Massachusetts attorney. Utah Third District Judge Fratto entered a default judgment against Stammen, but a Massachusetts court ruled that Stammen was not subject to personal jurisdiction in Utah. While the Receiver believes that the personal jurisdiction ruling is a question that should be decided by Utah courts, he has decided to cease expending legal fees pursuing Stammen.
20. The Receiver has engaged in significant litigation efforts in pending cases, including seeking discovery, providing discovery responses, negotiating protective orders, taking

the depositions of Robert Alsop, Jerry Gines, and SanCuro Wound Care Systems, seeking summary judgments and defaults, opposing motions to dismiss, responding to counterclaims, performing legal research, and preparing exhibits for use in trial.

21. Substantial effort has been undertaken to investigate the conduct of Penson Financial Services and prepare the litigation against it.

NCUA Claim

22. Family First Federal Credit Union was taken over by the NCUA after the Receiver filed suit. The Receiver has filed a claim with the NCUA, seeking to recover the amounts improperly paid to the credit union.

Assisting Law Enforcement Agencies

23. The Receiver has provided substantial assistance during the Reporting Period to state and federal law enforcement agencies which are investigating activities of Ascendus, FFCF, Taylor, Smith, and other entities.

Financial Developments

24. Since December 11, 2010, the Receiver has recovered \$124,163.79 as a result of the four settlements described above.
25. The Receiver has expended \$78,197.44 of Receivership funds since the date of the last report. These expenses were:

Date	Amount	Recipient	Purpose
12/13/10	\$3,500.00	Smoot Law Offices	Retainer for Stammen Lawsuit
1/11/11	\$19,666.43	Manning Curtis law firm	Legal fees, December 2010
2/8/11	\$16,984.86	Manning Curtis law firm	Legal fees, January 2011

2/17/11	\$869.85	Depomax	Deposition transcript
4/8/11	\$12,557.07	Manning Curtis law firm	Legal fees, February 2011
4/14/11	\$858.16	Depomax	Deposition transcript
4/30/11	\$8.00	Wells Fargo Bank	Monthly service fee
5/11/11	\$513.13	Smoot Law Offices	Balance of Mass. legal fees owed
5/11/11	\$12,394.32	Manning Curtis law firm	Legal Fees, March 2011
5/11/11	\$10,845.62	Manning Curtis law firm	Legal fees, April 2011
Total	\$79,197.44		

Areas of Focus

26. During the coming months, the Receiver expects to focus on the lawsuits that are still pending. The Penson litigation is expected to take significant continuing effort.

VI. CONCLUSION

The Receiver respectfully submits this Eleventh Report for the period from December 11, 2010 to May 20, 2011.

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

DATED this 20th day of May, 2011.



 WAYNE KLEIN, Receiver