

APR 13 2009

SALT LAKE COUNTY

By _____
Deputy Clerk

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

R. WAYNE KLEIN,

Receiver,

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

Plaintiff,

vs.

FFCF INVESTORS, LLC, et al.

Defendants.

**INITIAL REPORT OF
R. WAYNE KLEIN, RECEIVER**

Case No. 080922273

Judge: Denise P. Lindberg

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of FFCF Investors, LLC, Ascendus Capital Management, LLC, and Smith Holdings, LLC (the "Receivership Entities") submits this Initial Report covering the period March 18, 2009 through April 9, 2009.

PROCEDURAL HISTORY

1. The underlying cause of action, resulting in the appointment of a receiver, was filed on October 15, 2008. On March 18, 2009, this Court granted plaintiff A. David Barnes' motion for the appointment of a receiver and appointed R. Wayne Klein as Receiver for the

Receivership Entities.

2. On March 24, 2009, the Receiver filed his Oath and Acceptance of Receiver with the Court.
3. The Order Appointing Receiver issued by this Court authorizes the Receiver to take possession of all assets and records and requires agents of the three companies to deliver to the Receiver the assets and records in their possession.
4. Based on James Warner's description of the significant efforts he has undertaken to obtain documents relating to the Receivership Entities and to perform analysis, the Court expressed a desire that the Receiver minimize any duplication of work already performed by Warner and, to the extent practical, rely on the records he gathered and analysis he conducted.
5. Under the Order Appointing a Receiver, the Receiver became the authorized representative of the Receivership Entities. The underlying claims by plaintiff Barnes in this case continue against the Receivership Entities and against defendants Richard Smith and Roger Taylor.
6. In December, 2008, before the appointment of a Receiver, Roger Taylor, acting on behalf of FFCF, filed an action in Third District Court against Richard Smith and twelve of the FFCF investors. *FFCF Investors, LLC v. Richard Smith, et al.*, Civ. No. 080925879 (Third Dist. Ct., Utah). This suit alleged fraud by Smith and unjust enrichment by the twelve investors. The complaint in that action was amended on March 11, 2009 to add a claim for fraudulent conveyance.
7. Two suits have been filed in federal court by investors against the Receivership Entities and other defendants: *Annette Kay Donnell v. Roger E. Taylor, et al*, 2:09-cv-00127, (D. UT)

(complaint, Feb. 10, 2009) and *Albert Wirth v. Roger E. Taylor, et al.*, 2:09-cv-00229 (D. UT) (complaint, Mar. 11, 2009).

ACTIONS TAKEN BY THE RECEIVER

Records of the Receivership Entities

8. On March 19, 2009, the Receiver delivered a copy of the Order Appointing a Receiver to Richard Smith and requested all documents of the Receivership Entities. The Receiver also requested deliver of any computers purchased by the Receivership Entities or on which business records of the Receivership Entities were located. Smith told the Receiver that all documents he had relating to the Receivership Entities had been delivered to Roger Taylor and his counsel, James Warner. Smith told the Receiver that the computer on which work of the Receivership Entities was stored had been delivered to Taylor and Warner. The Receiver obtained no records or computers from Smith.
9. On March 24, 2009, the Receiver had an extended telephone call with James Warner, during which Mr. Warner summarized the documents he had obtained in his inquiry and the analysis he had performed. Warner explained that the records of the Receivership Entities were sparse and incomplete and that he had spent substantial effort in obtaining copies of missing documents. Warner denied having received any computer or hard drive from Smith. Warner told the Receiver that he (Warner) would have his staff prepare summaries and explanations of the work already performed and send those to the Receiver with the documents. The Receiver expressed a desire to begin reviewing the documents as soon as possible.

10. The Receiver has obtained the following documents from Warner (excluding forwarded copies of litigation filings):

- a. A spreadsheet listing the dates and amounts of investments and withdrawals for each investor (received March 24, 2009).
- b. A copy of the LBS Advisors, Inc. account statements for FFCF Investors (received April 1, 2009).

11. To avoid the need to duplicate work already performed by Warner and to expedite the work of the Receiver, the Receiver believes it is important to obtain all the available records of the Receivership Entities and the analysis performed by Warner as soon as possible.

Identification of Assets

12. Based on the investigation conducted to date, it appears to the Receiver that the Receivership Entities have no current funds or assets.

- a. Bank accounts held by the Receivership Entities at Far West Bank have been closed for some time and there appear to be no funds at Far West Bank belonging to the Receivership Entities.
- b. Zions Bank reported to the Receiver that neither FFCF nor Smith Holdings has ever had a bank account at Zions. The bank reported that Ascendus had an account that was open from September 2007 to July 2008, but the account has been closed and there are no funds in that account presently.

13. According to account statements sent to the Receiver by Warner, FFCF had an investment

account at LBS Advisors, Inc, in Newport Beach, CA. The documents provided by Warner suggest the account was opened in early May 2006 with \$7,324,000 in capital. The account statements show the account was closed on July 31, 2008. According to the account statements, there is no money in this account currently.

14. Based on the Receiver's investigation to date, it appears that the office previously used by FFCF and Ascendus at 222 East South Temple is currently occupied by attorneys Robert Alsop and Kent Norton. The available information indicates that the office premises were leased by FFCF and Ascendus, so the Receivership Entities do have any ownership interest in real estate at that location. The Receiver has requested information from Messrs. Alsop and Norton whether any of the furnishings in the office belong to the Receivership Entities.
15. The account statements provided to the Receiver by Warner suggest that some of the funds sent to LBS Advisers by FFCF were separated into accounts for Albert Wirth and Richard Young. According to allegations made by Wirth in his federal court litigation, LBS put the funds allocated to Wirth into a fund controlled by GJB Enterprises, Inc., a fund that claimed to engage in factoring of accounts receivable. The Receiver has been informed that on March 23, 2009, a Receiver was appointed for the assets of GJB Enterprises. According to the web site of the GJB Receiver, "there is no evidence of any on-going lending and/or factoring business." www.fedreceiver.com/case_summary.html?15.
16. The Receiver expects that a review of the bank records of the Receivership Entities will reveal where funds of the Receivership Entities have been expended. With this information,

the Receiver hopes to determine whether any assets were purchased that belong to the Receivership Entities and whether there were any expenditures of funds that were improperly paid and can be recovered. If the records of the bank accounts are not received from Warner in the near future, the Receiver will need to request these records directly from the banks, requiring additional expense and delay.

Information from Investors, Information for Investors

17. On March 20, 2009, the Receiver prepared and sent a questionnaire to 25 investors the Receiver had been able to identify. The questionnaire subsequently also was sent to investors who were not on the initial list and who contacted the Receiver. The questionnaire requested information about the investments made by each investor, as well as withdrawals and distributions they received. To date, the Receiver has received 13 responses from investors. The results of the questionnaires will be compared with information from the spreadsheet prepared by Warner's office and with bank statements that the Receiver hopes to obtain.

18. The Receiver has established a web site to inform investors and creditors of the progress of the Receivership and to communicate relevant information, including making the questionnaire available to investors. This Initial Report, as well as future Reports to the Court or other documentation and/or information that the Receiver determines would be of value to investors and creditors, will be posted on the web site. The web address is:

http://www.lbfglobal.com/active_cases_receiverships_fas.html.

Litigation

19. As noted above, there are two lawsuits currently pending in state court relating to the Receivership Entities and two federal court actions that have named the Receivership Entities as defendants. The Receiver has taken the following actions regarding these cases:

- a. On April 10, 2009, the Receiver filed a motion in this case and in *FFCF Investors, LLC v. Richard Smith, et al.* (case number 080925879), seeking to consolidate both cases before this Court. The Receiver believes that all litigation involving the Receivership Entities should be consolidated before the court that appointed, and is overseeing, the Receiver.
- b. On March 27, 2009, the Receiver accepted service of the complaint in the Wirth lawsuit filed in federal court. The Receiver met with counsel for Wirth and reached agreement on a stay of litigation against the Receivership Entities until the Receiver can analyze records of the Receivership Entities and determine what the Receiver's position will be in the litigation.
- c. On March 31, 2009, the Receiver met with counsel for Donnell, who also has filed an action in federal court. The Receiver and counsel reached agreement on a stay of litigation against the Receivership Entities until the Receiver can obtain and analyze Receivership records.
- d. The Receiver has obtained copies of filings in the *FFCF Investors, LLC v. Richard Smith, et al.*, lawsuit (#080925879). The Receiver has spoken with counsel for

several of the defendants in that suit, obtaining agreement for a stay of litigation until the Receiver obtains records of the Receivership Entities. The Receiver has provided case citations to counsel for some of the defendants regarding the powers of Receivers to recoup overpayments to investors and has been promised additional information from them.

Engagement of Professionals

20. The Receiver has decided to postpone the engagement of counsel in an effort to reduce expenses of the Receivership and to create a short time frame in which to explore the possibility of recouping assets through negotiation.

Efforts to Recover Funds and Assets of the Receivership Entities

21. As soon as the Receiver can review the records of the Receivership Entities, the Receiver expects to develop a position as to the amount that is owed to the Receivership Entities by existing investors and by other recipients of payments from the Receivership Entities.
22. When the Receiver has determined the amount that he believes was improperly paid, the Receiver will exercise his professional judgment in determining the best and most viable way of recovering these assets, including, but not limited to, continuing or initiating appropriate legal action.

Future Reports

23. The Receiver expects to submit further status reports at least quarterly.

CONCLUSION

The Receiver respectfully submits this Initial Report for the period from March 18, 2009 through April 9, 2009.

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

DATED this 10th day of April, 2009.



WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2008, a true copy of the foregoing Initial

Report of Receiver was mailed to the following:

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