

**MANNING CURTIS BRADSHAW
& BEDNAR LLC**

David C. Castleberry [11531]

dcastleberry@mc2b.com

136 East South Temple, Suite 1300

Salt Lake City, UT 84111

Telephone (801) 363-5678

Facsimile (801) 364-5678

*Attorneys for Plaintiff R. Wayne Klein, the
Court-Appointed Receiver of U.S. Ventures, LC,
Winsome Investment Trust, and the assets of Robert
J. Andres and Robert L. Holloway*

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

U.S. VENTURES LC, a Utah limited liability
company, WINSOME INVESTMENT
TRUST, an unincorporated Texas entity,
ROBERT J. ANDRES and ROBERT L.
HOLLOWAY,

Defendants.

**RECEIVER'S RESPONSE TO
SUPPLEMENTAL INFORMATION AND
DOCUMENTS SUBMITTED BY ZAMAN
ALI ON MARCH 25, 2014**

Case No. 2:11CV00099 BSJ

District Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver ("Receiver") of U.S. Ventures LC (US Ventures"), Winsome Investment Trust ("Winsome"), and all of the assets of Robert J. Andres ("Andres") and Robert L. Holloway ("Holloway"), by and through his undersigned counsel,

respectfully submits this Response to Supplemental Information and Documents Submitted by Zaman Ali ("Ali") on March 25, 2014.

INTRODUCTION

The Receiver originally recommended rejection of Ali's claim because of three interrelated concerns. First, Ali was a third party marketer who not only introduced investors to Winsome and raised money from investors, but also used his company, MCubed Financial Corporation ("MCubed"), as a clearinghouse for hundreds of thousands of dollars going to Winsome and from Winsome. Second, in this clearinghouse role, Ali may have retained a portion of the money given him by Winsome investors. Finally, and most significantly, Ali has consistently refused to provide documents to the Receiver that would allow the Receiver to determine and allocate funds from Winsome investors that passed through MCubed.

Over the course of nearly two years, Ali has been invited many times—and ordered several times—to provide information and documentation concerning the investor funds that passed through MCubed. In an effort to be fair with Ali, on March 7, 2014, the Court gave Ali one last opportunity to demonstrate the basis for his claim and to answer questions about the pooled funds in MCubed. Doc. No. 331. In his most recent disclosure to the Court, however, Ali has failed to provide any answers regarding the pooled funds in MCubed, even though he has stated that the source of money for his underlying claim comes from other "participants," and that he is *not* seeking the return of money from Winsome on behalf of these participants. As a result, because Ali has failed to provide information regarding the participants in MCubed and the nature of the pooled investments in MCubed, and because it appears MCubed received more

Winsome investor money than it ever distributed to Winsome or to investors, Ali's claim should be denied.

BACKGROUND

Ali owns MCubed, which gathered money from other investors and sent some of those funds to Winsome for investment. Statement Opposing Motion of Receiver Seeking Dismissal of Interest in Recovered Investment Funds ("Ali Objection"), Doc. No. 244. Ali involved others in the Winsome scheme after he rented a conference room in a hotel for his friends to listen to a pitch for investing in Winsome. *Id.* at 5. Ali traveled to Houston to meet with Andres to obtain more information about the investment opportunity with Winsome. *Id.* Ali came away impressed from his meeting with Andres, and after he returned to Calgary, he immediately gathered his friends and briefed them about his meeting with Mr. Andres. *Id.* at 5-6. Ali then began to gather funds from his friends to send to Winsome. *Id.* at 6. Much of the money from Ali's friends was gathered into Ali's company, MCubed, and MCubed sent some of this money to Winsome. *Id.*

Initially, Ali filed a claim in the name of MCubed on behalf of investors who supposedly had sent money to MCubed for investment. Klein Declaration, ¶ 21, Exhibit A to Receiver's Report on and Response to Objections to The Receiver's Recommendations on the Claims Process ("Receiver's Response"), Doc. No. 246. This claim was received on July 31, 2012, the deadline for the submission of claims. *Id.* The Receiver notified Ali that MCubed could not submit claims on behalf of other investors and that each investor must file his or her own claim. *Id.* Subsequently, all of the MCubed investors identified by Ali in the MCubed claim form filed

individual claims. *Id.* ¶ 22.¹ Ali also filed a claim for himself in the amount of \$100,000. *See* Ali Claim, Ex. 15 to Klein Declaration, which is attached as Exhibit A to Receiver's Response. As support for his claim, Ali claims that he invested \$100,000 in Winsome, but that he has not received anything in return. *Id.* The Receiver denied Ali's claim because Ali was a marketer, Ali failed to provide documentation to the Receiver to show the amounts of money Ali received from other investors, and, because of these documentation failures, Ali has been unable to show that Ali was not, in fact, already overpaid.

The Receiver and the Court have requested information from Ali on numerous occasions. *See, e.g.*, Correspondence between Ali and the Receiver, attached as Exhibit A. For example, on October 5, 2012, the Receiver sent an email to Ali asking him to explain why \$125,000 was sent to MCubed without this money being passed on to Winsome. *Id.* On October 31, 2012, the Receiver sent an email to Ali requesting information on the source of funds paid to MCubed and which funds were forwarded to Winsome. *Id.* On November 16, 2012, the Receiver sent an email to Ali's attorney explaining that the Receiver still lacks information tying funds from investors to amounts Ali claims he forwarded to Winsome. *Id.* On November 21, 2012, the Receiver sent a letter to Ali's attorney identifying discrepancies in Ali's responses and requesting information on the sources for certain Winsome transfers. *Id.* On May 31, 2013, the Receiver explained why he was denying Ali's claim. *Id.*

After the Receiver rejected Ali's claim, Ali appealed the Receiver's recommendation. On May 20, 2013, the Court held a hearing on Ali's claim and ordered Ali to provide supplemental

¹ It appears that MCubed has other investors not disclosed by MCubed. The Receiver's Response to Supplemental Information and Documents Submitted by Zamam Ali on May 29, 2013 (Doc. No. 277) notes that documents provided by Ali in 2013 identified a previously-unknown investor (Trantos or Tranfos) who appears to have bent money to MCubed in 2008 for investment in Winsome. *Id.* at 5-6.

information and documents to prove up his claim and to answer questions the Receiver raised about Ali's company, MCubed, which played a role in assembling and submitting pooled funds from investors to Winsome. Following the hearing, on May 21, 2013, the Court entered an order requiring Ali to provide "a complete accounting of MCubed Financial Corp. relating to all transactions by MCubed Financial Corp. involving Winsome Investment Trust or investors in Winsome Investment Trust." Order re Claim No. 1095, Doc. No. 268. In response to the May 21, 2013 Order, Ali provided some more documentation and information; however, significant questions remained because Ali still failed to provide any bank records or contemporaneous accounting documents showing the flow of investor money to and from MCubed. Ali has claimed that he advanced payments for certain investors, but he has failed to provide the Receiver with any documentary proof of these advances. Ali's word cannot be taken at face value because he claimed, for example, under oath that Clete McCoy invested \$50,000 with MCubed for the purpose of investing with Winsome, but Ali later retracted that statement and said that he had only "assumed" that McCoy had invested anything with MCubed. The Receiver is at a loss as to why Ali would assume that an individual had invested in MCubed when the bank records for MCubed would obviate the need for any assumptions.

As noted in the Receiver's Response to Supplemental Information and Documents Submitted by Zaman Ali on May 29, 2013, the Receiver had six examples of the problems with Ali's claim and the flow of money into MCubed. *See* Doc. No. 277. Specifically, the Receiver described unresolved questions about amounts sent by investors to MCubed, amounts Ali supposedly advanced on behalf of investors, why it appears that MCubed received significantly more from investors than it sent to Winsome, and why, for the first time, has Ali provided a copy

of a check made to a Chris Trantos because of a Winsome investment, when this investor's name had never been raised before during the claims process. *Id.* In his most recent response to the Court, Ali has ignored the six areas where the Receiver had described unresolved questions about Ali's claims and the pooled investment in MCubed. It is not as if Ali cannot provide information to prove that Ali's claims are legitimate. *All* of the Receiver's questions would have been answered if Ali had provided bank records for MCubed and contemporaneous accounting records of MCubed. *Id.*

ANALYSIS

The Receiver continues to have substantial doubt concerning "the role played by MCubed Financial Corporation in assembling and submitting what appears to be pooled funds." Order re: Claim of Zaman Ali (the "Order") at 1, Doc. No. 331. Pursuant to the Order, Ali was required to provide a simple explanation as to the source of the claimed amount, documents explaining and supporting the source of his claimed amount, and an explanation as to whether Ali is seeking to share the funds on behalf of others, and, "if for himself alone, [Ali must] document[] the payment made by him by referring to specific documents heretofore submitted, or additional documents heretofore asked for by Receiver." Order at 1-2.

Ali's response included only one document, a copy of a previously-submitted payment order showing that he sent \$100,000 directly to Winsome. March 25, 2014 Letter from Ali to Judge Jenkins, attached as Exhibit B. Ali has not provided any accounting for MCubed or any bank records for MCubed. Further, in this most recent response, Ali claims that the source of the claimed amount came from "participants' savings, credit lines and bank loans" that were pooled in MCubed and then transferred to Winsome. *Id.* Inexplicably, Ali also contends that his claim

on the receivership estate is only for himself, and is not for these unnamed "participants" who pooled money into MCubed. *Id.*

Further, based on the documents that the Receiver was able to obtain from Ali and other investors, it appears that investors claimed to have sent at least \$400,000.00 directly to MCubed. MCubed, however, forwarded only \$320,200.00 to Winsome. *See* Exhibit C, Spreadsheet: MCubed Activity as Third Party Marketer. Ali claims that he advanced money on behalf of investors in MCubed and that this fact explains why MCubed received a substantial amount of money that was never forwarded on to Winsome. Ali has failed to provide any bank statements for MCubed that could prove that Ali had actually advanced this money. The documents submitted by Ali also do not include any original, contemporaneous accounting records for MCubed. Ali's failures to provide bank statements and original accounting records for MCubed leaves the Receiver unable to dispel the conclusion drawn from the documents obtained from multiple sources that Ali is already overpaid, or validate the legitimacy of claims made by MCubed investors. Thus, Ali's claim should be denied.

CONCLUSION

MCubed's accounting and the source of funds for which he submits a claim remain mysteries. Ali could have provided bank records for MCubed that would have answered nearly every question posed by the Receiver, but he has failed to do so. Therefore, because Ali admits to having been a third party marketer and appears to have been overpaid from other Winsome investors and because Ali has refused many requests to provide documentation to show that he was not overpaid, the Receiver respectfully requests that the Court deny Ali's claim.

DATED this 4th day of April, 2014.

**MANNING CURTIS BRADSHAW
& BEDNAR LLC**

/s/ David C. Castleberry _____
David C. Castleberry
*Attorneys for Plaintiff R. Wayne Klein, the
Court-Appointed Receiver of U.S. Ventures, LC,
Winsome Investment Trust, and the assets
of Robert J. Andres and Robert L. Holloway*

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **RECEIVER'S RESPONSE TO SUPPLEMENTAL INFORMATION AND DOCUMENTS SUBMITTED BY ZAMAN ALI ON MARCH 25, 2014** to be served in the method indicated below to the Defendant in this action this 4th day of April, 2014.

- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
- VIA EMAIL
- VIA ECF

Kevin S. Webb
James H. Holl, III
Gretchen L. Lowe
Alan I. Edelman
U.S. Commodity Futures Trading
Commission
1155 21st Street, NW
Washington, DC 20581
kwebb@cftc.gov
jholl@cftc.gov
glowe@cftc.gov
aedelman@cftc.gov

- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
- VIA EMAIL
- VIA ECF

Jeannette Swent
US Attorney's Office
185 South State Street, Suite 300
Salt Lake City, UT 84111
Jeannette.Swent@usdoj.gov
Attorneys for Plaintiff

- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
- VIA EMAIL
- VIA ECF

Robert J. Andres
10802 Archmont Dr.
Houston, TX 77070

- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
- VIA EMAIL

R. Wayne Klein
Klein & Associates
10 Exchange Place, Suite 502
Salt Lake City, UT 84111

VIA ECF
 VIA FACSIMILE
 VIA HAND DELIVERY
 VIA U.S. MAIL
 VIA FEDERAL EXPRESS
 VIA EMAIL

Robert L. Holloway
31878 Del Obispo Suite 118-477
San Juan Capistrano, CA 92675

VIA ECF
 VIA FACSIMILE
 VIA HAND DELIVERY
 VIA U.S. MAIL
 VIA FEDERAL EXPRESS
 VIA EMAIL
 VIA ECF

Zaman Ali
125 Riverglen Drive SE
Calgary, Alberta T2C 3X1
Canada
zali1@telus.net

/s/ David C. Castleberry