

IN THE UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:18-cv-23992-JEM

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

TIMOTHY JOSEPH ATKINSON, JAY
PASSERINO, ALL IN PUBLISHING, LLC,
& GASHER, INC.,

Defendants.

RECEIVER'S SIXTH STATUS REPORT

Melanie E. Damian, the court-appointed temporary Receiver (the "Receiver") in the above-captioned enforcement action, submits her sixth status report setting forth her activities and efforts to fulfill her duties, under the Orders pursuant to which she was appointed, for the period from December 1, 2020 through March 31, 2020 (the "Reporting Period").

I. INTRODUCTION

Since her appointment, the Receiver has worked diligently with the Commodity Futures Trading Commission (the "CFTC") and Defendants Timothy Joseph Atkinson ("Atkinson"), All In Publishing LLC ("AIP"), Jay Passerino ("Passerino") and Gasher, Inc. ("Gasher") to identify and marshal all known assets and records of the Defendants.

During the previous reporting periods, the Receiver located at least 76 accounts in which she froze funds totaling \$2,979,630.90, of which \$2,615,399.09 was transferred to the fiduciary accounts for the Receivership Estate. The only assets that were frozen but not transferred to the

Estate were approximately \$9,300 in a foreign account of a company owned by Atkinson and approximately \$496,000 in Passerino's investment accounts. During this Reporting Period, the Receiver continued working on having the funds in Atkinson's company's foreign account, and the funds in Passerino's investment accounts, transferred to the Estate. As of the filing of this Report, however, those funds had not been transferred to the Estate.

In addition, during the Reporting Period, the Receiver continued to market for sale the remaining personal property of the Estate and sold some of the personal property, including artwork, sports memorabilia, and cryptocurrency through public auctions and private sales at fair market value, pursuant to the Court's order approving the sale of personal property of the Estate. And, after the Reporting Period, the Receiver sold at fair market value the one baseball card in the Estate that she had been marketing for sale during the last few reporting periods.

Further, during the Reporting Period, the Receiver continued to market for sale Passerino's sole real property, leasing it during the summer and fall when the South Florida real estate market for luxury condominium units is less strong. The Receiver had a tenant in the unit at the beginning of the Reporting Period and the tenant was schedule to vacate the unit in December but the Receiver had not located a buyer at that time so she permitted the tenant to remain in the unit until the end of the Reporting Period while the Receiver's tenant continued to market the unit for sale. On the last day of the Reporting Period, the tenant vacated the unit and it remains vacant, clean and accessible for the Receiver's broker to show to potential purchasers. During the Reporting Period, the Receiver received one written cash offer to purchase the property but it was below the fair market value of the unit so the Receiver did not accept the offer. Nevertheless, the Receiver's realtor maintained a dialogue with the potential purchaser and worked on obtaining written offers from two other potential purchasers who had visited the unit and made significant verbal offers.

Also, during the Reporting Period, the Receiver administered the Court-approved claims process, collecting claims and supporting documentation from various claimants, processing those claims, and sending out determination letter to all claimants who submitted claims. This process resulted in the approval of 94 allowed claims totaling \$4,360,767.21. Finally, the Receiver pursued fraudulent transfer and unjust enrichment claims against third parties, insiders and/or affiliates who received significant transfers from AIP without providing reasonably equivalent value, obtaining a default final judgment against one of those transferees, seeking to negotiate a settlement with another transferee, and litigating the Receiver's claim against two affiliated transferees.

II. PROCEDURAL BACKGROUND AND THE APPOINTMENT AND DUTIES OF RECEIVER

On September 27, 2018, the CFTC filed a *Complaint for Injunctive Relief and Demand for Jury Trial* (the "Complaint") against Atkinson and his business AIP, and Passerino and his business Gasher (collectively, "Defendants"), commencing the above-captioned enforcement action (the "CFTC Action"). The CFTC also filed an Emergency Motion for Statutory Restraining Order [ECF No. 6], an Emergency Motion for Preliminary Injunction [ECF No. 7], and an Emergency Motion for Appointment of Temporary Receiver [ECF No. 9] seeking to enjoin Defendants from continuing their operations and further violations of the Act, an inspection of Defendants' records, the freeze of their assets, the appointment of a receiver, and other equitable relief.

A. Entry of Statutory Restraining Order and Appointment of Temporary Receiver

On October 5, 2018, the Court entered an *Order Granting Plaintiff's Motion for Statutory Restraining Order, Appointment of Receiver, an Accounting and Other Equitable Relief* (the "Statutory Restraining Order"). ECF No. 48. Pursuant to the Statutory Restraining Order, the Defendants' assets were frozen, all records of Defendants' activities and assets were ordered to be

preserved, and Melanie E. Damian was appointed Temporary Receiver of the entity Defendants and the assets of the individual Defendants in the CFTC Action. The Statutory Restraining Order required the Receiver to file with the Court periodic status reports that describe the performance of her duties, including her efforts to marshal and secure assets and administer the Receivership Estate. *See id.*

B. Entry of Preliminary Injunctions Against Defendants

On October 11, 2018, Defendants Atkinson and AIP consented to the Court's entry of a Preliminary Injunction against them. On November 16, 2018, the Court entered the agreed upon *Consent Order for Preliminary Injunction and Other Ancillary Relief Against Defendants Timothy Joseph Atkinson and All in Publishing, LLC* (the "Consent Injunction"), extending the injunctive relief, asset freeze and directives ordered in the Statutory Restraining Order and continuing the Receiver's appointment. *See* ECF No. 127. Also on November 16, 2018, the Court entered the *Order for Preliminary Injunction and Other Ancillary Relief Against Defendants Jay Passerino and Gasher, Inc.* [ECF No. 125] (the "Preliminary Injunction" and together with the Consent Injunction, the "Preliminary Injunctions"). The Preliminary Injunction extended the injunctive relief, asset freeze and directives as to Defendants Passerino and Gasher ordered in the Statutory Restraining Order and continued the Receiver's appointment until final disposition of the CFTC's claims against those Defendants. *See id.* at pp. 17-30.

C. Entry of Permanent Injunctions Against Defendants

On May 22, 2019, the Court granted the CFTC's *Motion to Approve Consent Judgment Against Defendants Timothy Atkinson and All In Publishing LLC* [ECF Nos. 204 and 205] and entered the *Consent Order For Permanent Injunction, and Other Statutory and Equitable Relief Against Atkinson and AIP* (the "AIP Permanent injunction"). *See* ECF No. 206. On December 23, 2019, the CFTC filed a Motion for Entry of Proposed Consent Order for Permanent

Injunction Against Defendants Jay Passerino and Gasher, Inc. *See* ECF No. 233. On February 12, 2020, the Court granted that Motion deeming as entered the proposed Consent Permanent Injunction (the “Gasher Permanent Injunction” and, together with the AIP Permanent Injunction, the “Permanent Injunctions”). *See* ECF No. 237. The Permanent Injunctions authorize the Receiver to, among other things, bring fraudulent transfer recovery actions to increase the value of the Receivership Estate. *See* ECF No. 233 at Section V, ¶ 30 and ECF No. 237.

III. THE RECEIVER’S ACTIVITIES AND EFFORTS TO DATE

A. Obtaining Defendants’ Records and Freezing and Recovering Funds and Assets in Defendants’ Accounts

Following her appointment, the Receiver and her professionals swiftly took action to review all available documents associated with the Defendants for the purpose of identifying and investigating their assets and business operations. Thereafter, as explained above, the Receiver identified 76 accounts held by the Defendants at various institutions, received confirmation that \$2,979,630.90 in cash and investments were frozen, and deposited \$2,615,399.09 of those funds into the Receiver’s fiduciary accounts. *See* Exhibit A. Among the frozen funds and investments that were not initially transferred to the Estate were approximately \$9,300 in an account in St. Lucia in the name of an entity owned by Defendant Atkinson,¹ investments in Defendant Passerino’s brokerage accounts, and cryptocurrencies in Defendant Passerino’s cryptocurrency wallets and exchange accounts.

During the prior reporting period, the Receiver had Merrill Lynch liquidate the investments in Mr. Passerino’s accounts, which generated proceeds of \$5,940 in his Roth IRA, \$216,738 in his

¹ Despite repeated joint efforts by the Receiver and Defendant Atkinson and the entry of the Permanent Injunctions, the bank at which these funds are frozen in St. Lucia (Boslil Bank) refuses to transfer the funds to the Receiver’s fiduciary account.

SEP IRA, and \$273,573 in his brokerage account, for a total of \$496,251. During the Reporting Period, the Receiver requested that Merrill Lynch transfer those funds to the Estate, but it had not done so as of the filing of this Report. The Receiver expects those funds to be transferred to the Estate during the next reporting period. Also, during the prior reporting period, the Receiver instructed Passerino to liquidate his cryptocurrencies and transfer the proceeds to the Estate. Passerino did so and transferred those proceeds, totaling \$8,197.19, to the Estate.

B. Marketing and Selling Real Property of the Defendants

During the prior reporting period, the Receiver had entered into a six-month lease with a tenant for the rental of Passerino's condominium unit in Ft. Lauderdale, Florida. The monthly rent was \$3,800, but for November and December 2020, the Receiver agreed to reduce the rent to \$3,300 because the building closed the pool and pool deck for renovations during those months and, therefore, the tenant could not enjoy all of the amenities that were promised in the lease agreement with the Receiver. And the tenant paid that reduced rent to the Estate in November and December 2020, the latter of which was the first month of the Reporting Period. For January, February and March 2021, the remaining months of the Reporting Period, the Receiver collected the full rental amount of \$3,800 from the tenant less minimal deductions for certain minor repairs the tenant needed to make to the unit.

Also, during the Reporting Period, the Receiver's realtor continued to market the unit for sale. The global pandemic has had a significant detrimental effect on the real estate market, depressing values and the demand for the purchase and rental of luxury condominium units in South Florida. Nevertheless, the Receiver's realtor received multiple calls from other realtors whose clients were interested in seeing the unit and showed the unit to a number of potential purchasers. Two potential purchasers made verbal offers but did not present written contracts to the Receiver, so the Receiver's realtor continued discussions with their realtors and encouraged

them to present written offers. A third potential purchaser presented a written offer, but the proposed purchase price was well below fair market value and the potential purchaser would not increase its offer in response to the Receiver's reasonable counteroffer. Shortly after the close of the Reporting Period, the Receiver received two written offers near market value for the purchase of the unit. The Receiver's realtor and counsel are negotiating with the potential purchasers and the Receiver will accept, subject to this Court's approval, the contract with the best terms for the Estate. The Receiver's realtor continues to market the unit for sale and show the unit to other potential purchasers.

C. Marketing and Selling Personal Property of the Defendants

During the prior reporting period, the Court authorized the Receiver to sell all of the personal property of the Estate without further order of the Court.² See ECF No. 220. Accordingly, the Receiver immediately began marketing the personal property, including artwork, jewelry and watches, a rare Roberto Clemente baseball card, sports memorabilia, and firearms and firearm accessories, for sale through online auctions and private dealers pursuant to consignment agreements and directly to end customers.

During the Reporting Period, the Receiver continued to market the baseball card for sale. After the Reporting Period, the Receiver accepted an offer to purchase the card at market value, the purchaser wired the purchase price of \$31,500 to the Receiver's fiduciary account for the Estate and the Receiver's counsel delivered the card to the purchaser.

Further, the Receiver continued to market Atkinson's firearm and firearm accessories through a local gun store, which has agreed to sell them both on consignment, with the net sale

² An inventory of all personal and real property of the Estate is attached hereto as **Exhibit A**.

proceeds to be transferred to the Estate. And, the Receiver's counsel worked on marketing Passerino's firearms directly to potential purchasers.

Finally, during the Reporting Period, the Receiver continued to market Passerino's Derek Jeter sports memorabilia through Ebay auctions and sold it generating \$887.29 in net proceeds for the Estate. The remainder of Passerino's personal property, including electronic equipment and furniture, will be sold with his condominium unit to increase the value and appeal of the unit and avoid the costs and logistical difficulties associated with marketing and selling those items separately.

D. Implementing the Noticing and Claims Process

During this Reporting Period, the Receiver carried out the Court-approved claims process [ECF No. 249]. The Receiver, through her noticing and claims agent Stretto, collected claims on the online claims portal www.aipclaimsprocess.com. Stretto then began tabulating and confirming completion of claims and fielding questions and concerns of eligible claimants, in accordance with instructions and parameters set by the Receiver. Stretto escalated claimants' inquiries, unsupported but significant claims and late-filed claims to the Receiver and her counsel as necessary and appropriate. This process minimized the cost to the Estate and maximized the responsiveness to legitimate issue requiring the Receiver's attention.

The deadline for eligible claimants to submit claims was October 22, 2020. Shortly thereafter, the Receiver's counsel began an initial review of the 3,580 claims submitted through the online claims portal, most of which lacked supporting documentation and were summarily disallowed. With Stretto's assistance, the Receiver then completed a review and made an initial determination regarding approximately 450 claims that contained supporting documentation and a completed or nearly completed claim form, disqualifying claims (a) without any supporting

documentation, (b) without affirmations of all declarations, and (c) that failed to demonstrate a net loss. The Receiver's counsel then drafted an initial claims determination letter and sent it out by email to each claimant that submitted an online claim by December 20, 2020. That initial determination letter prompted many claimants to ask for assistance in completing or amending their claim form and in submitting supporting documentation. The letter also convinced some potential claimants that this claims process is a legitimate Court-approved process rather than just another binary options fraud. Accordingly, the Receiver collected and reviewed 37 requests for reconsideration, 9 amended claims, and 10 late-filed claims from claimants that had not received notice during the noticing phase of the claims process. After a complete review of the initial 450 claims plus those additional 56 corrected or late claims and requests for reconsideration, the Receiver made her final determinations regarding all allowed claim amounts. On March 18-19, 2020, the Receiver sent her final determination of allowed claim amount to each claimant that had filed a claim at that point in the claims process. After the mailing of the final determinations, some claimants asked for clarification or additional assistance in correcting their claims and some additional late-filed claims were submitted. The Receiver processed and reviewed all requests and responded to those claimants, allowing all properly supported claims that were filed or amended through April 12, 2021. After reviewing all submitted claims, supporting documentation and requests for reconsideration and responding to all claimant inquiries, the Receiver determined that 94 claims with a total dollar amount of \$4,360,767.21 would be allowed or partially allowed and 369 claims would be disallowed.

The Receiver's counsel and Stretto have expended significant efforts reviewing all claims and documentation and communicating with claimants to assist them in correcting their submissions in an effort to give all potential claimants an opportunity to participate in the claims process and to recover from the Estate.

During the claims process, the Receiver discovered many legitimate claimants that lost their life savings through fraudulent binary options trading platforms, websites and companies and who will greatly benefit from the distributions that will be made from this Estate upon Court approval. And, the Receiver expects to be able to make a significant *pro rata* distribution to each claimant with an allowed claim. During the next reporting period, the Receiver will file a motion seeking authority to make her initial distribution to claimants with allowed claims.

The Receiver maintains a website (www.allinpublishingreceivership.com) and set up a dedicated email address and telephone number for Defendants' customers and creditors to use to communicate with the Receiver and her counsel and stay apprised of the status of the Receivership and the CFTC's enforcement action. On the website, the Receiver has been posting Court filings, notices, orders and important dates and deadlines, and answering frequently asked questions.

E. The Estate's Claims Against Third Parties, Affiliates and Insiders

Throughout the Reporting Period, the Receiver continued to pursue fraudulent transfer and unjust enrichment claims against third parties and affiliates of the Defendants. In particular, the Receiver sought to revive her claims against Yahia Meftah and Yahia Meftah Sole Prop. (collectively, the "Meftah Defendants"), which this Court had dismissed during the prior reporting period for lack of personal jurisdiction. During the Reporting Period, the Receiver's counsel prepared and filed a motion to reopen the case and for leave to amend the complaint, or in the alternative, to transfer venue ("Motion to Reopen Case"), attaching a proposed Second Amended Complaint. *See* ECF No. 55. The Meftah Defendants filed a response to the Receiver's Motion to Reopen Case, and the Receiver filed a reply in support of her Motion. *See* ECF Nos. 56 and 60. During the Reporting Period, the Court entered an Order granting the Motion to Reopen Case [ECF No. 61] and, on March 1, 2020, the Receiver filed a Second Amended Complaint [ECF No. 62] naming Yahia Meftah d/b/a Yahia Meftah Sole Prop. and Zak Meftah as defendants and adding

allegations concerning the those Defendants' contacts to South Florida and Zak Meftah's significant role and involvement with AIP.

The Receiver also continued to pursue the Estate's fraudulent transfer claims against Hasnain Rafiq, an associate of the Defendants who received significant transfers from AIP without providing reasonably equivalent value. Having already obtained a Clerk's Default against Mr. Rafiq, the Receiver prepared and filed a motion for default final judgment, which the Court granted. *See* ECF No. 21 (Motion) and ECF No. 22 (Default Judgment). The Receiver is exploring selling the judgment because collection in Pakistan would be too costly.

Finally, the Receiver's counsel continued settlement discussions with the transferee Melinda Berry who had refused to sign the previously negotiated settlement agreement. In the event a settlement agreement is executed, the Receiver will present it to this Court for approval; otherwise, the Receiver will pursue the claim as appropriate.

IV. CASH ON HAND AND ADMINISTRATIVE EXPENSES OF ESTATE

As of the end of the Reporting Period (March 31, 2021), the Receiver held a total of \$2,372,731.03 in cash-on-hand, in two fiduciary accounts at City National Bank in Miami, Florida, segregated based on whether the owner of the accounts from which the funds were transferred was Atkinson/AIP or Passerino/Gasher. Because the claims process ultimately treated the Estate as a single Estate, the accounts and distributions will now be consolidated

Since the inception of the Receivership, the Receiver has made disbursements from the Receiver's fiduciary accounts for necessary expenses to preserve and administer the Estate, pursuant to the authority granted to the Receiver in the Court's Orders. Such expenses included without limitation maintenance fees and assessments for Defendant Atkinson's Miami Beach condominium units, mortgage payments, maintenance fees for Defendant Passerino's Ft. Lauderdale condominium unit, and fees for bank account services and check printing.

Pursuant to the Court's Orders, the Receiver has filed five applications seeking approval of the fees and expenses she and her professionals incurred during the first through fifth reporting periods and seeking payment of such fees and expenses from the funds the Receiver has marshaled and deposited into her fiduciary accounts pursuant to the Court's Orders. During this Reporting Period, the Court approved the Receiver's fifth fee application, and the Receiver disbursed the Court-approved amounts. *See* ECF Nos. 253 (Application) and 256 (Order). A detailed statement of the Estate's Receipts and Disbursements during this Reporting Period is attached hereto as **Exhibit B**. In short order, the Receiver will file an application seeking approval and payment of the fees and expenses that she and her professionals incurred during this Reporting Period.

V. CONCLUSION

The Receiver and her professionals appreciate the opportunity to assist the Court in this matter. Significant progress has been made, but the Receiver and her professionals will continue their efforts, as discussed herein, to fulfill the Receiver's duties under the Court's Orders, with the focus on affording the most cost-effective protection to, and maximizing the ultimate recovery by, the Estate's allowed claimants.

Respectfully submitted this 20th day of April, 2021.

Respectfully submitted,

/s/Kenneth Dante Murena
Kenneth Dante Murena, Esq.
Florida Bar No.: 147486
DAMIAN & VALORI LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
Telephone: (305) 371-3960
Facsimile: (305) 371-3965
Email: kmurena@dvllp.com
*Counsel for Melanie E. Damian,
Court-Appointed Receiver*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission via this Court's CM/ECF filing system on April 20, 2021 on all counsel or parties who have appeared in the above-styled action.

/s/Kenneth Dante Murena

Kenneth Dante Murena,
Counsel for Receiver