

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.

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**RECEIVER'S SEVENTH STATUS REPORT**

Melanie E. Damian, the court-appointed temporary Receiver (the "Receiver") in the above-captioned enforcement action, submits her seventh 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 April 1, 2021 through July 31, 2021 (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 \$2,928,194.27 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.

In addition, during the Reporting Period, the Receiver continued to market for sale the remaining personal property of the Estate and sold some of it, 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, during 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.

Moreover, during the Reporting Period, the Receiver continued to market for sale Passerino's Ft. Lauderdale condominium unit. The Receiver's realtor received offers from and negotiated with two potential purchasers. And, the Receiver closed the sale of that unit, netting nearly \$200,000 for the Estate.

Also, during the Reporting Period, the Receiver administered the Court-approved claims process, including collecting claims and supporting documentation from various claimants, processing those claims and sending out initial determinations, receiving and processing requests for reconsideration of the Receiver's initial determinations, and sending out final determination letter to all claimants who submitted claims. This process resulted in the approval of 94 allowed claims totaling \$4,360,767.21. Further, the Receiver continued to pursue her fraudulent transfer and unjust enrichment claims against an insider who received significant transfers from AIP without providing reasonably equivalent value (and the relative through which he received those transfers), engaging in discovery and motion practice. Finally, the Receiver obtained a default final judgment against an associate of AIP and Atkinson who had received significant transfers from AIP without providing reasonably equivalent value to AIP.

## **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,<sup>1</sup> 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 SEP IRA, and \$273,573 in his brokerage account, for a total of \$496,251. During the Reporting Period, the Receiver received the transfer of those funds from Merrill Lynch.

#### ***B. Marketing and Selling Real Property of the Defendants***

During the prior reporting period, the Receiver had leased out Passerino's condominium unit in Ft. Lauderdale, Florida to cover the carrying costs of the unit until entry of the Permanent Injunction against Passerino. During this Reporting Period, the Receiver focused on marketing

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<sup>1</sup> 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.

that condominium unit for sale. Initially, the global pandemic 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. Towards the end of 2020, however, 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. During this Reporting Period, the Receiver received two written offers near market value for the purchase of the unit. The Receiver's realtor and counsel negotiated with the potential purchasers, both of which increased their offers. And, the Receiver accepted the offer, subject to Court approval, that would result in the Estate netting the most funds, factoring in the realtor's sales commission. The Receiver then presented the purchase agreement memorializing the terms of that offer to the Court, and the Court approved the agreement. *See* ECF No. 258 (Receiver's Motion for approval) and No. 259 (Order). On July 13, 2021, the sale of the unit closed and \$196,715.77 in net proceeds were transferred to the Estate.

***C. Marketing and Selling Personal Property of the Defendants***

During a prior Reporting Period, the Court authorized the Receiver to sell all the personal property of the Estate without further order of the Court.<sup>2</sup> *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 closed the sale of the Roberto Clemente baseball card for the purchase price of \$31,500 and the Receiver's counsel delivered the card to the purchaser.

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

Further, the Receiver continued to market Atkinson's firearm and firearm accessories through a local gun store, which has agreed to sell them on consignment, with the net sale proceeds to be transferred to the Estate. And, the Receiver's counsel worked on marketing Passerino's firearms directly to potential purchasers.

***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](http://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.

After the mailing of the Receiver's 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 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.

After completing the claims review, making final determinations on claims and resolving all requests for reconsideration and potential appeals, the Receiver requested and received approval of her proposed initial distribution to claimants of 75% of the cash on hand in the Estate at the time of the distribution. *See* ECF No. 260 (Motion) and No. 266 (Order). The Receiver then worked with Stretto to confirm or complete claimants' mailing addresses and confirmed several foreign claimants' ability to receive and deposit checks. Towards the end of this Reporting Period, on July 16, 2021, the Receiver sent Initial Distribution checks totaling \$1,800,363.90 to claimants with allowed claims via first class mail to minimize the cost of the distribution and allay the concerns many claimants had with providing the Receiver's office or Stretto banking information. This *pro rata* distribution represented 42.4% of each claimant's allowed claim amount. The Receiver will now focus on completing the liquidation of personal property and the remaining recovery action, after which the Receiver will seek Court approval of a final distribution of the proceeds to allowed claimants.

***E. Communications with Investors and Creditors***

The Receiver maintains a website ([www.allinpublishingreceivership.com](http://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.

***F. The Estate's Remaining Claims Against Insider of AIP***

Throughout the Reporting Period, the Receiver continued to pursue fraudulent transfer and unjust enrichment claims against and insider of AIP and the third party through which he received

significant transfers from AIP. In particular, the Receiver revived 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. Pursuant to this Court’s Order reopening the case, the Receiver, on March 1, 2020, 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 those defendants’ contacts to South Florida and Zak Meftah’s significant role and involvement with AIP. The Meftah defendants filed a motion to dismiss the Second Amended Complaint [ECF 69] on April 1, 2021, the Receiver filed her Response [ECF 75] on April 26, 2021, and defendants filed a Reply [ECF 76] on May 3, 2021. The motion remains ripe for this Court’s determination.

The Receiver also concluded the Estate’s fraudulent transfer and unjust enrichment 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 during a prior reporting period, the Receiver prepared and filed a motion for default final judgment, which the Court granted during this Reporting Period. *See* ECF No. 21 (Motion) and ECF No. 22 (Default Judgment). The Receiver is exploring selling the judgment because collection in Pakistan would not be cost effective.

#### **IV. CASH ON HAND AND ADMINISTRATIVE EXPENSES OF ESTATE**

As of the end of the Reporting Period (July 31, 2021), the Receiver held a total of \$1,304,612.56 in cash-on-hand, in two fiduciary accounts at City National Bank in Miami, Florida. This amount reflects the amount of cash that will remain in the Estate after all of the Initial Distribution checks to allowed claimants, totaling \$1,800,363.90, are cashed.

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. During this Reporting Period, such expenses included, without limitation, mortgage payments, maintenance fees for Defendant Passerino's Ft. Lauderdale condominium unit, fees for bank account services, fees for Stretto's claims administration and distribution services, and the Initial Distribution to claimants.

Pursuant to the Court's Orders, the Receiver has filed six prior applications seeking approval of the fees and expenses she and her professionals incurred during the first through sixth 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 Receiver filed her sixth fee application and, on August 5, 2021, this Court approved the fees and costs for which approval and payment was sought. *See* ECF Nos. 264 (Application); 267 (R&R recommending approval of Application); and 269 (Order adopting R&R). 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 24<sup>th</sup> day of August, 2021.

Respectfully submitted,

/s/Kenneth Dante Murena  
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*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 August 24, 2021 on all counsel or parties who have appeared in the above-styled action.

/s/Kenneth Dante Murena  
Kenneth Dante Murena,  
*Counsel for Receiver*