

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 EIGHTH STATUS REPORT**

Melanie E. Damian, the court-appointed Receiver (the "Receiver") in the above-captioned enforcement action, submits her eighth 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 August 1, 2021 through December 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 prior reporting periods, 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, located and froze at least 76 accounts held by the Defendants at various financial

institutions, obtained and analyzed account statements and created a consolidated account reconstruction to assist with further asset recovery efforts, liquidated real and personal property, including investments and cryptocurrencies, and deposited \$3,607,901.09 into the Receiver's fiduciary accounts for the Estate.<sup>1</sup> Further, the Receiver marketed for sale and sold all of the Defendants' real property and most of the Defendants' personal property pursuant to the Court's orders authorizing and approving the sales. And, the Receiver formulated and submitted to the Court for approval a Claims Process and Distribution Plan and then implemented the Court-approved Claims Process.

During the Reporting Period, the Receiver continued to market for sale the remaining few items of personal property of the Estate and sold some of the artwork. Moreover, the Receiver administered the Distribution Plan, utilizing 75% of the cash-on-hand in the Estate to make an initial *pro rata* distribution to the claimants holding the 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 marketed for sale a default final judgment that she obtained against an associate of AIP and Atkinson who had received significant transfers from AIP without providing reasonably equivalent value to AIP and resides in Pakistan, making collection extremely difficult and costly.

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<sup>1</sup> The only assets that were identified by the Receiver but not transferred to the Estate were funds totaling approximately \$9,300 in an account of a company owned by Atkinson at Boslil Bank in St. Lucia. Boslil Bank has refused to recognize the Appointment Order or transfer the funds to the Estate despite multiple written and verbal requests by the Receiver's counsel, Mr. Atkinson, and Mr. Atkinson's counsel. The Receiver has determined that it would cost the Estate more than \$9,300 to seek to compel the institution to recognize the Appointment Order and transfer the funds to the Estate; therefore, the Receiver has not taken such action.

## 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 and this Court granted the Emergency Motion for Statutory Restraining Order [ECF No. 6], the Emergency Motion for Preliminary Injunction [ECF No. 7], and the 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.

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 authorized the Receiver to, among other things, bring fraudulent transfer recovery actions to increase the value of the Receivership Estate and directed the Receiver to, among other things, formulate and propose to the Court a Claims Process and Distribution Plan for purposes of distributing the assets of the Estate to investors who were defrauded by the Defendants. *See* ECF No. 233 at Sections V, ¶ 30

and ¶ 34 and ECF No. 237 at Section V, ¶ 30 and ¶ 34.

### **III. THE RECEIVER'S ACTIVITIES AND EFFORTS DURING THE REPORTING PERIOD**

#### ***A. Recovery of Additional Funds from Sale of Passerino's Real Property***

During the prior reporting period, the Receiver closed the sale of Passerino's condominium unit which resulted in \$196,715.77 in net proceeds being transferred to the Estate. During this Reporting Period, the Receiver obtained the return of \$2,576.52 in escrow funds remaining after the sale of that unit.

#### ***B. 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. *See* ECF No. 220. Accordingly, during this Reporting Period, the Receiver sold certain artwork obtained from Defendant Atkinson, generating \$5,029.94 in net proceeds, and delivered the artwork 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 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.

#### ***C. Administering the Distribution Plan***

Towards the end of the prior 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 in accordance with the Court-approved Distribution Plan. *See* ECF No. 249. During this Reporting Period, the Receiver, with the assistance of her distribution agent Stretto, continued to work with claimants to ensure that they received their distributions by check or wire transfer. Many claimants were unable to deposit their checks due to COVID-19 restrictions on paper checks and bank

closures all over the world. Also, many checks were significantly delayed in arriving at their destinations such that they arrived expired or were deemed lost in the mail. Accordingly, the Receiver cancelled many of the distribution checks and issued wire transfers for the distribution amounts. At present, 15 distributions remain outstanding. Stretto is preparing wire transfers for 5 of the claimants and replacement checks for 2 of them, and the Receiver has made several attempts to contact the remaining 8 claimants by email and telephone to resolve any issues with cashing the distribution checks or receiving the wire transfers for their distributions.

This *pro rata* distribution represented 42.4% of each claimant's allowed claim amount. The Receiver has recently proposed to the District Court for the Southern District of Florida that the claimants of this Estate be allowed to participate in a related receivership case's claims process and distribution plan (the "Fingerhut Claims Process and Distribution Plan"). See *Commodity Futures Trading Commission v. Daniel Fingerhut, Digital Platinum Inc., et al.*, Case No. 1:20-CV-21887-DPG (S.D. Fla.) (the "Fingerhut Case") at ECF No. 301. The Receiver was also appointed as receiver in the Fingerhut Case. In investigating the operations and identifying potential claimants of Daniel Fingerhut, Digital Platinum Inc. and related defendants, the Receiver determined that those defendants worked with AIP and/or Gasher to market the binary option schemes and foreign currency and digital asset trading schemes. The defendants in the Fingerhut Case and the Defendants in this case apparently shared marketing efforts and leads lists such that they share many of the same defrauded customers. Thus, if approved by the District Court in the Fingerhut Case, the Receiver intends to grant all allowed claimants of this Estate an allowed claim in the Fingerhut Claims Process in the amount of the outstanding balance of their allowed claim in this case. The Receiver would then make a *pro rata* distribution to this Estate's claimants from the Fingerhut Distribution Plan.

After the Receiver sells the few remaining items of personal property and completes the

remaining recovery action (described below), the Receiver will seek Court approval to make a final distribution of the remaining funds in the Estate (after payment of all outstanding administrative expenses) to allowed claimants.

***D. 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 an insider of AIP and the third party through which he received significant transfers from AIP. In particular, the Receiver pursued her claims against Yahia Meftah and Yahia Meftah Sole Prop. (collectively, the "Meftah Defendants"), which this Court had dismissed for lack of personal jurisdiction and the Receiver had revived during a prior reporting period. 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. During the Reporting Period, the Receiver's counsel attended the deposition of Jay Passerino where he testified concerning the Meftah Defendants' business dealings with Defendants in South Florida.

The Meftah Defendants filed a motion to dismiss the Second Amended Complaint [ECF No. 69] for lack of personal jurisdiction, which this Court granted [ECF No. 93] shortly after the end of the Reporting Period. The Receiver then filed a motion to transfer venue to the Northern

District of California where the Meftah Defendants are located. *See* ECF No. 96.

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

As of the end of the Reporting Period (December 31, 2021), the Receiver held a total of \$1,179,933.05 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 to allowed claimants, totaling \$1,800,363.90, have cleared.

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, fees for bank account services and fees for Stretto's claims administration and distribution services.

Pursuant to the Court's Orders, the Receiver has filed seven prior applications seeking approval of the fees and expenses she and her professionals incurred during the first through seventh 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 seventh fee application, and on September 21, 2021, this Court approved the fees and costs for which approval and payment was sought. *See* ECF Nos. 272 (Application); 275 (R&R recommending approval of Application); and 277 (Order adopting R&R). A detailed statement of the Estate's Receipts and Disbursements during this Reporting Period is attached hereto as **Exhibit A**. 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. The Receiver and her professionals will continue their efforts to fulfill the Receiver's remaining duties under the Court's Orders, with the focus on maximizing the ultimate recovery by the Estate's allowed claimants before the Receiver completes the wind down of the receivership and seeks a discharge.

Respectfully submitted this 24<sup>th</sup> day of February 2022.

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 February 24, 2022 on all counsel or parties who have appeared in the above-styled action.

/s/Kenneth Dante Murena

Kenneth Dante Murena,

*Counsel for Receiver*