

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 18-23992-CIV-MARTINEZ/AOR

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

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

Defendants.

REPORT AND RECOMMENDATION

THIS CAUSE came before the Court upon Temporary Receiver Melanie E. Damian's (the "Receiver") Unopposed Motion to Approve Initial Distribution filed on May 19, 2021 [D.E. 260], which was revised on May 27, 2021 [D.E. 262]. See Unopposed Motion to Approve Initial Distribution [D.E. 260]; Notice of Filing Corrected Exhibit A and Proposed Order (hereafter, "Notice") [D.E. 262]. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636 by the Honorable Jose E. Martinez, United States District Judge [D.E. 261].

On June 23, 2020 the Court approved and authorized the Receiver to:

- Implement the Claims Process and Distribution Plan proposed in the Receiver's Unopposed Motion to Approve (A) Noticing and Claims Administration Process and (B) Plan of Distribution (hereafter, "Motion") [D.E. 242], or a Process and Plan that is substantially similar in form, effect and cost as the Receiver may determine, in her sole discretion, is necessary, appropriate and in the best interest

of Defendants Timothy J. Atkinson, All In Publishing, LLC, Jay Passerino, and Gasher, Inc.'s (collectively, "Defendants") respective receivership estates (collectively, "Estate").

- Employ Bankruptcy Management Solutions d/b/a Stretto ("Stretto") to provide noticing, claims processing and distribution services pursuant to the terms of the proposal attached as Exhibit B to the Motion.
- Utilize Stretto to send by email a Notice (in a form substantially similar to the form attached as Exhibit C to the Motion) to all potential claimants as identified by the Receiver.

See Order Adopting Magistrate Judge's Report and Recommendation [D.E. 249].

Upon concluding the Claims Process approved by the Court, the Receiver determined that the claims made by Defendants' defrauded customers and creditors which would be allowed or partially allowed (hereafter, "Claimants"), as identified in Exhibit A to the Notice [D.E. 262-1], totaled \$4,246,141.33 (hereafter, "Allowed Claims"). See Unopposed Motion to Approve Initial Distribution [D.E. 260 at 3-5]; Notice [D.E. 262]; Ex. A to Notice [D.E. 262-1]. Pursuant to the Court approved Distribution Plan, the Receiver now seeks Court authority to make a *pro rata* initial distribution to Claimants of approximately 75% of the total amount of the Estate's cash on hand, resulting in an initial distribution of \$1,800,363.90 (hereafter, "Initial Distribution"). See Unopposed Motion to Approve Initial Distribution [D.E. 260 at 6]; Notice [D.E. 262]; Ex. A to the Notice [D.E. 262-1]. The Receiver also requests that the Court authorize the use of Stretto to make the requested Initial Distribution to Claimants. See Unopposed Motion to Approve Initial Distribution [D.E. 260 at 6].

Having reviewed the Unopposed Motion to Approve Initial Distribution, the Notice, and

being otherwise fully advised in the premises, the undersigned finds that the Receiver comported with the Court approved Claims Process and that the requested Initial Distribution and use of Stretto as a distribution agent also comports with the approved Distribution Plan.

RECOMMENDATION

Based on the foregoing, the undersigned **RESPECTFULLY RECOMMENDS** that the Unopposed Motion to Approve Initial Distribution [D.E. 260], as revised by the Notice [D.E. 262], be **GRANTED** and that the Proposed Order Granting the Unopposed Motion to Approve Initial Distribution [D.E. 262-2], attached hereto as Exhibit A, be **ENTERED**.

Pursuant to Local Magistrate Judge Rule 4(b), the parties have **fourteen days** from the date of this Report and Recommendation to file written objections, if any, with the Honorable Jose E. Martinez, United States District Judge. Failure to file timely objections may bar the parties from attacking the factual findings contained herein on appeal. See Resolution Tr. Corp. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993). Further, “failure to object in accordance with the provisions of [28 U.S.C.] § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions.” See 11th Cir. R. 3-1 (I.O.P. - 3).

RESPECTFULLY SUBMITTED in Chambers at Miami, Florida this 1st day of June, 2021.



ALICIA M. OTAZO-REYES
UNITED STATES MAGISTRATE JUDGE

cc: United States District Judge Jose E. Martinez
Counsel of Record

EXHIBIT A

**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.

**ORDER GRANTING RECEIVER'S UNOPPOSED MOTION
TO APPROVE INITIAL DISTRIBUTION**

THIS CAUSE came before the Court upon the Receiver's Unopposed Motion to Approve Initial Distribution (the "Motion") to claimants holding Allowed Claims.¹ The Court has considered the Motion and the Court record and is otherwise fully advised in the premises. Accordingly, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Motion [ECF No. 260], as revised by the Notice of Filing Corrected Exhibit A and Proposed Order (hereafter, "Notice") [ECF No. 262], is GRANTED.
2. The Receiver is authorized to make the Initial Distribution to holders of Allowed Claims in the amount of \$1,800,363.90, as proposed in the Motion [ECF No. 260] and revised by the Notice [ECF No. 262], and Exhibit A to the Notice [ECF No. 262-1].

¹ All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion to Approve Claims Process [ECF No. 242] and the Motion to Approve Initial Distribution [ECF No. 260].

3. The Receiver is authorized to retain and compensate Stretto as distribution agent to prepare, distribute and manage all disbursements to claimants without further order of this Court.

DONE AND ORDERED in Miami, Florida, this ____ day of _____,
2021.

JOSE E. MARTINEZ
U.S. DISTRICT JUDGE

Copies to: Counsel of Record