

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 UNOPPOSED MOTION
TO APPROVE INITIAL DISTRIBUTION**

Melanie E. Damian, the court-appointed temporary Receiver (the "Receiver") in the above-captioned enforcement action, files this unopposed Motion (the "Motion"), pursuant to this Court's *Order Adopting Report and Recommendation* [ECF No. 249] (the "Order Approving Claims Process") on the *Receiver's Motion for Approval of the Claims Process and Plan for Distribution* [ECF No. 242] (the "Motion to Approve Claims Process"), for an order approving the Receiver's proposed initial distribution of assets of the Estate (the "Initial Distribution"). In support of this Motion, the Receiver states as follows:

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. At present, the Estate holds \$2,397,750.05 in cash.

In light of the amount of funds presently in the Estate, the difficult financial condition of many of the defrauded customers, the entry of the Permanent Injunctions (defined *infra*), and the conclusion of the Claims Administration Process (as defined in the Motion to Approve Claims Process), it is appropriate for the Receiver to make the Initial Distribution to claimants with Allowed Claims at this time. The total amount of Allowed Claims is \$4,242,593.52.

In the Motion to Approve Claims Process, the Receiver proposed to file a motion to approve the Initial Distribution to claimants with Allowed Claims of seventy five percent (75%) of the total amount of cash on hand within thirty (30) days following the conclusion of the Claims Administration Process. [ECF No. 242 at Sec. III]. Accordingly, the Receiver files this Motion seeking authority to make the Initial Distribution in the amount of \$1,798,859.63 (just over 75% of the Estate’s cash), with each claimant to receive 42.4% of the amount of their Allowed Claim.¹

After the asset recovery and liquidation phases of the receivership have been concluded, the Receiver will file a motion to make a final distribution of the remaining cash on hand in the Estate after payment of all administrative expenses that are incurred through the conclusion of the Receivership.

II. BACKGROUND

On May 22, 2019, the Court granted the CFTC’s *Motion to Approve Consent*

¹ To protect the claimants from potential telemarketing frauds that have preyed upon victims of binary options trading schemes, the Receiver, submits as **Exhibit A** hereto a list of the amounts to be distributed to each of the claimants with Allowed Claims identified only by a claim number in the Initial Distribution proposed herein. The Receiver retains all personal information necessary to identify claimants, process their claims and make distributions in her office. Should the Court wish to review such files, the Receiver would propose an *in camera* review of that personal information.

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, carry out the claims process. *See* ECF Nos. 206 and 237.

III. CLAIMS PROCESS

On April 28, 2020, pursuant to the Permanent Injunctions against Defendants, the Receiver filed the Motion to Approve Claims Process [ECF No. 242]. On June 23, 2020, this Court entered its Order adopting the Magistrate Judge’s Report and Recommendation Approving Claims Process [ECF Nos. 244 and 249].

The Receiver conducted the Claims Administration Process in accordance with the Motion to Approve Claims Process and the Order Approving Claims Process. *See id.* 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 has only escalated claimants’ inquiries, unsupported but significant claims and late-filed claims to the Receiver and her counsel as necessary and appropriate, to minimize the cost to the Estate.

The deadline for eligible claimants to submit claims was October 22, 2020. Shortly thereafter, Stretto began an initial review of the 1,534 opt-out requests and the 1,740 responses submitted through the online claims portal, most of which were incomplete claim forms that lacked claimant information, claim totals, affirmations and/or supporting documentation such that they were summarily disallowed. With Stretto's assistance, the Receiver then completed a review and made an initial determination regarding approximately 450 claims that contained at least some supporting documentation and a completed or nearly completed claim form disqualifying claims (a) without sufficient supporting documentation, (b) without affirmations of all declarations, (c) that failed to demonstrate a net loss or (d) that were duplicate claims.

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 Administration Process. After a complete review of the initial 450 claims plus the 56 amended 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 11 claimants submitted late-filed claims because they had, for the first time, received notice of the Claims

Administration Process. Most of those late claimants came to the Receiver through a referral from the Department of Justice. In an effort to be as inclusive as possible and to prevent delay of the Claims Administration Process and the waste of Court resources by requiring late claimants to appeal to this Court for permission to file late claims, the Receiver processed and reviewed all claims and requests for reconsideration, allowing all properly supported claims that were filed or amended by April 20, 2021.

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 Administration Process and to recover from the Estate. Indeed, because the Receiver did not have information or documents that would corroborate the claims of the potential claimants, the Receiver had to strictly require documentation showing the transfer(s) between individual customers and any Binary Options Platform to which Defendants directed customers. Such strict proof requirements led to significant interaction between the Receiver's office and claimants. During this 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 Initial Distribution that will be made from this Estate upon Court approval.

After reviewing all submitted claims, supporting documentation and requests for reconsideration and responding to all claimant inquiries, the Receiver determined that 92 claims with a total dollar amount of \$4,242,593.52 would be allowed or partially allowed and 371 claims would be disallowed. *See Exhibit A.*

Accordingly, the Receiver now seeks authority to make a significant *pro rata* distribution to each claimant with an allowed claim.

IV. THE PROPOSED INITIAL DISTRIBUTION

The Receiver previously proposed and this Court approved an the Initial Distribution on a *pro rata* basis, to claimants with Allowed Claims, of seventy percent (75%) of the total amount of cash on hand upon the conclusion of the Claims Administration Process, with the remaining sum to be held by the Receiver as a reserve to cover the fees and costs that the Receiver and her professionals incur through the conclusion of the Receivership. *See* Motion and Order Approving Claims Administration Process [Motion, ECF No. 242 at III and Order, ECF No. 249]. Of the 463 claims that were submitted, the Receiver determined that 92 of them should be Allowed Claims (as defined in the Motion to Approve Claims Process [ECF No. 242 at III(A)]). The Allowed Claims total \$4,242,593.52. Based on the Receiver's final determinations and the estimated Initial Distribution amount of \$1,798,859.63 (just over 75% of the cash on hand in the Receivership Estate), the Receiver estimates that the Initial Distribution to claimants with allowable claims will be 42.4% of the total amount of Allowed Claims.

The Receiver proposes to use Stretto to make the proposed Initial Distribution to claimants. Stretto's staff is trained to efficiently prepare checks and directly send them out to claimants from the Estate's fiduciary account using the physical addresses provided by claimants on their proof of claim forms. Stretto uses the Positive Pay system² and mail tracking to assure the checks reach the correct party and are not cashed by an unauthorized person. The cost per check sent is \$1.29 plus the costs of delivery and Stretto's time expended as Senior Associate rates (approximately

² Positive pay is a fraud-prevention system offered by Stretto's commercial bank to protect the Estate against forged, altered, and counterfeit distribution checks. Stretto will provide the bank provide a list of the check number, dollar amount, and account number of each check sent to claimants.

\$185/hour) in providing review and quality control in the preparation, mailing and tracking of the checks and preparation of disbursement reports memorializing those payments to claimants. In order to reduce the cost of the Initial Distribution, Stretto will only make disbursements by wire transfer to those claimants in locations where sending a check would prove difficult and/or more costly than sending a check. Moreover, Stretto will track the checks sent to claimants and investigate any missing, seemingly altered or uncashed checks. The Receiver has determined that this is the most cost-effective and efficient method of making the Initial Distribution to claimants proposed herein.

In light of the remaining work to be done to liquidate assets of the Estate and to prosecute claims against third parties, the Receiver expects that she and her professionals will incur additional fees and costs in connection with fulfilling her duties. The Receiver anticipates that, following the proposed Initial Distribution, the Estate will be replenished with additional funds that the Receiver recovers as a result of her various asset recovery and liquidation efforts. As such, the Receiver expects to file with this Court a supplemental motion to approve a final distribution after the Receiver has completed her recovery efforts and a meaningful amount of funds are available for distribution, as the Receiver determines, using her business judgment, is in the best interest of the Estate and the defrauded customers and creditors. Upon making the final distribution, the Receiver will file a motion with the Court to discharge the Receiver.

V. CERTIFICATION

Undersigned counsel hereby certifies that he has conferred with counsel for the CFTC and with the individual Defendants regarding the relief requested herein and all parties consent to such relief.

VI. CONCLUSION

WHEREFORE, for the foregoing reasons, the Receiver respectfully requests that this Court enter the attached proposed order: (i) approving the Initial Distribution to all eligible claimants holding Allowed Claims listed on Exhibit A, (ii) approving the use of Stretto as distribution agent to disseminate any distributions made in this case and (iii) granting such other relief as this Court deems just and proper.

Dated: May 19, 2021.

Respectfully submitted,

DAMIAN & VALORI, LLP

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/s/ Kenneth Dante Murena

KENNETH DANTE MURENA, P.A.

FLORIDA BAR NO. 147486

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Receiver's Motion to Approve Initial Distribution was served via CM/ECF this 19th day of May, 2021, upon all counsels of record.

/s/ Kenneth Dante Murena

KENNETH DANTE MURENA, P.A.