

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 UNOPPOSED MOTION  
TO APPROVE FINAL DISTRIBUTION**

Melanie E. Damian, the court-appointed 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 final distribution of assets of the Estate (the "Final 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

\$1,054,641.07 in cash. After payment of the fees and costs requested in the Receiver's latest fee application, the Estate will hold \$995,120.30 in cash.

In light of the amount of funds presently in the Estate, the entry of the Permanent Injunctions (defined *infra*), the completion of the Claims Administration Process (as defined in the Motion to Approve Claims Process), and the conclusion of the Receiver's final recovery action, it is appropriate for the Receiver to make the Final Distribution to claimants with allowed claims at this time. The total amount of allowed claims is \$4,261,939.83, and the claimants holding allowed claims received 68% of that amount in the Court-approved Initial Distribution.

In the Motion to Approve Claims Process, the Receiver proposed to file a motion to approve the Final Distribution to claimants with allowed claims of the remaining balance of the cash on hand at the conclusion of the receivership case. [ECF No. 242 at Sec. III]. Accordingly, because there is no work remaining for the Receiver to do other than making the Final Distribution and winding down the Estate, the Receiver files this Motion seeking authority to make the Final Distribution of \$900,000 (just over 85% of the Estate's cash), with each claimant to receive an additional 21% recovery for a total recovery of 89% of the amount of their allowed claims.<sup>1</sup>

Thus, the Receiver requests authority to make the proposed Final Distribution of the remaining cash on hand in the Estate and to hold back just over \$100,000 for payment of all administrative expenses of the Estate, including professional fees, the distribution agent's fees and

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<sup>1</sup> 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.

costs for the Final Distribution, and tax liabilities that will be incurred through the conclusion of the Receivership.

## **II. BACKGROUND**

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, 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 deadline for eligible claimants to submit claims was October 22, 2020. Shortly thereafter, the Court-approved claims process and distribution agent, 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 473 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.

After reviewing all submitted claims, supporting documentation, and requests for reconsideration and responding to all claimant inquiries, the Receiver determined that 95 claims with a total dollar amount of \$4,261,939.83 would be allowed or partially allowed and 378 claims would be disallowed. *See* Exhibit A.

Then, in July 2021, upon obtaining this Court's approval, the Receiver made the Initial Distribution totaling \$1,807,062.46 providing a recovery of 42.4% of the allowed claims.

After the Initial Distribution, the Receiver, in her capacity as the Court-appointed Receiver in a related receivership involving overlapping victims, obtained permission from the District Court for the Southern District of Florida presiding over that receivership for the claimants of this Receivership Estate to participate in the related receivership'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.

On September 28, 2022, the Receiver filed a motion in the Fingerhut Case seeking authority to make a *pro rata* initial distribution to this Estate's claimants from the Fingerhut Estate, and the Court approved that Motion on October 13, 2022. *See* Fingerhut Case at ECF Nos. 326 (Motion) and 327 (Order). The Receiver then sent distributions equal to 45% of each claimant's

unpaid, allowed claim. Therefore, claimants in this case have recovered 42.4% of their allowed claim from this Receivership Estate and an additional 45% of the unpaid balance on their allowed claims from the Fingerhut Case for a total recovery to date of just over 68% of their allowed claim amounts.

Accordingly, the Receiver now seeks authority to make a final *pro rata* distribution to each claimant with an allowed claim providing an additional 21% recovery.

#### **IV. THE PROPOSED FINAL DISTRIBUTION**

The Receiver proposes to make a Final Distribution of \$900,000 – nearly all of the remaining cash on hand – and retain a reserve of \$154,641.07 to pay (i) the outstanding professionals' fees and costs incurred through December 31, 2023, which total \$59,520.77, (ii) the fees and/or costs that were incurred since December 31, 2023 and that will be incurred in connection with the Final Distribution, the liquidation of the few remaining assets, and the closing of the Estate, and (iii) the tax liabilities that will be incurred through the conclusion of the Receivership. This proposed Final Distribution will provide an additional 21% return of the losses incurred by all claimants with allowed claims.

Upon adding the proposed Final Distribution to the Court-approved Initial Distribution that the Receiver made in 2021 and the distribution that the Receiver made from the Fingerhut Case in 2022, the total distribution to claimants will amount to an 89% return of their losses.

After the claimants with allowed claims have received the proposed Final Distribution, the Receiver will file a Final Report and Fee Application and Motion to Discharge Receiver and Terminate Receivership.

**V. CERTIFICATION**

Undersigned counsel hereby certifies that he has conferred with counsel for the CFTC regarding the relief requested herein and such counsel has no objection to such relief. Undersigned counsel further certifies that he sent emails to Defendants Atkinson and Passerino to confirm their respective positions on the relief requested herein and that Defendant Passerino confirmed that he had no objections, but Defendant Atkinson had not confirmed his position on the requested relief as of the filing of this Motion.

**VI. CONCLUSION**

WHEREFORE, for the foregoing reasons, the Receiver respectfully requests that this Court enter the attached proposed order: (i) approving the Final Distribution to all eligible claimants holding allowed claims as proposed in Exhibit A, and (ii) granting such other relief as this Court deems just and proper.

Dated: March 6, 2024.

Respectfully submitted,

**DAMIAN | VALORI | CULMO**  
*Counsel for Receiver*  
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/s/ *Kenneth Dante Murena*

KENNETH DANTE MURENA, ESQ.  
FLORIDA BAR NO. 147486

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Receiver's Unopposed Motion to Approve Final Distribution was served via CM/ECF this 6th day of March, 2024, upon all counsels of record.

/s/ *Kenneth Dante Murena*

KENNETH DANTE MURENA, ESQ.