UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v. Case No.: 8:19-CV-886-T-VMC-33SPF

OASIS INTERNATIONAL GROUP, LIMITED, *et al.,*

Defendants,

and

MAINSTREAM FUND SERVICES, INC., *et al*.,

Relief Defendants.
_____/

RECEIVER'S MOTION FOR LEAVE TO RETAIN COUNSEL

Burton W. Wiand, as receiver over the assets of the above-captioned defendants and relief defendants (the "**Receiver**" and the "**Receivership**"), moves the Court for leave to engage Sallah Astarita & Cox, LLC (the "**Sallah Firm**") on a contingency basis for the limited purpose of investigating and pursuing claims against Mainstream Fund Services, Inc. ("**Mainstream**"). The Receiver believes that (1) investigating and pursuing such claims would be in the best interests of the Receivership; (2) the Sallah Firm would be effective counsel because, among other reasons, it has experience asserting claims against fund administrators; and (3) the contingency fee arrangement attached as **Exhibit 1** is fair and reasonable.

BACKGROUND

At the request of the Commodity Futures Trading Commission ("**CFTC**"), the Court appointed the Receiver on April 15, 2019 and directed him, in relevant part, to "[t]ake exclusive

custody, control, and possession of the Receivership Estate," which includes "all the funds, properties, premises, accounts, income, now or hereafter due or owing to the Receivership Defendants, and other assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants." Doc. 7 at p. 14, ¶ 32 & p. 15, ¶ 30.b. On July 11, 2019, the Court entered a Consolidated Receivership Order (Doc. 177) (the "**Consolidated Order**"), which combined and superseded two prior orders (Docs. 7 & 44) and is now the operative document governing the Receiver's activities.

Pursuant to the Consolidated Order and its predecessors, the Receiver has the duty and authority to, in relevant part, investigate and institute legal proceedings for the benefit of the Receivership and its investors and other creditors. Specifically, the Consolidated Order authorizes, empowers, and directs the Receiver to "investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted…." Doc. 177 ¶ 44. It also authorizes the Receiver "[t]o bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver." *Id* ¶ 8.I.; *see also* ¶ 8.J. (authorizing the Receiver to "pursue … all suits, actions, claims, and demands, which may now be pending or which may be brought by … the Receivership Estates.").

The Oasis Ponzi Scheme

The CFTC's complaint charges the defendants with violations of the Commodity Exchange Act and CFTC regulations and seeks to enjoin their violations of these laws in connection with a fraudulent foreign currency trading scheme. The principal corporate entity

used to perpetuate the fraud was Oasis International Group, Limited ("**OIG**"), which is not registered with the CFTC in any capacity.

On August 8, 2019, defendant Joseph S. Anile, II (one of OIG's owners) pled guilty to three counts involving the scheme – (1) conspiracy to commit wire and mail fraud; (2) engaging in an illegal monetary transaction; and (3) filing a false income tax return. *See United States of America v. Joseph S. Anile, II,* Case No. 8:19-cr-334-T-35CPT (M.D. Fla.); *see also* Doc. 195, Ex. A (Anile plea agreement).

> From at least as early as November 2011, through and including at least April 18, 2019, in the Middle District of Florida, the defendant, Joseph S. Anile, II, conspired with others to commit wire fraud and mail fraud. The defendant and coconspirators made false and fraudulent representations to victim-investors and potential investors to persuade them to transmit their funds, via wire and mail, to entities and accounts controlled by conspirators to be traded in the foreign exchange market ("FOREX"). In fact, the defendant and coconspirators used only a portion of the victim-investors' funds for FOREX trading, and the trading resulted in losses which conspirators concealed. They used the balance of the victim-investors' funds to make Ponzi-style payments, to perpetuate the scheme, and for their own personal enrichment….
>
> In soliciting investments, the defendant and coconspirators made multiple false and fraudulent representations and material omissions in their communications to victim-investors and potential investors. In particular, they promoted one of the conspirators as an experienced FOREX trader with a record of success, but concealed the fact that he had been permanently banned from registering with the CFTC and was prohibited from soliciting U.S. residents to trade in FOREX and from trading FOREX for U.S. residents in any capacity. They also fraudulently represented that: (a) conspirators did not charge any fees or commissions; (b) investors were guaranteed a minimum 12 percent per year return on their investments; (c) conspirators had never had a month when they had lost money on FOREX trades; (d) interest and principal payments made to investors were funded by profitable FOREX trading; (e) conspirators owned other assets sufficient to repay investors' principal investments; and (f) an investment with conspirators was safe and without risk.

Id. at 25-27.

Similarly, on December 17, 2019, a federal grand jury returned a two-count indictment against defendant Michael J. DaCorta (another of OIG's three owners), alleging conspiracy to commit wire and mail fraud as well as engaging in an illegal monetary transaction. *See United States of America v. Michael J. DaCorta,* Case No. 8:19-cr-605-T-02CPT (M.D. Fla.); *see also* Doc. 229, Ex. A. According to the grand jury, as early as November 2011, DaCorta entered into a conspiracy to defraud investors by making numerous fraudulent representations. *See* DCA Doc. 1 ¶ 14b.-d.

> It was a further part of the conspiracy that conspirators would and did use funds "loaned" by victim-investors to: (i) conduct trades, via an offshore broker, in the FOREX market, which trades resulted in catastrophic losses; (ii) make Ponzi-style payments to victim-investors; (iii) pay expenses associated with perpetuating the scheme; and (iv) purchase million-dollar residential properties, high-end vehicles, gold, silver, and other liquid assets, to fund a lavish lifestyle for conspirators, their family members and friends, and otherwise for their personal enrichment.

Id. at ¶ 14k (DaCorta indictment). The Receiver's independent investigation has generally confirmed Anile's admissions and the allegations made by the CFTC and the United States. Although this matter is stayed, the Receiver's activities under the Consolidated Order are exempt from the stay.

Mainstream's Role in the Scheme

Mainstream asserts that it provides its clients with "accurate, timely and comprehensive accounting services." Doc. 218 at 1. It also concedes that it provided "cash management services" to OIG since September 4, 2013 (*id.* at p. 2, ¶ 1) – *i.e.*, more than five-and-a-half years before the CFTC uncovered the Ponzi scheme underlying this action, which has already resulted in a guilty plea and an indictment. The Receiver has investigated (and continues to investigate) the extent to which Mainstream participated in this activity.

Specifically, the Receiver's forensic accountants have conducted a preliminary analysis of the principal bank account (0764 – the "**Account**") through which Mainstream conducted transactions worth tens of millions of dollars. According to that preliminary analysis:

- the sole source of inflows to the Account appears to have been money, directly or indirectly, from defrauded investors;
- certain defendants (acting through OIG) transferred more than $18 million from the Account to ATC Brokers Ltd. ("**ATC**") – the entity through which fraudulent and unprofitable trading occurred;
- ATC never transferred any money back to the Account, which is reflected in both Mainstream's and ATC's records – in other words, there were no profits;
- nevertheless, Mainstream transferred millions of dollars from the Account to the defendants and other insiders;
- Mainstream also transferred millions of dollars from the Account to relief defendants and others to buy real estate (in which certain defendants resided at the investors' expense) and gold and silver, which transactions were inconsistent with OIG's stated purpose; and finally
- Mainstream transferred millions of dollars to investors from the Account, despite the lack of any trading profits from ATC.

In other words, Mainstream appears to have provided "cash management services" to OIG by using investor money to make payments to other investors without ever processing any actual trading profits. That is the definition of a Ponzi scheme. *See, e.g., Wiand v. Lee*, 753 F.3d 1194, 1201 (11th Cir. 2014) ("A Ponzi scheme uses the principal investments of newer investors, who are promised large returns, to pay older investors what appear to be high returns, but which are in reality a return of their own principal or that of other investors."). The Receiver believes Mainstream could have liability to the Receivership in connection with these activities, but his purpose in this motion is not to detail his entire investigation and contemplated litigation regarding Mainstream. Rather, he requests that the Court approve his

engagement of the Sallah Firm to investigate and pursue the Receivership's potential claims against Mainstream. Those claims will be asserted in an appropriate forum through an independent action. They will not be litigated in this proceeding.

The Sallah Firm and the Contingency Fee Arrangement

As explained in Exhibit 1, the Sallah Firm has substantial experience with litigation related to securities and commodities fraud.[1] Jim Sallah, a principal of the firm, served as Senior Counsel in the SEC's Division of Enforcement before he entered private practice in 2004. *See* Ex. B to Ex. 1. He has served as a court-appointed receiver in numerous actions and as counsel to receivers in additional matters. *Id.* Most relevant here, Mr. Sallah has experience asserting claims against fund administrators like Mainstream. A copy of a complaint he filed and favorably litigated in the Southern District of Florida is attached as Exhibit A to Exhibit 1. The Receiver believes Mr. Sallah and the Sallah firm are an excellent choice of counsel to represent the interests of the Receivership with respect to Mainstream.

The Receiver has already collected more than $10 million in seized and/or forfeited assets. To protect those funds and to ensure the largest possible recovery for the Receivership's creditors, including defrauded investors, the Receiver has negotiated a contingency fee arrangement with the Sallah Firm. As explained in the cover letter to Exhibit 1, the applicable

[1] Defendant Montie opposes the relief requested in the motion because the Receiver has already retained Wiand Guerra King P.A. ("**WGK**"). Defendant Montie claims that the Receiver should not be permitted to retain the Sallah Firm unless WGK is not capable of prosecuting the proposed litigation. As an initial matter, the Receiver is entitled to his choice of counsel (subject to this Court's supervision), but more importantly, courts regularly authorize receivers to prosecute third-party claims using contingency counsel. *See, e.g., S.E.C. v. Nadel, et al.*, Case No. 8:09-cv-87-T-26TBM (M.D. Fla.), Doc. 175 (order approving retention of contingency counsel), Doc. 696 (same). These orders are attached as **Exhibit 2**.

fee ranges from 10% for a pre-suit resolution to 15% for a pre-answer resolution to 25% for a post-answer resolution and, finally, to 33% for a settlement within forty days of trial or a successful verdict thereafter. The Receiver believes this sliding scale is appropriate because it will afford the Receivership Estate a greater proportional recovery in the event of an early settlement while also compensating the Sallah Firm fairly as the litigation increases in length and complexity. The arrangement caps the contingency fee at 20% for any recovery above $10,000,000 and 10% for any recovery above $20,000,000. The Sallah Firm will advance costs subject to reimbursement from any recovery with the exception of costs associated with experts retained by the Receiver – for example, his forensic accountants. As with any contingency fee arrangement, the Sallah Firm is only entitled to payment if it procures a successful resolution of the Receiver's potential claims. The Receiver believes this arrangement is fair and reasonable, given the value and complexity of those claims and the risks inherent in litigation. It will protect the funds already in the Receivership while allowing the Receiver to attempt to marshal additional funds through litigation, as directed and authorized by the Consolidated Order.

MEMORANDUM OF LAW

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets

and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F.2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

As noted above, the Consolidated Order authorizes, empowers, and directs the Receiver to "investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted…." Doc. 177 ¶ 44. It also authorizes the Receiver "[t]o bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver." *Id* ¶ 8.I.; *see also* ¶ 8.J. (authorizing the Receiver to "pursue … all suits, actions, claims, and demands, which may now be pending or which may be brought by … the Receivership Estates."). Based on (1) the Court's wide discretion, (2) the Receiver's independent investigation into the matters discussed herein, (3) the skill and competency of the Sallah Firm to prosecute those matters,

and (4) the reasonableness of the contingency fee arrangement, the Receiver requests that the Court grant the Receiver leave to retain the Sallah Firm to investigate and pursue potential claims against Mainstream under the terms of the agreement attached as Exhibit 1.

LOCAL RULE 3.01(G) CERTIFICATION

Undersigned counsel for the Receiver has conferred with counsel for the CFTC and is authorized to represent to the Court that the CFTC does not oppose the relief requested in this motion. The United States (as an intervening party) takes no position on the motion. Defendants Duran, Haas, Anile, and DaCorta do not oppose the relief requested in the motion.

Relief defendant Mainstream and defendant Montie oppose the motion. All other entities (except Satellite Holdings, which is associated with defendant Haas) have defaulted and are under the Receiver's control.

Respectfully submitted,

s/ Jared J. Perez
Jared J. Perez, FBN 0085192
jperez@wiandlaw.com
Eric R. Feld, FBN 92741
efeld@wiandlaw.com
WIAND GUERRA KING P.A.
5505 West Gray Street
Tampa, Florida 33609
Tel.: (813) 347-5100
Fax: (813) 347-5198

Counsel for Burton W. Wiand, Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 5, 2020, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court, which served counsel of record. I have also provided the following non-CM/ECF participants with a true and correct copy of the foregoing by the listed means to:

Gerard Marrone
Law Office of Gerard Marrone, P.C.
66-85 73rd Place
Second Floor
Middle Village, NY 11379
gmarronelaw@gmail.com
Counsel for Defendant Joseph S. Anile, II

Michael DaCorta
13313 Halkyn Point
Orlando, FL 32832
cdacorta@yahoo.com

Francisco "Frank" Duran
535 Fallbrook Drive
Venice, FL 34292
flduran7@gmail.com

/s Jared J. Perez
Jared J. Perez, FBN 0085192