

**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

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

Relief Defendants.

**RECEIVER’S MOTION TO APPROVE PRE-SUIT SETTLEMENT
AGREEMENT WITH RELIEF DEFENDANT FUNDADMINISTRATION, INC.**

Burton W. Wiand, as receiver (the “**Receiver**”) for Oasis International Group, Limited (“**OIG**”), Oasis Management, LLC (“**Oasis Management**”), Satellite Holdings Company (“**Satellite Holdings**”), and their affiliates and subsidiaries (collectively, the “**Receivership Entities**”), moves the Court to approve the pre-suit Settlement Agreement between the Receiver and Relief Defendant Fundadministration, Inc. (“**Fundadministration**”). The material terms of the Settlement Agreement are discussed below and are not subject to confidentiality. However, the fully executed physical Settlement Agreement is not attached hereto as an exhibit pursuant to the confidentiality provision within the Settlement Agreement.

Fundadministration is also contemporaneously settling with the Commodity Futures Trading Commission (the “CFTC”), which named Fundadministration as a Relief Defendant¹ as the fund administrator for OIG and the two related Oasis commodity pools, Oasis Global FX, Limited (“Oasis Pool 1”) and Oasis Global FX, SA (“Oasis Pool 2”) (collectively, the “Oasis Pools”). The CFTC will be separately filing its settlement papers, and will be dismissing its claims against Fundadministration.

BACKGROUND

A. The Receiver’s Appointment and Relevant Duties

At the request of the 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2019, the Court entered a Consolidated Receivership Order (Doc. 177) (the “**Consolidated Order**”), which combined and superseded two prior orders (Docs. 7 & 44) and is now the operative document governing the Receiver’s activities.

The Court found that entry of the Consolidated Order was necessary and appropriate for the purposes of marshaling and preserving all assets, including in relevant part, assets that

¹ A “relief defendant” is a party named for procedural purposes, “who is not accused of wrongdoing ...” but named nonetheless so the court can order equitable relief against assets that the relief defendant controls. *In re Burton Wiand Receivership Cases Pending in the Tampa Div. of the Middle Dist. of Fla.*, No. 8:05-CV-1856T27MSS, 2008 WL 818504, at *5 (M.D. Fla. Mar. 26, 2008) (citing *SEC v. Cavanaugh*, 155 F.3d 129, 136 (2d Cir. 1998)).

“were fraudulently transferred by the Defendants and/or Relief Defendants.” Doc. 177 at 2. The Court also authorized the Receiver “to sue for and collect, recover, receive and take into possession all Receivership Property” (*id.* ¶ 8.B.) and “[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.). Similarly, the Court authorized, empowered, and directed the Receiver to “prosecute” actions “of any kind as may in his discretion, and in consultation with the CFTC’s counsel, be advisable or proper to recover and/or conserve Receivership Property.” *Id.* ¶ 43. And finally, in relevant part, the Court authorized the Receiver “[t]o engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisors, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers.” *Id.* at ¶ 8.F. (emphasis added).

B. The Receiver’s Investigation

On September 24, 2013, OIG entered into an Administration Agreement with Fundadministration and later expanded the representation over the Oasis Pools.² Pursuant to the Administration Agreement, Fundadministration provided administration services for Oasis. The Receiver elected to investigate and evaluate whether a fund administrator providing such

² None of the Fundadministration employees or executives who worked with OIG are still with Fundadministration, meaning the Fundadministration representatives involved with the subject Settlement Agreement had no involvement with the underlying Oasis matter.

services (*i.e.*, Fundadministration) had any liability and caused any damages to the Receivership Entities.

On March 5, 2020, the Receiver filed a motion seeking to retain Sallah Astarita & Cox, LLC (the “**Sallah Firm**”) on a contingency fee basis to investigate and pursue potential claims against Fundadministration, which was the fund administrator for OIG and the Oasis Pools. Doc. 238. The Court granted that motion and therefore approved the Sallah Firm’s retention against Fundadministration, including the Sallah Firm’s right to a contingency fee of 10.0% of any settlement prior to filing a complaint (*i.e.*, pre-suit). Doc. 261.

After an investigation by the Sallah Firm that began in January of this year, the Receiver made a pre-suit demand on Fundadministration asserting Fundadministration had, among other things, received recoverable transfers from Oasis. Fundadministration rejected this demand, and continues to dispute that the Receiver is entitled to recover relief sought against Fundadministration. The Receiver and Fundadministration signed a tolling agreement and several tolling amendments, discussed substantive and coverage issues, attended a pre-suit mediation on October 13, 2020, and thereafter continued pre-suit settlement discussions for several months.

Fundadministration disputed, and continues to dispute, that the Receiver is entitled to recover relief sought against Fundadministration, and has asserted to the Receiver pre-suit defenses. The Receiver and Fundadministration have nevertheless engaged in good faith settlement discussions for many months and have recently reached mutually agreeable settlement terms.

C. The Proposed Settlement

The material settlement terms between the Receiver and Fundadministration include the following:

- a. Fundadministration has agreed to a total settlement amount of \$3,950,000.00 USD, broken down as described below.
- b. First, Fundadministration and/or its affiliates or designees shall pay the Receiver a total settlement amount of \$3,555,000.00 USD (the “Receiver’s Settlement Amount”) that is net of legal fees (described below), in readily accessible funds, as follows: As soon as is reasonably practicable on or after the date on which the Court approves the Agreement, but in no event more than five (5) calendar days beyond that date, Fundadministration shall send by wire the Receiver’s Settlement Amount to the Receiver.
- c. Second, and in addition to the Receiver’s Settlement Amount, Fundadministration and/or its affiliates or designees shall pay the Sallah Firm (again, the Receiver’s Court-approved special litigation counsel regarding Fundadministration) a total of \$395,000.00 USD (the “Legal Fee Settlement Payment”)³, in readily accessible funds, as follows: As soon as is reasonably practicable on or after the date on which the Court approves the Agreement, but in no event more than five (5) calendar days beyond that date, Fundadministration shall send by wire the Legal Fee Settlement Payment to Sallah Astarita & Cox, LLC.
- d. Fundadministration agrees to bear the expense of its own attorneys’ fees and costs.
- e. Effective upon the Order from the Court granting this motion, and clearing of the Receiver’s Settlement Amount and Legal Fee Settlement Payment, and except for enforcing the Settlement Agreement, the parties shall give each other standard mutual releases.
- f. Fundadministration shall waive its right to submit a claim in the Receivership.
- g. The Settlement Agreement is subject to Court-approval and thus granting this motion. In the event the Court fails to approve the Settlement

³ This amount is the 10.0% Court-approved contingency fee amount based on the subject total settlement amount of \$3,950,000.

Agreement, it shall be deemed null and void and of no further force or effect.

- h. Unless the Court requires the filing of the Settlement Agreement, that physical document shall remain confidential, and therefore that physical document shall not be published, displayed, disclosed, or revealed except (a) as may be required by subpoena or Order of Court, or by other quasi-judicial or regulatory body with the legal right and power to demand or require (public or private) disclosure of such information; (b) to legal, regulatory, insurance and financial advisors, in each case where such disclosure may be required for legitimate legal, business or tax purposes and where the recipient of such information agrees to receive and maintain the information in strict confidence in accordance with the terms of this Agreement; (c) to any appropriate regulatory, insurance, financial or tax authorities with jurisdiction over the Parties, or their affiliates, as well as any securities exchanges; and (d) as otherwise may be required by law. The validity and effectiveness of the Settlement Agreement shall not be affected if the Court requires the filing of that document. In addition, the terms of the Settlement Agreement shall not be confidential and shall be included in this motion.
- i. No press release shall be issued in connection with the subject settlement.
- j. Fundadministration shall be permitted to review and provide comments within five (5) calendar days of notice on all proposed filings, such as this motion, or Receiver reports regarding the Settlement Agreement to ensure the Receiver's filings and reports comply with the terms of the Settlement Agreement.
- k. The parties shall execute at or near the time of execution of the Settlement Agreement another amendment to the tolling agreement through and including the date of entry of the Order approving the Settlement Agreement, or alternatively if the Court does not approve the Settlement Agreement, thirty (30) calendar days after the denial of the Settlement Agreement.
- l. The parties agree that the Settlement Agreement is governed by Florida law and consent to and agree to this Court retaining and having exclusive jurisdiction to interpret and enforce the terms of the Settlement Agreement. Because the parties have agreed that this Court shall retain jurisdiction to enforce the Settlement Agreement, the effectiveness of the Settlement Agreement is conditioned upon the Court's entry of an Order in which the Court retains jurisdiction to enforce the terms of the Agreement. Therefore, any dispute arising out of, or related to, the Settlement Agreement shall be

exclusively and solely heard, determined, and adjudicated by this Court in a summary proceeding.

The Receiver believes that the subject settlement provides a practical solution and sound business judgment that will result in substantial benefit to the Receivership Estate. Further, the Receiver believes that the subject settlement is in the best interests of the Receivership Estate and the victims because the proposed resolutions avoid the protracted time involved in litigation; avoid receivership fees, costs, and resources of actual litigation; and guarantee the influx of significant monies into the Receivership Estate for the benefit of the victims.

MEMORANDUM OF LAW

A. Standard

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. *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). Without question, the Court is empowered to grant the requested relief and approve the subject Settlement Agreement.

B. The Proposed Settlement Agreement Is Fair, Reasonable, Equitable, and in the Best Interests of the Receivership Estate

Under the proposed settlement, the Receiver will receive a significant seven-figure net amount of \$3,555,000 from a gross total settlement amount of \$3,950,000 (again, 10% (or \$395,000) is the Court-approved pre-suit contingency amount for the Receiver's special litigation counsel). Considering the large seven-figure settlement amount, the significant litigation and expert expenses involved in this matter and the inherent risks of litigating this matter, the Receiver believes that the Settlement Agreement is in the best interests of the Receivership Estate. In reaching this conclusion, the Receiver considered numerous matters. Fundadministration is not financially capable of responding to the Receiver's potential claim. Insurers had asserted coverage issues, and claims against affiliates of Fundadministration are legally and factually difficult. Even should such claims against affiliates be successful, the companies are in foreign jurisdictions and collection hurdles would be substantial. There are substantial legal defenses that would be asserted against litigated claims and the outcome of litigation can never be assured. Plus, litigation of this nature would be very expensive, long

term and would involve significant efforts from the Receiver and his staff. Fundadministration also denies any knowledge of the scheme underlying this enforcement action, which is consistent with the CFTC not naming Fundadministration as an actual named defendant.

Given all of these factors the Receiver is of the opinion that this settlement provides substantial monetary benefit for the Receivership Estate and provides a resolution that is well valued given all of these issues. The Receiver recommends that the Court approve this settlement and its substantial benefits to the Receivership.⁴ The Receiver has included a proposed Order for the Court's review.

CONCLUSION

For the foregoing reasons, the Court should grant this motion. Therefore, the Receiver respectfully requests that this Court issue the proposed Order attached as Exhibit A,⁵ and provide such other relief as is just and proper.

LOCAL RULE 3.01(G) CERTIFICATION

The Consolidated Order requires the Receiver to consult with the CFTC regarding certain litigation. Doc. 177 ¶ 43. As such, 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

⁴ For example, the Receiver has reviewed and evaluated Fundadministration's online, publicly available financials (through its parent company). In addition, regarding the issue of insurance, Fundadministration's insurer (through its parent company) has refused to acknowledge coverage, citing at least one specific exclusion that the Receiver has also reviewed and evaluated.

⁵ As a courtesy to the Court, the Receiver has attached a proposed Order and requests leave to do such under recently updated Local Rule 3.01(f). The Receiver will also gladly submit via email to the Court the proposed Order in Word format if the Court requests such.

requested in this motion. The Receiver has also conferred with the defendants in this case. Defendants Joseph S. Anile, II, John J. Haas, Raymond P. Montie, III, and Francisco L. Duran have no objection to this motion. However, Defendant Michael J. DaCorta objects to this motion and has stated the following: “Although I am in favor of recovery of all funds for the lenders, I will **object** to this settlement for the same reasons I objected to the CFTC/Mainstream deal. It is based wholly on unproven allegations and hearsay. Not one allegation made against Oasis et al, has been proven in a court of law.” Finally, the Receiver has conferred with the United States, which takes no position.

Dated: February 8, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 8, 2021, 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:

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EXHIBIT A

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

COMMODITY FUTURES TRADING
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OASIS INTERNATIONAL GROUP,
LIMITED, *et al.*,

Defendants,

and

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

Relief Defendants.

**ORDER GRANTING RECEIVER'S MOTION
TO APPROVE PRE-SUIT SETTLEMENT AGREEMENT
WITH RELIEF DEFENDANT FUNDADMINISTRATION, INC.**

This cause comes before the Court pursuant to the Receiver's Motion to Approve Pre-Suit Settlement Agreement with Relief Defendant Fundadministration, Inc. (the "Motion") (Doc. # 368), filed on February 8, 2021. For the reasons given below, the Motion is granted.

The subject Settlement Agreement between the Receiver and Fundadministration, Inc. is fair and reasonable; is an arms-length pre-suit resolution of the Receiver's claims against Fundadministration, Inc.; and is in the best interests of the Receivership Estate and its investors and creditors. Therefore, good cause exists to approve the subject Settlement Agreement.

Accordingly, it is now **ORDERED, ADJUDGED, and DECREED:**

The Receiver's Motion to Approve Pre-Suit Settlement Agreement with Relief Defendant Fundadministration, Inc. (Doc. # 368) is **GRANTED**. The subject Settlement Agreement between the Receiver and Fundadministration, Inc. is hereby **APPROVED**. The parties to the Settlement Agreement are directed to perform and consummate all terms and conditions under the Settlement

Agreement. Because the parties to the Settlement Agreement have agreed that this Court will retain jurisdiction to enforce the Settlement Agreement, the effectiveness of the subject Settlement Agreement is conditioned upon the Court's entry of this Order in which the Court retains jurisdiction to enforce the terms of the subject Settlement Agreement. *See Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1280 (11th Cir. 2012).

DONE and **ORDERED** in Chambers, in Tampa, Florida, this ____ day of _____, 2021.

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE