

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

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

Case No. 8:19-cv-886-VMC-SPF

OASIS INTERNATIONAL GROUP,
LIMITED; OASIS MANAGEMENT, LLC;
SATELLITE HOLDINGS COMPANY;
MICHAEL J. DACORTA; JOSEPH S.
ANILE, II.; RAYMOND P. MONTIE III;
FRANCISCO "FRANK" L. DURAN; and
JOHN J. HAAS,

Defendants;

and

MAINSTREAM FUND SERVICES, INC.;
BOWLING GREEN CAPITAL
MANAGEMENT LLC; LAGOON
INVESTMENTS, INC.; ROAR OF THE
LION FITNESS, LLC; 444 GULF OF
MEXICO DRIVE, LLC; 4064 FOUNDERS
CLUB DRIVE, LLC; 6922 LACANTERA
CIRCLE, LLC; 13318 LOST KEY PLACE,
LLC; and 4 OAKS LLC,

Relief Defendants.

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REPORT AND RECOMMENDATION

Before the Court is the Receiver's Motion for an Order (1) Approving a First Interim Distribution of \$10 Million; (2) Approving the Receiver's Final Determinations Regarding Unperfected or Incomplete Claims; and (3) Overruling Limited Objections to Certain Claim Determinations (the "First Interim Distribution Motion") (Doc. 694). Plaintiff Commodity

Futures Trading Commission (“CFTC”) does not oppose the motion and neither do Defendants DaCorta, Haas, Anile, Montie, and Duran (Doc. 694 at 27). The Department of Justice takes no position on the motion (*Id.*). For the reasons stated here and in the First Interim Distribution Motion, the undersigned recommends the Court grant the Motion.

A. Relevant Background

In this federal equity receivership action, the Court appointed Burton Wiand as the receiver over Defendants’ and Relief Defendants’ assets (Docs. 7, 390). The Court’s July 11, 2019 Consolidated Receivership Order governs the Receiver’s activities and directs him to recover and conserve all Receivership Property and manage the Receivership Estates (*see* Doc. 177). On March 7, 2022, the Court granted the Receiver’s motion to approve the determination and priority of claims, pool the Receivership’s assets and liabilities, approve the Receiver’s distribution plan, and establish an objection procedure (“Claims Determination Motion”) (Docs. 439, 482). Specifically, the Court approved the Receiver’s determination of claims, distribution plan, and proposed procedure for handling any objections (the “Objection Procedure”) (Doc. 482). Under the Objection Procedure, the objecting claimant has the burden of proof (Doc. 439 at 46). The Court-ordered deadline for submitting objections to the Receiver’s claim determinations was April 14, 2022.

In the First Interim Distribution Motion, the Receiver represents that, in addition to those claim determinations approved by the Court in its March 7, 2022 Order, his team has analyzed: (1) objections to claim determinations submitted under the Objection Procedure, and (2) supplemental claim information (like a court-approved Personal Verification Form, supplemental bank records, or affidavits) the Receiver required of some claimants to determine an incomplete or unperfected claim (Doc. 694 at 3). Approved claims are listed in

Exhibits 1 and 2 of the First Interim Distribution Motion (claim determinations approved in the Court’s March 7, 2022 Order *and* those the Receiver has approved since then) (*Id.* at 8, n.6). Approved claims aside, these issues remain:

10 claimants submitted timely objections under the Objection Procedure. The Receiver resolved seven of them. Three are unresolved.

Two of the 19 claimants associated with New Horizon Capital Ventures, Inc. did not submit the requisite Proof of Claim Form to maintain their claims; 17 did.

The Receiver required approximately eight allowed or allowed-in-part claimants to submit supplemental documentation, but some did not.

The Receiver required approximately 408 claimants to submit a Personal Verification Form. Fourteen of these 408 claimants either did not do so or did not submit a properly executed form, and approximately 329 of these 408 claimants submitted a Personal Verification Form that struck the language “pursuant to Florida law” from the declaration under penalty of perjury.

Approximately 345 claimants submitted or filed purported “declarations,” which the Receiver considered legal nullities and not proper objections under the Objection Procedure.

(*Id.* at 3-5).

Against this backdrop, the Receiver asks the Court to approve the first distribution of \$10 million to those claimants with approved claims (or portions of claims) in the amounts listed in Exhibits 1 and 2 of the First Interim Distribution Motion, exclude from the distribution those claimants with incomplete or unperfected claims, and overrule the three objections to the Receiver’s claim determinations.

B. Distribution to Claimants with Approved Claims

In its March 7, 2022 Order, the Court found “[t]he plan of distribution as set forth in the Motion is logical, fair, and reasonable.” (Doc. 482 at 2). The Court approved the Receiver’s use of the Net Investment Method (defined in the Claims Determination Motion)

to make pro rata distributions to claimants with approved claims (*Id.*). No claimant submitted an objection through the Objection Procedure regarding the Receiver's use of the Net Investment Method or pro rata distributions (Doc. 694 at 7). The Receiver and his team have calculated a distribution for each approved (or approved-in-part) claim based on the Net Investment Method, as shown in Exhibits 1 and 2 to the First Interim Distribution Motion (*Id.*).

According to the Receiver, the value of the Receivership Estate as of December 1, 2022 was \$12.3 million (*Id.* at 9). In the First Interim Distribution Motion, the Receiver requests the pro rata distribution of \$10 million of the Receivership Estate's \$12.3 million, or 17.51% of the allowed claims (listed in Exhibits 1 and 2) (*Id.* at 8-9). This distribution will "provide a significant amount of money to claimants now while still maintaining adequate funds to cover the expenses of (1) ongoing litigation, (2) administering the Receivership, and (3) paying the Receiver's professionals for services already provided and yet to be provided." (*Id.* at 9). For the reasons explained in the First Interim Distribution Motion, the undersigned recommends the court approve the first interim distribution of \$10 million as set forth in Exhibits 1 and 2 to the Motion.

C. Determination of Unperfected Claims

Some of the Receiver's initial claim determinations were conditional or contingent on receiving supplemental information from the claimant like Personal Verification Forms, bank records, or affidavits. The Receiver states: "Hundreds of claimants perfected their claims by submitting the required information, but others failed to comply with the Court-approved instructions." (Doc. 694 at 14). The Receiver has made final determinations of these claims and makes these recommendations:

The Receiver approved the claims associated with claimants who provided supplemental information as the Receiver requested. These claims are listed in Exhibit 1 and should be allowed.

Some claimants failed to confirm the total amount sought in their claims. These claims should be allowed in part for the amount the Receiver could verify. These claims are also listed in Exhibit 1.

The claimants associated with Claims 782-E and 782-U (two of the 38 claimants who initially permitted New Horizon to submit a Proof of Claim Form on their behalf as part of a collective claim) did not submit the individual Proof of Claim Form the Receiver required to verify their claims. These claims should be denied. Claim 782-A should also be denied because it was submitted by an entity owned, in part, by a New Horizon operator, and the owner also personally received \$34,515.47 in false profits. These claims are listed in Exhibit 3.

Sixteen of the 38 New Horizon claimants submitted individual Proof of Claim Forms for amounts that matched the Receiver's numbers. These claims should be allowed in full and are listed in Exhibit 1.

Twenty-one claimants who submitted untimely Proof of Claim forms demonstrated excusable neglect, and their claims should be allowed. These claims are listed in Exhibit 2.

Claimants associated with 14 claims submitted by Brent Winters as power of attorney failed to supplement their claims with a signed Personal Verification Form, despite many opportunities to do so. These claims should be denied, and these claimants should not be allowed to participate in distributions. These 14 claims are listed in Exhibit 3.

(*Id.* at 12-20).

The undersigned finds these recommendations equitable, fair, and reasonable for the reasons stated in the First Interim Motion and recommends the Court approve them.

D. Objections

In accordance with the Objections Procedure, there are three unresolved objections to the Receiver's claim determinations that the Court must decide. The Receiver asks the Court to overrule all three. The Receiver served the objecting claimants with the First Interim

Distribution Motion. They have not responded despite bearing the burden of proof under the Objections Procedure.

First, Claim 782-V was submitted by a New Horizon claimant (Gary Zielinski) for an investment not supported by the Receiver's bank records (*Id.* at 15, 20-24). The Receiver treated the Proof of Claim form for Claim 782-V as an objection. In response to the Receiver's request for documentation to verify the claim, Zielinski provided stock certificates and two dividend checks from New Horizon but did not provide bank records or other evidence of the investment (Doc. 695 at 3). The Court has reviewed the documents associated with Zielinski's objection, attached to the Receiver's Declaration submitted with the First Interim Distribution Motion (*Id.* at 2 and Exh. A), and recommends the Court approve the Receiver's recommendation and overrule the objection.

Second, the objection associated with Claim 404 (Darlene and Robert Finch) challenges a payment included in the claim's total payment amount. The Receiver provided the objecting claimant with evidence that the claimants received the disputed payment, and the Receiver properly included it in the claim determination (Doc. 695, Exh. D). In response to the Receiver's request that the claimants withdraw the objection considering this evidence, the claimants directed the Receiver to their "attorney, Brent Winters" (Doc. 695 at 10) (even though, on their Personal Verification Form, the claimants checked "No" to the prompt, "Brent Winters is representing me in this Receivership, including my claim to any Receivership assets." (Doc. 695, Exh. E)). The Court has reviewed the evidence associated with Claim 404 (attached to the Receiver's Declaration). It is un rebutted. The undersigned agrees with the Receiver that the objection should be overruled.

The third objection associated with Claim 759 (Michael Squillante) should also be overruled. The claimant invested \$400,000 and, according to Receivership records, made \$348,608.32 in withdrawals over five years (Doc. 695 at 5). Despite this, the objecting claimant requests \$500,000. After reviewing the supporting documents attached to the Receiver's Declaration, the undersigned recommends the Court overrule the objection and approve the claim in part, allowing \$51,391.68 (the total investment of \$400,000 minus the \$348,608.32 in withdrawals) (*Id.* at Exh. F, G).

E. Conclusion

Accordingly, the undersigned **RECOMMENDS**:

(1) The Receiver's Motion for an Order (1) Approving a First Interim Distribution of \$10 Million; (2) Approving the Receiver's Final Determinations Regarding Unperfected or Incomplete Claims; and (3) Overruling Limited Objections to Certain Claim Determinations (the "First Interim Distribution Motion") (Doc. 694) be **GRANTED** as follows:

- a. A first interim distribution of \$10 million, as set forth in the Motion and in Exhibits 1 and 2, be approved and authorized.
- b. The objections to the Receiver's determinations of Claims 782-V, 404, and 759 be overruled.
- c. The Receiver be authorized to honor requests to change the name of a claimant or payee of a claim if, in the Receiver's discretion, he is provided reasonable proof of the new recipient's right to the distribution.
- d. The Receiver be authorized to reissue distribution checks initially made payable to deceased claimants to the appropriate entity or person if, in the

Receiver's discretion, he is provided reasonable proof of the new recipient's right to the distribution.

- e. Any deposit or other negotiation of a distribution check be deemed a waiver of all arguments made outside the Objection Procedure, including those made through the stricken "declarations," Notices, and altered or incomplete Personal Verification Forms (as defined in the Motion). If a claimant negotiates a check, the claimant be deemed to have accepted the information provided in the Proof of Claim as true and correct under penalty of perjury. If a claimant does not agree with the distribution amount or any aspect of the distribution process, he or she must not negotiate the pertinent check and may not participate in the distribution. Any alteration or appendment of conditions to the check be deemed a violation of the Court's Order.

It is so **REPORTED** in Tampa, Florida on January 27, 2023.


SEAN P. FLYNN
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

Within fourteen days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to the proposed findings and recommendations or request an extension of time to do so. 28 U.S.C. § 636(b)(1); 11th Cir. R. 3-1. Failure of any party to timely object in accordance with the provisions of § 636(b)(1) waives that party's right to challenge on appeal the district court's order based on the unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3-1.