UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
OASIS MANAGEMENT, LLC; AND
SATELLITE HOLDINGS COMPANY,

Plaintiff,

v. Case No: 8:20-cv-00862-VMC-TGW

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.
_____/

MOTION TO SET ASIDE DEFAULT JUDGMENT AND INCORPORATED MOTION TO DISSOLVE WRIT OF GARNISHMENT

COMES NOW, Defendant, ROCCO GARBELLANO ("Garbellano"), pursuant to Fed. R. Civ. P. 60(b) and/or 55(c), and files this Motion to Set Aside Default Judgment and Incorporated Motion to Dissolve Writ of Garnishment ("Motion"), and in support thereof states as follows:

STATEMENT OF RELIEF REQUESTED

Garbellano requests that this Court set aside the Default Judgment entered against him on the basis of mistake or excusable neglect, pursuant to Fed. R. Civ. P. 60(b)(1). As set forth herein, Garbellano has a good reason for not responding to the Complaint. Likewise, he has a meritorious defense, and Receiver would not be prejudiced if the Court sets aside the Default Judgment. Since the Default Judgment

must be set aside, the Writ of Garnishment should be dissolved because the Writ was issued based on entry of the Default Judgment.

INTRODUCTION

The instant case involves "reach back" litigation filed by Burton W. Wiand, as Receiver for Oasis International Group, Ltd., Oasis Management, LLC, and Satellite Holdings Company ("Receiver"), pursuant to "the principles governing federal equity receiverships, and pertinent law, including the Florida Uniform Fraudulent Transfer Act, Fla. Stat. §726.101, et. seq." ("FUFTA"). [Dkt. 1, ¶6.] After the Commodity Futures Trading Commission ("CFTC") filed an enforcement action against various defendants (*not* Garbellano) for violations of the CFTC Act and various CFTC Regulations arising out of an apparent Ponzi scheme, the Court appointed Receiver, who then instituted the instant action to recover alleged "false profits" that Receiver claims were improperly transferred to Garbellano. See C.F.T.C. v. Oasis International Group, Ltd., Case No. 8:19-CV-886-T-33SPF (M.D. Fla.) ("CFTC Action"). According to Receiver, the leaders of the Ponzi scheme stole money from innocent investors, some of whom received so-called "false profits." Despite Receiver failing to allege or show that Garbellano invested even $1 in the Ponzi scheme, Receiver nonetheless identified Garbellano as an investor who allegedly received "false profits." Ultimately, this Court entered a Default Judgment against Garbellano and ordered Garbellano to pay damages in the amount of $268,692.51, plus prejudgment interest in the amount of $59,263.00.

As more specifically set forth in this Motion, this Court is compelled to set aside the Default Judgment for good cause and/or because Garbellano's failure to timely file a response to the Complaint constitutes mistake, inadvertence, surprise, or excusable neglect. Not only did Receiver fail to give Garbellano notice of his application for default judgment as required by Fed. R. Civ. P. 55(b)(2), but Receiver and/or his agent caused Garbellano to believe he did not have to file any additional documents beyond the Waiver of Service of Summons provided to him by Receiver's counsel. Additionally, Garbellano has a meritorious defense because he did not receive false profits. Rather, he received commissions for value. Receiver improperly sought and obtained a judgment for monies allegedly transferred to Garbellano outside the "reach back" period. Finally, Receiver would suffer no prejudice by setting aside the Default Judgment because Receiver's failure to properly notify Garbellano of the application for default judgment caused the error.

Because the Default Judgment must be set aside, the Writ of Garnishment must be dissolved.

BACKGROUND

1. In or around the 1990s, Garbellano met Michael DaCorta ("DaCorta"), who is one of the defendants in the CFTC Action.

2. In or around 2012, DaCorta told Garbellano that he was starting Oasis International Group, Ltd., Oasis Management, LLC, and/or Satellite Holdings Company (collectively "Oasis"), a foreign exchange trading business.

3. DaCorta represented to Garbellano that he had between $10 million and $15 million in silver and wanted to give Garbellano an opportunity to earn income.

4. Garbellano and DaCorta agreed that Garbellano would earn 1% commission for providing leads to invest in Oasis. Garbellano signed an agreement reflecting these terms ("Commission Agreement"). However, Garbellano e-signed the Commission Agreement and has been unable to locate a signed copy of same.

5. Garbellano did not invest any money in Oasis. He was *not* an investor.

6. At all times during Oasis's operation, Garbellano believed DaCorta operated Oasis as a legitimate and legal business. Garbellano at all times acted in good faith and brought value to Oasis by recruiting investors. In exchange, he received commissions.

7. Garbellano had no knowledge that something was wrong until April 2019. At that time, Garbellano attempted to log into his account to collect his April 2019 commission, but he received a message stating his account no longer existed.

8. Later, Garbellano learned that the FBI apparently shut down Oasis. Garbellano received communications from the FBI through his Oasis account indicating that he may have been involved in a crime. However, nothing in the communications indicated to Garbellano that he had done anything wrong or could get into trouble. Said communications are no longer accessible to Garbellano.

9. Subsequently, Garbellano's involvement with Oasis in any capacity seemed to terminate. No one contacted him or sent him any notification, demand for money, request for information, or the like.

10. Garbellano heard nothing about the instant case until around March 2020, nearly a full year after Oasis had been shut down. In March 2020, Garbellano received correspondence from Receiver. A copy of said correspondence, dated March 18, 2020, is attached hereto as **Exhibit A** ("March Correspondence").

11. The March Correspondence notified Garbellano of the CFTC Action, as Garbellano was not previously aware of same. However, the March Correspondence began with "Dear Investor." It appeared to be a generic letter not sent specifically to Garbellano.

12. It then demanded return of "false profits," but Garbellano did not receive false profits as an investor. The March Correspondence defined "false profits" as "[t]he amounts [Garbellano] received in excess of what [Garbellano] contributed," and "were simply the redistribution of money belonging to other investors."

13. Since Garbellano was not an investor, but rather an originator working for commissions, he did not believe the letter applied to him.

14. Additionally, Garbellano spoke to someone in Florida who gave him advice that led Garbellano to believe he should ignore the March Correspondence. The individual identified himself as an attorney and person who had some control over the outcome of the litigation. Garbellano does not recall the person with whom he spoke, but it was a male who identified himself as an attorney.

15. Garbellano's phone history shows a phone call on or about March 18, 2020 with Receiver's office. A redacted copy of Garbellano's phone record is attached hereto as **Exhibit B.**

16. Garbellano's reliance on the advice, coupled with the confusing and seemingly inapplicable nature of the March Correspondence, caused Garbellano to ignore the letter.

17. On or about March 30, 2020, Garbellano received e-mail correspondence from Receiver stating, "individuals are soliciting funds from investor victims to pursue purported claims against individuals and entities relating to [Oasis]." A copy of the March 30, 2020 e-mail is attached hereto as **Exhibit C.**

18. Said e-mail was intended to ensure that victims were not misled by unofficial entities trying to extort money from them. Defendant, at this point, believed he might be a victim because he was not an investor in Oasis.

19. Receiver filed a Complaint in the instant action on or about April 14, 2020 ("Complaint"). [Dkt. 1]. Receiver improperly named Garbellano as a defendant under the incorrect assumption that Garbellano was an investor in Oasis and received "false profits."

20. Receiver attached to the Complaint an exhibit purporting to show that Garbellano received payments between March 12, 2012 and April 5, 2019.

21. As of April 2020, Receiver failed to notify Garbellano that he filed the Complaint. Garbellano had no knowledge that Receiver filed the Complaint or that he named Garbellano as a defendant therein.

22. Receiver's counsel did not contact Garbellano until May 29, 2020. Only then did Garbellano find out anything about a lawsuit. A copy of Garbellano's phone record is attached hereto as **Exhibit B.**[1]

23. Receiver's counsel made statements to Garbellano during the phone call that directly indicated to Garbellano that he had no liability, that no one would seek to take his assets, and that he was an innocent victim in the Ponzi scheme.

24. During the phone call, Garbellano clearly stated to the gentleman that he disputed the amount allegedly owed and also had a legal defense that he would pursue if necessary, i.e. that he was not an investor and never received false profits. Rather, Garbellano said he worked for commissions and all monies that Oasis paid to Garbellano were payments in exchange for value that Garbellano brought to Oasis.

25. Garbellano also explained to Receiver's counsel that he had no money or ability to pay anything anyway. The person to whom Garbellano spoke made statements to Garbellano that led Garbellano to believe Receiver agreed with his defense and would not pursue the case against him, and/or Receiver would not seek to collect any money from him. The person stated to Garbellano that he would put Garbellano's case "in the back closet."

26. The person to whom Garbellano spoke requested that he sign a Waiver of Service of Summons ("Waiver"). The person's statements to Garbellano indicated

[1] In an affidavit filed by Receiver, he attests that on May 4, 2020, he notified Garbellano of this action. Garbellano has no record or recollection of any communication or notification around that time. [Dkt. 320.]

that if he signed the Waiver, he would not need to do anything else in the case. However, if he refused to sign the paper, then Garbellano would be required to pay a significant amount of money.

27. At the time of the conversation, Garbellano believed this meant that signing the Waiver meant he did not owe any money.

28. On May 29, 2020 (the same day as the phone call), Receiver's counsel sent Garbellano an email containing a "Waiver Package." A copy of the e-mail, with the Waiver Package, is attached hereto as **Exhibit D.**

29. The Waiver Package contained the Waiver, which showed the case caption. Garbellano is not named in the caption. Receiver's counsel failed to enclose a copy of the Complaint with the Waiver Package.

30. Based on the representations made by Receiver and/or Receiver's counsel/agent, and based on Garbellano's stated defense, Garbellano executed the Waiver on June 15, 2020.[2]

31. On June 16, 2020, Receiver filed the Waiver. [Dkt. 162.]

32. Receiver did not contact Garbellano again.

33. Upon information and belief, Mr. Garbellano never received any other documents relating to this case until May 2021.

[2] Upon information and belief, Garbellano's wife actually signed the document. However, this would have been done at the express direction of Mr. Garbellano because his wife had access to a printer and scanner at her place of employment. Garbellano readily adopts and acknowledges the signature as his own.

34. On August 11, 2020, Receiver filed a Motion for Default Judgment Against Defendant Rocco Garbellano ("First Motion for Default"). [Dkt. 320.] The First Motion for Default lists a New Jersey address for Garbellano in the Certificate of Service. Garbellano lives in New York.

35. Receiver failed to serve Garbellano with the First Motion for Default.

36. On August 24, 2020, this Court denied Receiver's First Motion for Default. [Dkt. 383.]

37. Thereafter, on October 13, 2020, Receiver filed an Omnibus Motion for Default Judgment Against Defaulted Defendants ("Second Motion for Default"). [Dkt. 523.]

38. In the Second Motion for Default, Receiver sought relief pursuant to Fed. R. Civ. P. 55(b)(2). Receiver included in the Second Motion for Default a Certificate of Service. Garbellano is not listed in the Certificate of Service.

39. Receiver failed to serve Garbellano with the Second Motion for Default. Garbellano in fact never received a copy of the Second Motion for Default.

40. The Court set the Second Motion for Default for hearing on October 28, 2020. On October 20, 2020, the Clerk issued a Court Notice of Hearing. Garbellano is not listed in the Notice. [Dkt. 529.] Garbellano in fact never received notice of the hearing.

41. Because Receiver failed to provide proper notice to Garbellano, Garbellano never had knowledge that Receiver filed the First Motion for Default or

the Second Motion for Default. Garbellano had no notice or knowledge of the October 28, 2020, hearing.

42. On November 3, 2020, this Court entered an Order granting Plaintiff's Motion for Default Judgment and directing the Clerk to enter a judgment against Defendant. [Dkt. 592.]

43. On November 4, 2020, the Court entered a Default Judgment against Garbellano for damages in the amount of $268,692.51, plus prejudgment interest in the amount of $59,263.00. [Dkt. 613.]

44. Again, Receiver failed to serve Garbellano with the Default Judgment. Garbellano had no notice of the Default Judgment entered against him.

45. On or around May 11, 2021, Garbellano received an electronic filing from the Southern District of New York. The email contained a cover sheet and copy of the Default Judgment. See Burton W. Wiand, as Receiver for Oasis International Group, Ltd., et. al. v. Rocco Garbellano, et. al., Case No. 1:21-mc-00428-PAE (S.D.N.Y.).

46. However, Garbellano did not actually see the email until around May 22, 2021. This was the first time Garbellano learned that a judgment had been entered against him in the instant action.

47. Not knowing or understanding what the document meant, Garbellano sent the e-mail to his son. It was not until the undersigned law firm got involved that Garbellano, through counsel, was able to unravel and decipher what had happened. Garbellano's affidavit is attached hereto as **Exhibit E.**

48. On July 1, 2021, while attempting to determine the procedural posture in the instant action, Garbellano learned his only bank account had been frozen.

49. Garbellano, through counsel, learned that on June 5, 2021, Receiver filed an *Ex Parte* Motion for Issuance of Writ of Garnishment and Incorporated Memorandum of Law ("Motion for Writ").[3] [Dkt. 820.] The Motion for Writ requested that a writ be issued against Garbellano's tangible and intangible property interests held by JP Morgan Chase Bank, N.A. ("Garnishee").

50. On June 17, 2021, the Court granted the Motion for Writ and issued an *Ex Parte* Post-Judgment Writ of Garnishment ("Writ"). [Dkt. 853.]

51. On or about June 28, 2021, Receiver served the Writ on Garnishee, Chase Bank, via service on its registered agent at 1200 S. Pine Island Rd., Plantation FL 33324.

52. In response, Garnishee immediately froze Defendant's bank account held with Chase Bank. Said bank account contains approximately $8,700 and is Defendant's only bank account.

53. On or about June 29, 2021, Receiver mailed to Defendant the Motion for Writ with an unsigned writ.

54. The Garnishee has filed a response. Therefore, the issue is ripe for adjudication.

[3] Undersigned counsel is attempting to negotiate a resolution to the Writ of Garnishment with Receiver's counsel.

STANDARD OF REVIEW

Florida's public policy favors resolving lawsuits on their merits. Therefore, default judgments are greatly disfavored. RooR Int'l BV v. Jay Chabila, LLC, 2019 WL 5088908, at *2 (M.D. Fla. Aug. 15, 2019). See also Hanft v. Church, 671 So. 2d 249 (Fla. 3d DCA 1996) (setting aside default judgment where plaintiff served defendant, but defendant mistook papers for a records subpoena). Federal Rule Civil Procedure 60(b)(1) states, "[o]n motion and just terms, the court may relieve a party. . . from a final judgment. . . for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect." It is within the Court's discretion to grant such relief. See, e.g. Max Speciality Ins. Co. v. A Clear Title & Escrow Exch. LLC, No. 8:12-CV-727-T-26MAP, 2012 WL 6021468, at *3 (M.D. Fla. Dec. 4, 2012) (exercising discretion to grant motion to set aside entry of default and final judgment). District court judges consider the totality of the circumstances when determining whether to set aside a default judgment pursuant to Fed. R. Civ. P. 60(b)(1). "With regard to 'excusable neglect,' the Supreme Court has held that the determination of what constitutes 'excusable' neglect is an equitable one, taking into consideration the totality of the circumstances surrounding the party's omission." United States v. Arnold, 2001 WL 34106906, at *2 (M.D. Fla. Aug. 15, 2001) (citing Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993)).

To set aside a default judgment pursuant to Fed. R. Civ. P. 60(b)(1), a defendant must prove (1) it has a meritorious defense that could affect the outcome of the litigation; (2) it has a good reason for failing to respond to the complaint; and (3) the

non-defaulting party will not suffer prejudice if the court sets aside the default. Coniglio v. Bank of Am., NA, 638 Fed. Appx. 972, 974 (11th Cir. 2016) (vacating and remanding lower court's denial of motion to set aside default judgment based on defendant's showing of excusable neglect). The court will also consider the length of delay and potential impact on court administration, whether the movant reasonably controlled the delay, and whether the movant acted in good faith. See Pioneer, 507 U.S. at 385.

Likewise, because the Writ is based on the entry of Default Judgment, the Writ must be dissolved upon setting aside the Default Judgment.

MEMORANDUM OF LAW

This Court must set aside the Default Judgment because Garbellano failed to respond to the Complaint due to mistake, inadvertence, surprise, or excusable neglect. Garbellano has a meritorious defense. Specifically, he was never an investor in Oasis. He worked as an originator by referring potential investors to the company, and in exchange, Oasis paid him commissions. Additionally, the alleged fraudulent transfers that Receiver seeks to extend the scope of the "reach back" is beyond the reach back period. Garbellano failed to respond to the Complaint because he was misled into believing he did not need to do anything besides sign the Waiver of Service of Summons. Receiver failed to serve Garbellano with the Second Motion for Default and the notice of hearing on same. Finally, Receiver would suffer no prejudice because Receiver's actions caused Garbellano to not participate in the litigation. Because the Default Judgment must be set aside, the Writ of Garnishment must be dissolved.

I. Garbellano has a meritorious defense that could affect the outcome of the litigation.

Garbellano has a meritorious defense that could affect the outcome of the litigation. Where the transfers of commissions to the defendant are received in good faith and for value, the receiver may not avoid the transactions. Fla. Stat. § 726.109 (2020). Good faith relates to the defendant's good faith in receiving the funds (as opposed to the debtor's good faith). In re Lydia Cladek, Inc., 494 B.R. 555 (M.D. Fla. 2013) (denying motion for summary judgment and finding a genuine issue of material fact existed where the defendant filed an affidavit stating he acted in good faith). An analysis of a defendant's good faith should be determined on a case-by-case basis after consideration of the facts. Id. See also, In re Pearlman, 478 B.R. 900 (M.D. Fla. 2010). Value means "the objective value of the property received by the debtor or by the subjective benefits the debtor derived from the property." In re Providence Financial Investments, Inc., 2018 WL 5003972 at *6 (Bkrptcy S.D. Fla. Oct. 15, 2018).

In Providence Financial, the court addressed facts nearly identical to the facts in the instant case. The debtors operated a Ponzi scheme and defrauded investors of millions of dollars. The trustee attempted to recover commission payments paid to the defendant as an originator, who brought investors to the company to sell them promissory notes as investments. Id. at *1. The commission payments were paid to the defendant pursuant to a contractual agreement.

Although a debtor operating a Ponzi scheme has actual intent to hinder, delay, or defraud, a defendant can provide good faith and value in exchange for commissions,

and therefore avoid the "reach back" of such commissions. Id. at *4. The defendant established good faith where he did not know of the fraudulent operations and had no intent to participate in the fraud. Id. at *3. Likewise, the defendant gave value to the debtors in exchange for the commissions. Id. at *5. It did not matter that the services furthered the Ponzi scheme or rendered the entity more insolvent. Id. at *6. The court found that the defendant producing investors who paid over $1 million to the debtors gave value to the debtors. Id.

In the instant case, Garbellano did not invest money into Oasis. Rather, pursuant to a written commission agreement (a copy of which Garbellano does not presently have), he brought investors to the company to sell them promissory notes as investments. He produced investors who paid money to the debtors. Therefore, he brought value to the debtors, and Receiver bears the burden to prove that the debtor received less than "reasonably equivalent value." Providence Financial, 2018 WL 5003972 at *7. Likewise, Garbellano acted in good faith. He had no knowledge of the fraudulent operations and had no intent to participate in the fraud. He had no access to the accounting records of Oasis and had no involvement in the decision-making for the business. There is simply no evidence to suggest that Garbellano knew or should have known that the debtors were operating a Ponzi scheme.

Additionally, Receiver has improperly sought to "reach back" beyond the four-year limitations period set forth in Fla. Stat. §726.110. The four-year limitations period is triggered when the receiver has constructive knowledge of the payments. See Wiand v. Wells Fargo Bank, N.A., 86 F. Supp. 3d 1316, 1326 (M.D. Fla. 2015) (finding that

three of the four security interests conveyed by the defendant could not be avoided because the receiver had constructive knowledge of the mortgages more than four years prior to filing the FUFTA claim). See also In re Lydia Cladek, Inc., 494 B.R. 555 (M.D. Fla. 2013) (using the petition date as the triggering date, and disallowing avoidance of any transfers occurring more than four years prior to that date).

According to Receiver's Complaint, the CFTC filed an enforcement action on April 15, 2019. The investigation, and therefore knowledge of the alleged false profits, must have taken place earlier than April 2019. Therefore, at a minimum, Receiver cannot avoid transfers made prior to April 15, 2015. Receiver's own exhibit to the Complaint, detailing the commissions allegedly received by Garbellano, shows over $80,000 in transfers allegedly made to Garbellano prior to April 15, 2015. Receiver should have known he could not avoid those transactions. It should also be noted that Receiver's own Complaint alleges that the leaders of Oasis did not employ sufficient or accurate record keeping procedures. The summaries used to support Receiver's claims are unreliable at best. Thus, the Court should set aside the Default Judgment and dismiss as time-barred any claims made by the Receiver to avoid transfers from Oasis to Garbellano prior to the date on which the Receiver is deemed to have constructive knowledge of the alleged false profits.

Because Garbellano has a meritorious defense that would negate all liability, he satisfies the first element of establishing excusable neglect pursuant to Fed. R. Civ. P. 60(b)(1).

II. Garbellano has a good reason for not responding to the Complaint.

Garbellano has a good reason for not responding to the Complaint. First, Receiver failed to serve Garbellano with the Second Motion for Default or a notice of hearing on same. Second, the totality of circumstances demonstrates that Garbellano's failure to respond was due to good reason, amounting to "excusable neglect."

a. Receiver failed to provide Garbellano with notice of the Second Motion for Default and notice of the hearing on same.

Receiver was required to notify Garbellano of his application for default judgment no less than seven (7) days before the hearing on said application. Because Receiver failed to do so, Garbellano's mistake or neglect is clearly excusable. "If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing." Fed. R. Civ. P. 55(b)(2).

The notice requirement under Rule 55(b)(2) applies when the defendant has "appeared." An appearance does not require that a formal appearance be made to trigger the notice requirement. See Charlton L. Davis & Co., P. C. v. Fedder Data Ctr., Inc., 556 F.2d 308, 309 (5th Cir. 1977) (surveying cases that found informal appearance sufficient to trigger notice requirement). See also Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1209 (11th Cir. 1981) (adopting as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981). Instead, the defendant must simply manifest "a clear purpose to defend the suit." Charlton, 556 F.2d at 309. Defendant can make such a manifestation during a phone

call. Id. (internal citations omitted); see also Lutomski v. Panther Valley Coin Exch., 653 F.2d 270, 271 (6th Cir. 1981) (holding that telephone contacts where defendant demonstrated it would defend the claim were sufficient to constitute an "appearance" for purposes of being entitled to notice under Rule 55(b)(2)).

A plaintiff's failure to notify a defendant of the default motion in violation of Rule 55 provides sufficient reason for a defendant's failure to respond to the motion. See United States v. Varmado, 342 Fed. Appx. 437, 439 (11th Cir. 2009) (citing to Charlton, 556 F.2d at 309 (holding that default judgment must be set aside because defendant did not receive notice)).

Receiver's Second Motion for Default was filed based on Fed. R. Civ. P. 55(b)(2). [Dkt. 523.] Under Rule 55(b)(2), Receiver was required to provide notice to Garbellano because Garbellano "appeared" in the action. On the May 29, 2020, phone call with Receiver, Garbellano informally appeared by manifesting a clear intent to defend the action. Garbellano told Receiver that he was not an investor but earned commissions for bringing investors to Oasis. Garbellano disputed the alleged amounts Receiver said he owed and demonstrated his intent to defend the suit. Moreover, Receiver clearly knew it was required to provide notice to Garbellano, as evidenced by the fact that Receiver attempted to serve Garbellano with Receiver's First Motion for Default (which Receiver sent to the wrong address), and Receiver served the other defendants in the action with the Second Motion for Default. Other defendants in the action received notice of the hearing set for October 28, 2020. Garbellano did not

receive notice. Therefore, Garbellano had good reason for failing to participate in the litigation of the case.

b. Under the totality of circumstances, Garbellano's lack of response to the Complaint was for good reason.

Additionally, under the totality of circumstances, Garbellano's lack of response to the Complaint was for good reason. Finding mistake, inadvertence, surprise, or excusable neglect is an equitable determination, "taking account of all relevant circumstances surrounding the party's omission." Walter v. Blue Cross & Blue Shield United of Wisconsin, 181 F.3d 1198, 1201 (11th Cir. 1999). Excusable neglect encompasses situations in which negligence causes the failure to comply with a filing deadline. See Cheney v. Anchor Glass Container Corp., 71 F.3d 848 (11th Cir. 1996) (finding excusable neglect where law firm's partner and associate each mistakenly thought the other had filed the proper motion). Courts consider the length of delay and potential impact on court administration, whether the movant reasonably controlled the delay, whether the movant acted in good faith, and whether the non-moving party would suffer prejudice. Pioneer Investment Services Co. v. Brunswick Associates, 507 U.S. 380 (1993) (holding in Bankruptcy case that an attorney's inadvertent failure to meet a deadline may constitute excusable neglect, where the notice setting the deadline was ambiguous and confusing even to an experienced attorney). See also Coniglio v. Bank of America, NA, 638 Fed. Appx. 972, 974 (11th Cir. Feb. 3, 2016) (applying Pioneer factors to Rule 60(b)(1) motion to set aside default judgment, and vacating and remanding trial court's denial of motion based on defendant's showing of

excusable neglect where defendant had a strong meritorious defense, acted in good faith, and the non-moving party would suffer no prejudice); Varmado, 342 Fed. Appx. at 441 (setting aside default where defendant was pro se, was not given notice of the default, there was no evidence of willful misconduct or dilatory tactics, and she had a meritorious defense).

In the instant case, Garbellano's circumstances necessitate that this Court set aside the Default Judgment. Garbellano, an unsophisticated person with no litigation experience, was mistakenly unaware that Receiver sued him (Garbellano's name does not appear in the case caption). At the time Receiver and Garbellano spoke, Garbellano was *pro se*. Further, the March Correspondence (which was addressed "Dear Investor") demanded return of "false profits" from investors. Garbellano never invested money in Oasis and did not receive any false profits. Therefore, he reasonably believed the March Correspondence did not apply to him.

The email Receiver sent to Garbellano on March 30, 2020 further confused Garbellano because it referred to him as a potential victim. When Garbellano realized he was actually a defendant in the lawsuit, he notified Receiver of his defense, i.e. that he worked for commission, and he was not an investor. Based on Receiver's statements to Garbellano in May 2020, especially the statement that Garbellano's case would be put "into the back closet," Garbellano mistakenly believed that he only needed to sign the Waiver of Service of Summons, and then his involvement would end. He believed Receiver accepted Garbellano's defense on the merits of the case.

Garbellano's mistaken belief that Receiver accepted Garbellano's defense and dropped Garbellano as a defendant was supported by the fact Receiver never sent any additional documents, requests, or instructions to Garbellano. Garbellano knew nothing about the case until Receiver registered the Default Judgment in the Southern District of New York in May 2021. In fact, Receiver failed to serve Garbellano with the Second Motion for Default. Receiver failed to serve Garbellano with any notice of hearing on the Second Motion for Default. Receiver never sent a copy of the Default Judgment to Garbellano. It would be unreasonable to expect an unsophisticated *pro se* defendant to know that he had to file a responsive pleading or motion in light of these circumstances.

The length of delay between Garbellano learning of the entry of the Default Judgment and filing of this Motion is only approximately 2 months, which is not a significant delay. Garbellano had to secure counsel, and counsel had to then research the issues. Additionally, undersigned counsel has been and continues to negotiate with Receiver's counsel to try to reach an amicable resolution to this matter. Receiver, on the other hand, took seven (7) months to register the Default Judgment in New York. If Receiver can delay by 7 months, certainly Garbellano taking 2 months to thoroughly research and prepare the issues for litigation is not a significant period of time. See Gerstenhaber v. Matherne Holdings, Inc., 2018 WL 6261848, at *2 (S.D. Fla. Nov. 6, 2018) (acting quickly to respond to a default demonstrates respect for the court's process, and weighs in favor of leniency and setting aside entry of default and default judgment).

Garbellano has clearly acted in good faith by immediately taking steps to remedy the issue and act. Garbellano did not intentionally or purposefully delay in filing responsive pleadings, nor did he gain any advantage from the delay. See Blake v. Enhanced Recovery Co., LLC, 2011 WL 3625594, at *3 (M.D. Fla. Aug. 17, 2011) (holding that party acted in good faith where it did not want to delay case and did not gain an advantage from the delay). Setting aside the Default Judgment would not impact court administration because the case is still pending against several other co-defendants. Garbellano is prepared to file an Answer to the Complaint to avoid any additional delays in the litigation of this matter. A proposed Answer is attached hereto as **Exhibit F.**

Finally, Garbellano had no control over the delay. From March 2020 until May 2021, Garbellano had no knowledge or understanding that he was a defendant in a lawsuit or that he could owe money to anyone. Garbellano maintains his position that he does not actually owe money to anyone for alleged "false profits."

Therefore, based on the totality of circumstances, Garbellano has a good reason for not responding to the Complaint in the instant action.

III. Receiver will suffer no prejudice if the Court sets aside the Default Judgment.

Lastly, Receiver would not be prejudiced if the Court sets aside the Default Judgment. A simple delay is insufficient to establish that the non-defaulting party is prejudiced. See Coniglio, 638 Fed. Appx. at 975. The case is still proceeding against co-defendants. The case remains ongoing and Receiver remains heavily involved.

"To establish prejudice, the plaintiff must show that the delay will result in the loss of evidence, increased difficulties in discovery, or greater opportunities for fraud and collusion." Gerstenhaber v. Matherne Holdings, Inc., 2018 WL 6261848, at *2 (S.D. Fla. Nov. 6, 2018). Not only is Receiver responsible for Garbellano's failure to respond to the Complaint by giving misleading advice to Garbellano and then failing to comply with Fed. R. Civ. P. 55(b)(2), but Receiver would not lose evidence or experience difficulties with discovery. Garbellano would not have any greater opportunity for fraud or collusion, especially in light of Garbellano's meritorious defense. Receiver currently has no evidence and has conducted no discovery. Reopening the case to allow Garbellano to present his defense would give Receiver the opportunity to uncover evidence and conduct discovery.

Receiver has failed to allege or establish that Garbellano actually received any "false profits" or that Garbellano invested any money in Oasis. Receiver's Complaint shows that Garbellano invested *no money* in Oasis. Therefore, Receiver would suffer no prejudice if the case proceeded on the merits.

Even if Receiver will suffer some degree of prejudice if the Court sets aside the Default Judgment, "the presence of a meritorious defense, and the risk of significant financial loss to the [Defendant], particularly in light of the strong policy of determining cases on their merits" weighs in favor of the setting aside and vacating the Default Judgment. Worldwide Distribution, LLLP v. Everlotus Indus. Corp., 2016 WL 8999083, at *2 (M.D. Fla. May 20, 2016) (internal quotations omitted).

CONCLUSION

This Court must set aside the Default Judgment because Garbellano failed to respond to the Complaint due to mistake or excusable neglect. Garbellano worked for commissions, i.e. good faith and fair value. He has a meritorious defense to the allegations. Additionally, the alleged fraudulent transfers that Receiver seeks to extend the scope of the "reach back" beyond the reach back period. Garbellano failed to respond to the Complaint because he was misled into believing he did not need to do anything besides sign the Waiver of Service of Summons. Receiver failed to serve Garbellano with the Second Motion for Default and the notice of hearing on same. Finally, Receiver would suffer no prejudice because Receiver's actions caused Garbellano to not participate in the litigation. Because the Default Judgment must be set aside, the Writ of Garnishment must be dissolved.

WHEREFORE, Defendant, ROCCO GARBELLANO, hereby moves this Honorable Court to GRANT this Motion to Set Aside Default Judgment and Incorporated Motion to Dissolve Writ of Garnishment, and GRANT Defendant Garbellano such other and further relief as appropriate under the circumstances.

Local Rule 3.01(g) Certification

I hereby certify that counsel for movant has conferred with counsel for Plaintiff regarding the instant motion and Plaintiff's counsel does not agree to the relief sought herein.

s/Holly A. Rice
Holly A. Rice
Florida Bar No. 89138
Saxe Doernberger & Vita, P.C.
851 5th Avenue North, Suite 301
Naples, FL 34102
(239) 316-7244 Telephone
Primary email: hrice@sdvlaw.com
Secondary email: charper@sdvlaw.com
Attorney for Defendants, Rocco Garbellano

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 2021 a true copy of the foregoing document was filed electronically with the Clerk of Court via the CM/ECF system, and thereby served on all counsel of record.

/s/*Holly A. Rice*
Holly A. Rice

EXHIBIT A

WIAND GUERRA KING

5505 W GRAY STREET | TAMPA, FL 33609 | PHONE: 813.347.5100

JARED J. PEREZ
Direct Dial: 813.347.5114
jperez@wiandlaw.com

March 18, 2020

VIA US MAIL AND EMAIL (if available)
Rocco Garbellano
48 Clark Street
Poughkeepsie, NY 12601
roccogarbellano@gmail.com

Re: *U.S. Commodity Futures Trading Commission v. Oasis International Group, Ltd., et al.;* M.D. Fla. Case No.: 8:19-CV-00886
Rocco Garbellano

Dear Investor:

This law firm represents Burton W. Wiand in his capacity as Court-appointed Receiver for Oasis International Group, Ltd., Oasis Management, LLC, Satellite Holdings Company, and other related individuals and entities (collectively, "**Oasis**" or the "**Receivership Entities**"). Please visit www.oasisreceivership.com for more information, including a copy of the operative Court order appointing the Receiver.

As you may be aware, the Commodity Futures Trading Commission ("**CFTC**") filed the above-referenced lawsuit to put a halt to the "Oasis scheme," which involved defrauding approximately 800 investors in what was purportedly a foreign-exchange options trading endeavor. In reality, certain defendants were operating a classic Ponzi-scheme, using funds from subsequent investors to make payments to other investors and otherwise dissipating assets for their own personal use.

Based on the Receiver's review of documents in his possession, the Receiver has determined that you and/or your affiliated entities received distributions from one or more of the Receivership Entities in amounts which exceeded the amounts you contributed to these entities. The amounts you received in excess of what you contributed were not legitimate profits, but instead, were simply the redistribution of money belonging to other investors. Those amounts are considered "false profits," and under well-established law, the Receiver is entitled to the return of the funds. The Receiver is also entitled to prejudgment interest on the false profits from the date(s) of the transfer(s).

As calculated in Exhibit A to this letter and based on the documents in the Receiver's possession, the Receiver has a claim against you to recover "false profits" and prejudgment interest. The Receiver is charged with collecting the assets of the Receivership, including the false

profits that you received. Therefore, the Receiver hereby demands an immediate return of these funds. However, the Receiver has been authorized by the Court and will accept 90% of the amount of false profits owed in satisfaction of the claim against you. The Receiver will also waive his right to demand and collect prejudgment interest. Based on the information reviewed by the Receiver, he is willing to settle this claim for the amount listed in Exhibit A.

In the event you do not agree to return the demanded funds, the Receiver may pursue litigation to recover the false profits received with interest. If you do not contact the Receiver within ten (10) days of the date of receipt of this letter, the Receiver will assume you do not desire to amicably resolve this matter. The 10% discount and waiver of prejudgment interest will no longer be available.

Should you wish to dispute the amounts the Receiver believes you invested and/or received from the Receivership Entities, please provide complete details of your investment(s), including all documents you received from the Receivership Entities, bank statements and/or cancelled checks verifying your disputed amounts, and all communications between you and anyone affiliated with the Receivership Entities or relating to your investment.

Should you have any questions or concerns, please feel free to contact this office.

Respectfully,

s/ Jared J Perez
Counsel for the Receiver

EXHIBIT A

Amount Invested:	**$0.00**
Total Payments:	**$268,692.51**
False Profits:	**$268,692.51**
Settlement Offer: **(90% of False Profits)**	**$241,823.26**

EXHIBIT B

verizon

Billing period
Mar 7, 2020 - Apr 6, 2020

Account number
[redacted]

Deborah Garbellano

[redacted]
PIXEL 2

Talk activity (cont.)

Date	Time	Number	Origination	Destination	Min.	Airtime Charges	LD/Other Charges	Total
[redacted]								
Mar 18	4:24 PM	813.347.5100	Poughkeeps, NY	Tampacen, FL	2	--	--	--
[redacted]								
Mar 18	4:32 PM	813.347.5100	Poughkeeps, NY	Tampacen, FL	3	--	--	--

[redacted]

verizon

Billing period
May 7, 2020 - Jun 6, 2020

Account number
[redacted]

Deborah Garbellano

[redacted]
PIXEL 2

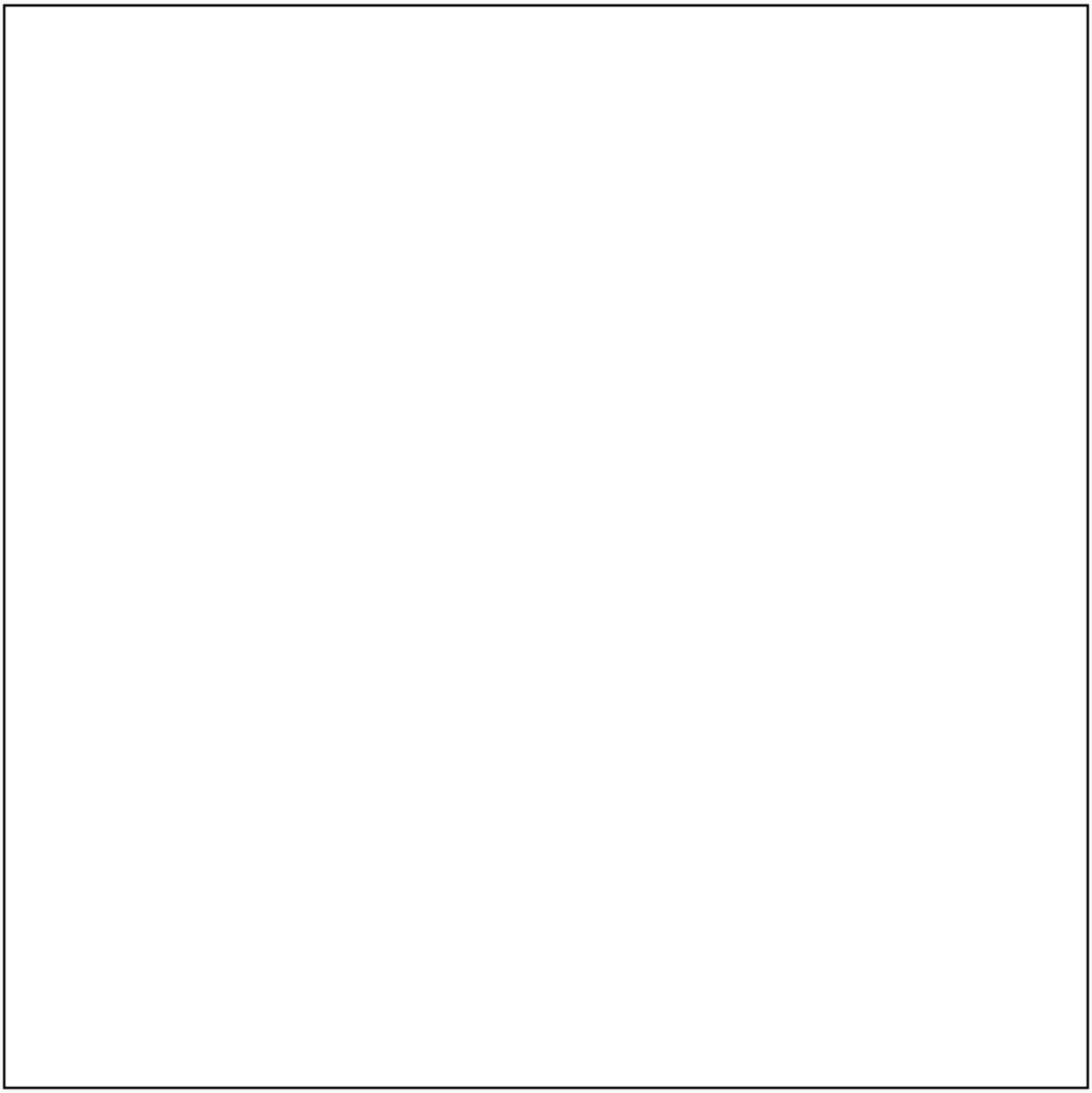
Talk activity (cont.)

Date	Time	Number	Origination	Destination	Min.	Airtime Charges	LD/Other Charges	Total
[redacted]								
May 29	3:12 PM	727.898.7210	Poughkeeps, NY	Stpetersbg, FL	4	--	--	--
[redacted]								
May 29	3:23 PM	727.898.7210	Poughkeeps, NY	Incoming, CL	20	--	--	--

EXHIBIT C

---------- Forwarded message ---------
From: **Oasis Receivership** <astephens@wiandlaw.com>
Date: Mon, Mar 30, 2020 at 5:12 PM
Subject: Solicitation of Funds for Pursuit of Possible Claims by Investors
To: <roccogarbellano@gmail.com>

View this email in your browser



In Receivership
5505 West Gray Street. Tampa, FL 33606
O: 813-347-5100

March 30, 2020

Oasis Investor

Re: Solicitation of Funds for Pursuit of Possible Claims by Investors

Dear Investor:

Recently it has come to my attention that individuals are soliciting funds from investor victims to pursue purported claims against individuals and entities relating to the Oasis International Group Ponzi scheme. I have concerns that investor victims are being misled about these purported claims and the potential for recovery. Investor victims must understand that claims made by the Receivership on behalf of themselves and creditors of Oasis International Group and its related entities are claims of the Receivership estate. Those claims reach all property within the jurisdiction of the Court. As the Receiver, I have the obligation to assure that there are no competing claims with respect to any potential

recoveries for the benefit of all victims of Oasis International Group and its related entities. Investor victims make a serious mistake if they compound their initial lost investments by placing faith in misguided recovery efforts that compete with claims of the Receivership.

I have received information that investor victims are being provided numerous representations that are, frankly, inaccurate. Those representations include the following:

1. That there is somewhere in England or elsewhere a sum of more than $113 million available for recovery for investor victims. After significant inquiry with respect to the trading activities of Oasis International Group, I have a high level of confidence that such a representation is flatly untrue. The perpetrators of the Oasis International Group fraud created internal documents indicating a balance of $113 million in accounts presumably with a trading firm in the United Kingdom. That number is fictitious and the trading records Of Oasis International Group indicate that there never was more than $10 million of equity in the Oasis trading account. At the time the trading ceased, the total value of the account was slightly more than $2 million. Those funds have been frozen in England. Pursuant to the efforts of the Department of Justice, the funds are in the process of being repatriated to the United States to be placed in the Receivership estate. Individuals currently asserting that there is a $113 million in the accounts have been provided this information and know their assertions not to be true;
2. That the Receiver must bring actions against wrongdoers in connection with these cases by April 15, 2020 or be barred from doing so. That date is significant regarding the bringing of certain types of claims, but those claims are limited. Moreover, the Court has issued an order that may ease deadlines for the Receiver's actions. Regarding claims of malfeasance by entities and professionals or those who aided and abetted the fraud, that April 15, 2020 date would not apply. The representation to investor victims that that date limits the Receiver's ability to proceed with claims is at best misleading;
3. That investor victims have been told that there has been no inquiry into the entity known as Spotex LLC, which provided a trading platform indirectly used by Oasis International Group and its related entities. Once again, the information being provided to investor victims in this regard is false. As Receiver, I am aware of the involvement of Spotex and am actively seeking information to determine whether or not any claims against that entity would be appropriate; and
4. Finally, Investor victims are encouraged to contribute money to pursue claims that are clearly claims of the Receivership. Indeed if such claims were instituted I would likely ask the Court to enjoin them. Such claims would waste the funds of those who brought them and the Receivership in preserving its right to those causes of action.

Claim forms have now been sent to investor victims. Letters have been sent asking those who profited from the fraud to return the "profits" they received – false profits derived from funds of other investors. Please complete and return your claim form. Please respond to the letter requesting the return of false profits, if you received one. Once claims forms have been returned, and any claim disputes resolved, we will be in a position to begin to make distributions to investor victims and will continue to do so as assets are liquidated or collected.

My reason for sending this memorandum is to see that investor victims are not misled by individuals that are either misinformed, or seeking to gain financially by creating unrealistic hopes. Our goal is to recover as many assets and as much money for the Receivership as possible. Should any investor desire to speak with me, I am available to take your calls. Our number is (813) 347-5100. If you have information that you think would be helpful, please contact me. We continue to pursue assets and claims on behalf of the Receivership and the victims of those who were defrauded by Oasis International Group and its related entities and others.

I also wish to clarify that, inconsistent with what has been discussed above and also represented to investor victims, I am currently in discussions with attorney Mark Hanley in the United Kingdom with respect to the possibility of bringing

actions on behalf of the receivership against ATC and possibly others. I am also evaluating other options to pursue claims against ATC and possibly one or more of its principals.

Receiver

Burton W. Wiand, Receiver for Oasis International Group, et al.

5505 West Gray Street, Tampa, FL 33609

O: 813-347-5100

oasisreceivership.com

EXHIBIT D

[redacted]

---------- Forwarded message ---------
From: **Tara Dillon** <tdillon@eflegal.com>

Date: Fri, May 29, 2020, 4:54 PM
Subject: Waiver Package -Burton W. Wiand v. Arduini et al. Case No: 8:20-cv-00862-VMC-TGW - Our File 6005.004
To: roccogarbellano@gmail.com <roccogarbellano@gmail.com>
Cc: Bea McConnell <bmcconnell@eflegal.com>, John Waechter <jwaechter@eflegal.com>

Good afternoon Mr. Garbellano,

Thank you for speaking with me this afternoon. I wanted to provide the Waiver package sent to you on May 4, 2020. Please provide the executed document to our firm at your earliest opportunity.

Thank you,

Tara Dillon

Florida Registered Paralegal

721 First Avenue North

St. Petersburg, Florida 33701

P: 727.898.7210 | F: 727.898.7218
eflegal.com | **tdillon@eflegal.com** | **Sidebar Blog**

Big Firm Experience ● Boutique Service

Englander Fischer
attorneys

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
OASIS MANAGEMENT, LLC; AND
SATELLITE HOLDINGS COMPANY,

Plaintiff,

v. Case No: 8:20-cv-00862-VMC-TGW

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.
_____/

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF SUMMONS

TO: Rocco Garbellano
48 Clark Street
Poughkeepsie, NY 12601

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a formal summons or notification from the court, but rather a request that you sign and return the enclosed waiver of service in order to avoid the service of process cost. To avoid these costs, you must return the signed waiver within 30 days from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

If you comply with this request and return the signed waiver, I will file it with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed and you will have 60 days from the date this notice is sent to answer the complaint.

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you and will request that the court require you, or the entity you represent, to pay the full costs of such service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Dated: May 4, 2020.

/s/ Beatriz McConnell
JOHN W. WAECHTER
Florida Bar No. 47151
Primary: jwaechter@eflegal.com
Secondary: dturner@eflegal.com
COURTNEY L. FERNALD
Florida Bar No. 52669
Florida Bar Certified, Appellate Practice
Primary: cfernald@eflegal.com
Secondary: tdillon@eflegal.com
BEATRIZ MCCONNELL
Florida Bar No. 42119
Primary: bmcconnell@eflegal.com
Secondary: tdillon@eflegal.com
ALICIA GANGI
Florida Bar No. 1002753
Primary: agangi@eflegal.com
Secondary: tdillon@eflegal.com
ENGLANDER and FISCHER LLP
721 First Avenue North
St. Petersburg, Florida 33731-1954
(727) 898-7210 / Fax (727) 898-7218
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
OASIS MANAGEMENT, LLC; AND
SATELLITE HOLDINGS COMPANY,

Plaintiff,

v. Case No: 8:20-cv-00862-VMC-TGW

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.
_____/

WAIVER OF THE SERVICE OF SUMMONS

TO: Beatriz McConnell, Esquire
Englander and Fischer LLP
721 First Ave. North
St. Petersburg, FL 33701

I acknowledge receipt of your request that I, or the entity I represent, waive service of summons in the above-captioned lawsuit, along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to avoid the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will retain all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from May 4, 2020, the date when this request was sent. If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____ _____
Rocco Garbellano

DUTY TO AVOID UNNECESSARY EXPENSES OF SERVING A SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are provided with more time to answer the complaint than if a summons had actually been served when the request for waiver of service was received.

EXHIBIT E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
OASIS MANAGEMENT, LLC; AND SATELLITE
HOLDINGS COMPANY,

Plaintiff,

v. Case No: 8:20-cv-00862-VMC-TGW

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.
_____/

AFFIDAVIT OF ROCCO GARBELLANO

STATE OF MARYLAND
COUNTY OF WICOMICO

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths in the State and County aforesaid, personally appeared, Rocco Garbellano, who, after being duly sworn and under oath, deposes and says:

1. My name is Rocco Garbellano.

2. I reside at 48 Clark Street, Poughkeepsie, New York 12601.

3. I am 59 years old and of sound mind.

4. I own a fence installation company in Duchess County, NY.

5. I am married. My wife and I have owned our home for over 30 years. I have lived in New York since at least that time. I never lived or physically worked in Florida.

6. I met Michael DaCorta in the 1990s when I installed a fence for him.

7. Mr. DaCorta contacted me in or about 2012 and offered me a way to earn income.

8. Specifically, Mr. DaCorta offered to pay me commissions in exchange for referring investors to Mr. DaCorta's business, Oasis International Group, Ltd. ("Oasis"). I never had any reason to suspect that Mr. DaCorta was doing or saying anything illegal.

9. Mr. DaCorta told me that Oasis had millions of dollars in silver and the business would make me rich.

10. In or around 2012, I entered into an agreement with Mr. DaCorta whereby I would receive commissions for referring investors to Oasis. I signed an agreement that gave me 1% of investment dollars per month for bringing investors to Oasis.

11. I brought value to Oasis by acting as an originator. Specifically, I obtained leads in furtherance of Mr. DaCorta's business. The investors loaned to and/or invested money in Oasis and received Promissory Notes and Loan Agreements. In exchange for referring leads to Oasis, I received compensation.

12. However, once I secured a lead, I had no further involvement in or knowledge of any investment activities and gave no advice regarding same. I had no knowledge of where the investment dollars went or how income was generated.

13. I solicited my family and friends to invest their savings into Oasis. Had I known anything illegal was happening, I would never have risked the financial security of my family and friends.

14. I had access to a portal and received my compensation via the portal. I received wire transfers.

15. I was never an investor in Oasis. I never gave money to Oasis. I never received profits from Oasis.

16. I had no knowledge of any Ponzi scheme or unlawful activity related to my interactions with Oasis or the transactions or business of Oasis. I never participated in or knowingly furthered the fraud that Mr. DaCorta is accused of committing as part of his Ponzi

scheme. I never had any involvement in Oasis's operations or accounting. I never received any purported profits on investments in the Oasis fund.

17. I acted in good faith at all times.

18. In or about April 2019, I stopped attempting to secure investors and secure commissions because my account was shut down. I learned that the FBI shut everything down.

19. I received several communications via the portal (to which I no longer have access) relating to the Ponzi scheme. No one indicated that I had done anything illegal or that I might owe money.

20. In March 2020, I received correspondence from Mr. Jared Perez of Wiand Guerra King, but I never comprehended the substance thereof. The correspondence is dated March 18, 2020 ("March Correspondence"). The March Correspondence is attached to the Motion to Set Aside Default as **Exhibit A.**

21. To me, the letter appeared generic and not sent specifically to me. While it demanded return of "false profits," I had not received false profits, so I did not believe the letter applied to me.

22. I contacted the attorney who sent the letter and spoke to a man who identified himself as an attorney.

23. The person with whom I spoke advised me that I did not need to do anything with the March correspondence. I understood that I could ignore it.

24. I do not recall the name of the person with whom I spoke.

25. On March 30, 2020, I received an email from Burton W. Wiand, as Receiver for Oasis International Group, Ltd.; Oasis Management, LLC; and Satellite Holdings Co. ("Plaintiff") stating, "individuals are soliciting funds from investor victims to pursue purported claims against individuals and entities relating to [Oasis]." A copy of the March 30, 2020, e-mail is attached to the Motion to Set Aside Default Judgment as **Exhibit C.**

26. Said e-mail was intended to ensure that victim investors were not misled by unofficial entities trying to extort money from them. I believed Plaintiff considered me a victim since he was sending me this information.

27. On or about April 14, 2020, Plaintiff sued me in the instant action. Plaintiff never provided me with a copy of the Complaint. Therefore, as of April 2020, I had no knowledge that the Plaintiff filed a Complaint against me. As set forth herein, I did not learn until 2021 that Plaintiff sued me in the instant matter.

28. On or about May 29, 2020, I spoke with who I believed to be Plaintiff's counsel, via telephone. I stated that I disputed the amount allegedly owed and also stated that I had a legal defense because I was not an investor.

29. The person to whom I spoke led me to believe that Plaintiff agreed with my defense and would not pursue a case against me or would not seek to collect money from me.

30. Plaintiff's counsel made statements to me during the phone call that directly indicated to me that I had no liability, that no one would seek to take my assets, and that I was an innocent victim in the Ponzi scheme.

31. The person to whom I spoke advised me that if I sign a Waiver of the Service of Summons ("Waiver"), I did not need to take any further action, and nothing would be pursued against me. However, if I did not sign, I would owe money. I believed signing the Waiver meant I did not owe money.

32. I still had no attorney at this time.

33. On May 29, 2020, Ms. Tara Dillon, the paralegal for Plaintiff's attorney, emailed me a "Waiver Package." A copy of the email, with attachment, is attached to the Motion to Set Aside Default Judgment as **Exhibit D.**

34. On or about June 15, 2020, I signed the Waiver and sent it to Ms. Dillon.

35. The foregoing events all took place during the beginning of the COVID-19 global pandemic, when courthouses were closed and contacting clerks' offices would have been extremely difficult.

36. I never thought I was being sued or that I could potentially owe money to Plaintiff. I believed I was a victim in the case because I was owed money for leads I brought to Oasis. Therefore, I did not think I needed to speak to an attorney, and I did not know I had to take further action to resolve my involvement in the case. I believed my involvement was a mere technicality that had no consequences or benefits for me.

37. I was unaware that I had any legal rights or obligations. I had no knowledge that the lawsuit sought money, damages, or the like from me. I believed that signing the document meant the case would be closed. I relied on the advice given and statements made by the people with whom I spoke.

38. I was unaware that I should have spoken to an attorney to obtain advice. I did not know I needed to seek legal advice because I did not know that a judgment could or would be entered against me.

39. Until around May 2021, I never received any further mailings or notifications in this case.

40. As detailed herein, I have learned since hiring counsel that Plaintiff has attempted to state a cause of action against me, claiming I owe money as a "winning investor" in the fund, and that Plaintiff obtained a default judgment against me.

41. I have now learned that on August 11, 2020, Plaintiff filed a Motion for Default Judgment against me, which this Court denied on August 24, 2020. That Motion includes a certificate of service stating that Plaintiff served me at 35 McCloud Road, Lafayette, NJ 07848. I do not, nor have I ever, lived at that address. I do not know who, if anyone, resides at that address.

42. I was never served with a copy of Plaintiff's first Motion for Default Judgment, dated August 11, 2020.

43. I have also learned that on October 13, 2020, Plaintiff filed a second Motion for Default Judgment against me ("Second Motion"). However, I am not listed on the Certificate of Service, and Plaintiff never served me with a copy of the Second Motion.

44. I have now learned that this Court heard Plaintiff's Motion on October 28, 2020. Neither the Clerk nor Plaintiff ever sent me notice of said hearing. I did not know that Plaintiff scheduled the hearing or that this Court held a hearing.

45. I have now learned that this Court entered a Final Default Judgment against me as a result of the Second Motion and hearing thereon, neither of which I had received advanced notice.

46. It was not until mid-May 2021 that I learned Plaintiff sued me. In May 2021, I received a document from the U.S. District Court for the Southern District of New York ("SDNY") containing a copy of the Certified Judgment in the instant case. Even upon receipt of the documents from the SDNY, I did not comprehend the significance or meaning thereof.

47. On May 22, 2021, I forwarded the document from the SDNY to my son. I still did not know or understand that I needed an attorney. My son helped me obtain an attorney to help me understand my rights and obligations.

48. Since hiring counsel, I have learned that I am accused of owing a lot of money, despite working for compensation and earning every dollar I received. I never invested money in Oasis. By serving as an originator and bringing value to Oasis, I earned all the commissions I received from Oasis and/or Mr. DaCorta. Therefore, I believe I do not owe any money to Plaintiff.

49. My position has always remained the same, i.e. that I do not owe money to anyone.

50. In accordance with that belief, I reiterated to Plaintiff that I do not owe any money. Plaintiff reassured me that I need not be concerned with owing Plaintiff money. I understood this to be the end of the issue.

51. I have acted in good faith and have not intentionally, willfully, or purposefully delayed the proceedings or my own actions in this matter.

52. On or about July 1, 2021, I learned that my Chase Bank account had been frozen.

53. I learned that Plaintiff filed an Ex Parte Motion for Issuance of Writ of Garnishment and Incorporated Memorandum of Law ("Motion for Writ").

54. The Court granted the Motion for Writ on June 17, 2021.

55. I was never served with or given New York exemption forms. However, I completed exemption forms for New York and Florida.

56. The statements made in this affidavit are true and accurate to the best of my present knowledge.

57. I am making this statement voluntarily. No one is pressuring, coercing, or forcing me to sign this affidavit.

AFFIANT FURTHER SAYETH NAUGHT.

Rocco Garbellano

Sworn to and subscribed before me on this 23rd day of July, 2021.

Notary Public

KAREN N. RILEY
Notary Public
State of Maryland
Wicomico County
My commission exp. February 11, 2024

EXHIBIT F

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
OASIS MANAGEMENT, LLC; AND
SATELLITE HOLDINGS COMPANY,

Plaintiff,

v. Case No: 8:20-cv-00862-VMC-TGW

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.
_____/

DEFENDANT ROCCO GARBELLANO'S ANSWER TO PLAINTIFF'S COMPLAINT

COMES NOW, Defendant, ROCCO GARBELLANO ("Garbellano"), and Answers Plaintiff's Complaint as follows:

INTRODUCTION

1. Without knowledge, therefore denied.

2. Without knowledge, therefore denied.

3. Without knowledge, therefore denied.

4. Without knowledge, therefore denied.

5. Without knowledge, therefore denied.

6. Without knowledge, therefore denied.

7. Without knowledge, therefore denied.

JURISDICTION AND VENUE

8. Denied as to Garbellano.

9. Denied as to Garbellano. Without knowledge of what the Receiver seeks.

10. Without knowledge, therefore denied.

11. Without knowledge, therefore denied.

12. Without knowledge, therefore denied.

13. Without knowledge, therefore denied.

14. Without knowledge, therefore denied.

15. Without knowledge, therefore denied.

16. Without knowledge, therefore denied.

17. Without knowledge, therefore denied.

18. Without knowledge, therefore denied.

19. Without knowledge, therefore denied.

20. Without knowledge, therefore denied.

21. Without knowledge, therefore denied.

22. Without knowledge, therefore denied.

23. Without knowledge, therefore denied.

24. Without knowledge, therefore denied.

25. Without knowledge, therefore denied.

26. Without knowledge, therefore denied.

27. Without knowledge, therefore denied.

28. Without knowledge, therefore denied.

29. Without knowledge, therefore denied.

30. Without knowledge, therefore denied.

31. Without knowledge, therefore denied.

32. Without knowledge, therefore denied.

33. Without knowledge, therefore denied.

34. Without knowledge, therefore denied.

35. Without knowledge, therefore denied.

36. Without knowledge, therefore denied.

37. Without knowledge, therefore denied.

38. Admitted that Garbellano is a resident of Dutchess County, New York.

As to the remainder, without knowledge of what Receiver seeks, therefore denied.

39. Without knowledge, therefore denied.

40. Without knowledge, therefore denied.

41. Without knowledge, therefore denied.

42. Without knowledge, therefore denied.

43. Without knowledge, therefore denied.

44. Without knowledge, therefore denied.

45. Without knowledge, therefore denied.

46. Without knowledge, therefore denied.

47. Without knowledge, therefore denied.

48. Without knowledge, therefore denied.

49. Without knowledge, therefore denied.

50. Without knowledge, therefore denied.

51. Without knowledge, therefore denied.

52. Without knowledge, therefore denied.

53. Without knowledge, therefore denied.

54. Without knowledge, therefore denied.

55. Without knowledge, therefore denied.

56. Without knowledge, therefore denied.

57. Without knowledge, therefore denied.

58. Without knowledge, therefore denied.

59. Without knowledge, therefore denied.

60. Without knowledge, therefore denied.

61. Without knowledge, therefore denied.

62. Without knowledge, therefore denied.

63. Without knowledge, therefore denied.

64. Without knowledge, therefore denied.

65. Without knowledge, therefore denied.

66. Without knowledge, therefore denied.

67. Without knowledge, therefore denied.

68. Without knowledge, therefore denied.

69. Without knowledge, therefore denied.

70. Without knowledge, therefore denied.

71. Without knowledge, therefore denied.

72. Without knowledge, therefore denied.

73. Without knowledge, therefore denied.

74. Without knowledge, therefore denied.

75. Without knowledge, therefore denied.

76. Without knowledge, therefore denied.

77. Without knowledge, therefore denied.

78. Without knowledge, therefore denied.

79. Without knowledge, therefore denied.

80. Without knowledge, therefore denied.

81. Without knowledge, therefore denied.

82. Without knowledge, therefore denied.

83. Without knowledge, therefore denied.

84. Without knowledge, therefore denied.

85. Admitted that the Court has subject matter jurisdiction. As to the remainder, without knowledge, therefore denied.

86. Admitted.

OTHER PARTIES AND RELATED INDIVIDUALS AND ENTITIES

87. Admitted.

88. Without knowledge, therefore denied.

89. Without knowledge, therefore denied.

90. Without knowledge, therefore denied.

91. Without knowledge, therefore denied.

92. Without knowledge, therefore denied.

93. Without knowledge, therefore denied.

94. Without knowledge, therefore denied.

95. Without knowledge, therefore denied.

96. Without knowledge, therefore denied.

97. Without knowledge, therefore denied.

98. Without knowledge, therefore denied.

99. Without knowledge, therefore denied.

100. Without knowledge, therefore denied.

FACTS COMMON TO ALL CAUSES OF ACTION

101. Without knowledge, therefore denied.

102. Without knowledge, therefore denied.

103. Denied as to Garbellano.

A. Insiders Operated the Oasis Entities as a Common Enterprise

104. Without knowledge, therefore denied.

105. Without knowledge, therefore denied.

106. Without knowledge, therefore denied.

107. Without knowledge, therefore denied.

108. Without knowledge, therefore denied.

B. The Insiders Operated The Oasis Entities as a Ponzi Scheme

109. Without knowledge, therefore denied.

110. Without knowledge, therefore denied.

111. Without knowledge, therefore denied.

112. Without knowledge, therefore denied.

113. Without knowledge, therefore denied.

114. Without knowledge, therefore denied.

115. Without knowledge, therefore denied.

116. Without knowledge, therefore denied.

117. Without knowledge, therefore denied.

118. Without knowledge, therefore denied.

119. Without knowledge, therefore denied.

120. Without knowledge, therefore denied.

121. Without knowledge, therefore denied.

122. Without knowledge, therefore denied.

123. Without knowledge, therefore denied.

124. Without knowledge, therefore denied.

125. Without knowledge, therefore denied.

C. Insider Anile's Guilty Plea and Insider DaCorta's Indictment

126. Without knowledge, therefore denied.

127. Without knowledge, therefore denied.

D. Transfers to the Defendants

128. Denied as to Garbellano.

129. Denied as to Garbellano.

130. Admitted to the extent that Plaintiff's Exhibit A shows that Garbellano never invested any amount in any Oasis Entity. Otherwise denied.

131. Denied as to Garbellano.

132. Denied as to Garbellano.

133. Denied as to Garbellano.

COUNT I
Florida Statutes § 726: Uniform Fraudulent Transfer Act
False Profits

134. Garbellano realleges each and every answer contained in paragraphs 1 through 133.

135. Denied as to Garbellano.

136. Without knowledge, therefore denied.

137. Denied as to Garbellano.

138. Denied as to Garbellano.

139. Denied as to Garbellano.

140. Denied as to Garbellano.

141. Denied as to Garbellano.

142. Denied as to Garbellano.

COUNT II
Unjust Enrichment
False Profits

143. Garbellano realleges each and every answer contained in paragraphs 1 through 133.

144. Without knowledge, therefore denied.

145. Denied as to Garbellano.

146. Denied as to Garbellano.

147. Denied as to Garbellano.

148. Denied as to Garbellano.

149. Denied as to Garbellano.

AFFIRMATIVE DEFENSE I: RECEIPT OF COMMISSIONS

1. In or around 2012, DaCorta told Garbellano that he was starting Oasis International Group, Ltd., Oasis Management, LLC, and/or Satellite Holdings Company (collectively "Oasis"), a foreign exchange trading business.

2. DaCorta represented to Garbellano that he had between $10 million and $15 million in silver and wanted to give Garbellano an opportunity to earn income.

3. Garbellano and DaCorta agreed that Garbellano would earn 1% commission for providing leads to invest in Oasis. Garbellano signed an agreement reflecting these terms ("Commission Agreement"). However, Garbellano e-signed the Commission Agreement and has been unable to locate a signed copy of same.

4. Garbellano did not invest any money in Oasis. He was *not* an investor.

5. At all times during Oasis's operation, Garbellano believed DaCorta operated Oasis as a legitimate and legal business. Garbellano at all times acted in good faith and brought value to Oasis by recruiting investors. In exchange, he received commissions.

6. Where the transfers of commissions to the defendant are received in good faith and for value, the receiver may not avoid the transactions. Fla. Stat. § 726.109 (2020).

7. Good faith relates to the defendant's good faith in receiving the funds (as opposed to the debtor's good faith). In re Lydia Cladek, Inc., 494 B.R. 555 (M.D. Fla. 2013) (denying motion for summary judgment and finding a genuine issue of material fact existed where the defendant filed an affidavit stating he acted in good faith). An analysis of a defendant's good faith should be determined on a case-by-case basis after consideration of the facts. Id. See also, In re Pearlman, 478 B.R. 900 (M.D. Fla. 2010). Value means "the objective value of the property received by the debtor or by the subjective benefits the debtor derived from the property." In re Providence Financial Investments, Inc., 2018 WL 5003972 at *6 (Bkrptcy S.D. Fla. Oct. 15, 2018).

8. Garbellano did not invest money into Oasis. Rather, pursuant to a written commission agreement (a copy of which Garbellano does not presently have), he brought investors to the company to sell them promissory notes as investments. He produced investors who paid money to the debtors. Therefore, he brought value to the debtors, and Receiver bears the burden to prove that the debtor received less than "reasonably equivalent value." Providence Financial, 2018 WL 5003972 at *7.

9. Likewise, Garbellano acted in good faith. He had no knowledge of the fraudulent operations and had no intent to participate in the fraud. He had no access to the accounting records of Oasis and had no involvement in the decision-making for the business.

AFFIRMATIVE DEFENSE II: STATUTE OF LIMITATIONS

10. Plaintiff's claim is barred, at least in part, by the applicable statute of limitations.

11. Fla. Stat. §726.110 sets a four-year limitation period. The four-year limitations period is triggered when the receiver has constructive knowledge of the payments. See Wiand v. Wells Fargo Bank, N.A., 86 F. Supp. 3d 1316, 1326 (M.D. Fla. 2015) (finding that three of the four security interests conveyed by the defendant could not be avoided because the receiver had constructive knowledge of the mortgages more than four years prior to filing the FUFTA claim). See also In re Lydia Cladek, Inc., 494 B.R. 555 (M.D. Fla. 2013) (using the petition date as the triggering date, and disallowing avoidance of any transfers occurring more than four years prior to that date).

12. According to Receiver's Complaint, the CFTC filed an enforcement action on April 15, 2019.

13. The investigation, and therefore knowledge of the alleged false profits, must have taken place earlier than April 2019.

14. Therefore, at a minimum, Receiver cannot avoid transfers made prior to April 15, 2015.

15. Receiver's own exhibit to the Complaint, detailing the commissions allegedly received by Garbellano, shows over $80,000 in transfers allegedly made to Garbellano prior to April 15, 2015. Receiver should have known he could not avoid those transactions.

WHEREFORE, Defendant, ROCCO GARBELLANO, requests that this Court dismiss Plaintiff's claims against him with prejudice and grant Plaintiff no relief as against Garbellano, award Garbellano his reasonable fees and costs under applicable laws, and grant Garbellano such other and further relief as is deemed appropriate under the circumstances.

s/
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CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of July, 2021 a true copy of the foregoing document was filed electronically with the Clerk of Court via the CM/ECF system, and thereby served on all counsel of record.

/s/
Holly A. Rice