

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No. 12-81311-CIV-MIDDLEBROOKS/BRANNON

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

vs.

HUNTER WISE COMMODITIES, LLC,
et al.,

Defendants.

RECEIVER'S EIGHTEENTH STATUS REPORT

Melanie E. Damian, Esq., the court-appointed Equity Receiver (the "Receiver") for Defendants Hunter Wise Commodities, LLC, Hunter Wise Services, LLC, Hunter Wise Credit, LLC and Hunter Wise Trading, LLC (collectively, the "Hunter Wise Entities") in the above-captioned enforcement action, submits her Eighteenth Status Report (the "Report") concerning the Receivership. This Report covers the period from January 1, 2018, through June 30, 2018 (the "Reporting Period"). This will be the Receiver's second to last Status Report for this Receivership, as the Receiver expects to complete the remaining work required under the Appointment Order during the next reporting period and will describe that work in her Final Report and Motion to Discharge Receiver.

I. INTRODUCTION

A. Commencement of the Monitorship and Receivership

On February 22, 2013, following a hearing on the CFTC's Motion for Preliminary Injunction and Appointment of a Receiver, the Court entered an Order Appointing Special

Corporate Monitor [ECF No. 77] (the “Appointment Order”), which, among other things, appointed Ms. Damian as Special Monitor and Corporate Manager of the Entity Defendants, set forth her powers and duties, and created the Estate. On February 25, 2013, the Court entered its Order on Plaintiff’s Motion for Preliminary Injunction [ECF No. 78] (the “Injunction Order”). On May 16, 2014, the Court entered its Order of Final Judgment, Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief against the Hunter Wise Entities, Ed Martin and Fred Jager [ECF No. 306] (the “Final Judgment”), which, among other things, appointed Ms. Damian as full Equity Receiver.

B. Reporting on the Status of the Estate and the Activities of the Receiver

Paragraph 24 of the Injunction Order requires the Receiver to “periodically ... as directed by the Court, file with the Court and serve on the parties a report summarizing efforts to marshal and collect assets, administer the [Estate], and otherwise perform the duties mandated by [the] Order.” Accordingly, the Receiver has filed seventeen reports prior to the instant Report. Those reports cover the activities undertaken by the Receiver during the period from February 22, 2013, through December 31, 2017.

The Receiver continues to fulfill her duties under the Appointment Order, the Injunction Order, the Final Judgment, and the Restitution Orders entered against various dealers of Hunter Wise, and provides herein a detailed description of her efforts and accomplishments with respect to her duties as Special Monitor, Corporate Manager and Equity Receiver during the current Reporting Period.

II. STATUS OF THE RECEIVERSHIP

A. Remaining Metals of the Estate

i. Transfer and Sale of Metals During Reporting Period

During the Reporting Period, the Receiver transferred the metals she was storing in a safe deposit box at Ocean Bank in Miami, Florida to Delaware Depository Services (“DDS”) so that its commodities trading arm, Fidelity, could sell them at market prices. Since that transfer, during previous reporting periods, Fidelity has assisted the Receiver to sell hundreds of thousands of dollars’ worth of precious metals at market prices.

During this Reporting Period (and the prior reporting period), the market prices of precious metals rose steadily justifying the continued liquidation of the Estate’s metals. As such, the Receiver sold certain of the metals as their spot prices reached certain benchmarks, taking advantage of the continued increase in market prices and minimizing the risk of loss to the Estate should the prices begin to drop. In particular, the Receiver directed Fidelity to sell all of the Estate’s remaining silver and platinum and most of the Estate’s remaining gold, for a total of \$725,636.26. From those sales, Fidelity transferred \$682,413.46 to the Receiver during the Reporting Period.¹

ii. Remaining Metals to Be Sold

A detailed report of the quantities and market values (as of June 30, 2018) of the remaining metals of the Estate, all of which are being stored at DDS, is attached hereto as **Exhibit “A”**. The Receiver estimates that the market value of the metals held by the Estate as of June 30, 2018 was \$84,826.47.² The Receiver’s professionals will continue to monitor the metals prices as the Receiver winds down the Estate and will liquidate the remaining metals of the Estate on a dollar-cost-average basis during the next (final) reporting period.

¹ Fidelity transferred the remaining \$43,222.80 in sale proceeds to the Receiver after the Reporting Period.

² The market values of the metals reflected on Exhibit A are determined by Fidelity based on the spot prices and numismatic values of the metals as of the end of this Reporting Period.

B. Marketing for Sale the Estate's Shares in Closely Held Companies (Great Western Iron Ore and Firescope)

As previously reported in great detail, the Jagers have turned over funds and assets in partial satisfaction of Jager's restitution obligation under the Final Judgment pursuant to a certain Court-approved agreement (the "Jagers Agreement"). *See* ECF No. 350.

During the Reporting Period, the Receiver's counsel identified companies that purchase remnant assets of receivership and bankruptcy estates in connection with marketing for sale the shares in closely held companies that Mr. Jager and his entities turned over to the Receiver pursuant to the Jagers Agreement, including the 2,643,750 shares in Great Western Iron Ore ("Great Western") and the 9,546 shares in Firescope. The sale of the Great Western shares is complicated by the fact that it is a private company and the iron ore industry has experienced a steady decline in prices over the past few years and extreme volatility during this and prior reporting periods. The value of the shares is tied to the iron ore industry so the Receiver will continue to monitor the market and share price while searching for a buyer for the Estate's shares. The Receiver has been unable to locate buyers for the Great Western and Firescope shares willing to pay meaningful amounts, therefore she will seek court authority to sell them, along with all other remaining assets that have minimal value or otherwise cannot be liquidated cost effectively, to a reputable and established company that buys remnant assets from receivership and bankruptcy estates and makes the highest offer for the Estate's remnant assets.

As previously reported, the Receiver and her counsel successfully obtained the turnover of all known assets of Defendant Martin having any significant value. The Receiver also worked with Mr. Martin, certain of his family members and the Nevada Agency and Transfer Company to effect the transfer of Mr. Martin's and his family members' 500,000 shares in Great Western to the Receiver. So, in total, the Estate holds 3,143,750 shares in Great Western, which, as explained

above, the Receiver will seek Court authority to sell them to a company that buys remnant assets of estates.

C. Recovery of Fraudulent Transfers from Non-Defendant Dealers and Their Principals

During the Reporting Period, the Receiver continued settlement negotiations and litigation of the remaining fraudulent transfer claims against the Hunter Wise dealers and their principals, collected settlement amounts from certain dealers and principals, and continued collection efforts against other dealers and principals against which judgments were entered.

During a prior reporting period, the Receiver filed the action styled *Damian v. ICCXP, International Council of Commodities Exchange Professionals, LLC and Patricia Tessandori Clancy*, (Case No. 9:15-cv-81215-WPD). The Court entered a Default Final Judgment against ICCXP, International Council of Commodities Exchange Professionals, LLC. *See* Case No. 9:15-cv-81215-WPD at ECF No. 33. In light of Defendant Tessandori's lack of assets and minimal income, the Receiver agreed to dismiss the action as to Ms. Tessandori without prejudice and accept \$200 per month for the duration of the receivership, which she has paid each month since June 2016. During the Reporting Period, Ms. Tessandori made 4 payments of \$200 to the Estate, bringing the total amount she has paid to date to \$4,600.00. Ms. Tessandori did not make the monthly payments for May and June 2018 and has not responded to requests for payment by counsel for the Receiver.

Similarly, because another dealer Cirrus Commodities Exchange ("Cirrus") and its principal Stephen Gillette did not receive sufficient funds from the Hunter Wise Entities to justify the expense to the Estate of a fraudulent transfer action, because Cirrus ceased operations, and because Mr. Gillette had minimal assets and income, the Receiver and Mr. Gillette, during a prior reporting period, entered into an informal settlement agreement pursuant to which Mr. Gillette

agreed to pay to the Estate \$200 each month for the remainder of the receivership. Since the date of the settlement, Mr. Gillette has made monthly payments to the Estate. During the Reporting Period, Mr. Gillette made 6 payments of \$200 to the Estate, bringing the total amount he has paid to date to \$8,700.

During a prior reporting period, on January 21, 2016, the Receiver filed the action styled *Damian v. Sovereign Capital Management, LLC, Daniel Maus and Jocelyne Martorano* (Case No. 1:16-cv-20262-DPG). The parties settled this matter at a judicial settlement conference for a total settlement amount of \$15,000. *See id.* at ECF No. 436 and 437. During prior reporting periods, Defendant Daniel Maus paid his \$7,500 share of the settlement amount and Defendant Jocelyn Martorano made all monthly payments that she agreed to pay under the Agreement. During the prior reporting period, Ms. Martorano made two of the three required monthly payments, missing the November 2017 payment and bringing the total amount she paid to \$4,500.00.

Under the settlement agreement, Ms. Martorano had until April 2018 to pay the remaining \$3,000 of her \$7,500 settlement obligation. During this Reporting Period, Ms. Martorano made only one of the six \$500 monthly payments, explaining that she has been out of work for six months and unable to make the last five monthly payments.

On June 3, 2016, the Receiver filed the action styled *Damian v. KB Concepts Group, LLC d/b/a Apex Asset Advisors, LLC and Kelvin A. Burgos* (Case No. 9:16-cv-80914-WJZ). Subsequently, the CFTC commenced an enforcement action against both Defendants (Case No. 16-24022-CIV-Altonaga/O'Sullivan). On May 8, 2017, the CFTC obtained an Order of Final Default Judgment against Defendants KB Concepts Group, LLC and Burgos, ordering Defendants to pay disgorgement and civil monetary penalties and authorized the Receiver to collect the disgorgement amount for the benefit of the defrauded customers. *See* Case No. 16-24022-CIV-Altonaga/O'Sullivan at ECF No. 43. Neither Defendant appealed that Order, and neither has paid

any amount to the Receiver. During the Reporting Period, the Receiver's counsel continued their efforts to collect the restitution amount from Mr. Burgos and explored with Mr. Burgos the entry of a consent judgment against him and his company for the same amount as the disgorgement amount in the CFTC's Final Default Judgment. Accordingly, Mr. Burgos, on behalf of his company only, signed a consent to final judgment in favor of the Receiver. Subsequently, the Receiver's counsel continued their efforts to have Mr. Burgos, individually, sign the consent to final judgment.

On January 29, 2016, the Receiver filed the action styled *Damian v. International Metals Trading & Investments, Ltd. and Bill Perry* (Case No. 1:16-cv-20343). After the Pretrial Conference, the Receiver recommended dismissal of the Receiver's claims against Mr. Perry individually, and the Court did in fact dismiss those claims and then granted Mr. Perry 45 days to submit documentation disputing the Receiver's damages calculations as to International Metals Trading & Investments, Ltd. ("International Metals"). During the prior reporting period, Mr. Perry submitted documentation but it did not change the Receiver's calculations of International Metals' net gain. As such, the Receiver filed a Status Report explaining this to the judge. Subsequently, the Receiver re-filed her Motion for default final judgment against International Metals and Mr. Perry filed a Verified Response to the Receiver's Motion. *See* Case No. 1:16-cv-20343, ECF Nos. 105 and 112. During the Reporting Period, the Court granted the Receiver's Motion and entered a default final judgment against International Metals. *See id.*, ECF Nos. 114 and 115. That case is now closed. The Receiver's investigation to date has not identified any remaining assets with which to satisfy the judgment.

D. Marketing for Sale the Judgments in Favor of the Receiver

The Receiver is marketing for sale the various judgments she obtained against Hunter Wise dealers and/or their principals. She has received a significant offer to purchase seven of those

judgments from a company in the business of purchasing judgments from receivership and bankruptcy estates and other judgment creditors. The Receiver is seeking two other offers to purchase the judgments, including companies that purchase remnant assets from receivership and bankruptcy estates. When the Receiver has received three offers to purchase the judgments, along with three offers to purchase the remnant assets of the estate and the shares in Great Western Iron Ore and Firescope, she will file a motion to approve the sale of the judgments, remnant assets and shares to the companies that make the highest and best offers.

E. Recovery from Financial Institution

During a prior reporting period, on September 22, 2016, the Receiver commenced an action in the U.S. District Court for the Central District of California against a financial institution that did business with, and received substantial payments from, the Hunter Wise Entities. *See* Case No. 2:16-cv-07198-FMO-SSx. The parties settled that action for a lump sum payment of \$445,000. During the Reporting Period, the Court approved the Receiver's unopposed motion to approve that settlement. *See id.*, ECF No. 453. During the Reporting Period, on April 17, 2018, the financial institution paid the settlement amount in one lump sum. The Receiver then filed a Joint Stipulation of Dismissal with Prejudice of the action against the financial institution. *See id.*, ECF No. 59.

F. Recovery from Defendants in Action Brought by Receiver

As previously reported, on May 15, 2015, the Receiver filed an action against certain defendants seeking millions of dollars in damages. During a prior reporting period, the Receiver and the defendants attended a mediation, and at that mediation, the parties reached a multi-million settlement of the Receiver's claims. During the Reporting Period, the Receiver's counsel and counsel for the defendants worked diligently to prepare a formal agreement memorializing the settlement, but the parties could not agree to certain provisions of the agreement and the Receiver was forced to move this Court to enforce the settlement agreement reached at mediation. *See* ECF

No. 456. After further efforts to work through the disputed provisions, the parties were able to finalize the agreement, the Receiver submitted it to this Court for approval, and the Court approved it. *See* ECF Nos. 466 and 467. On June 15, 2018, the Estate received the lump sum settlement payment.

III. END-CUSTOMERS / CLAIMANTS

During the Reporting Period, the Receiver and her professionals received telephone calls, mail and e-mail correspondence from end-customers, seeking information concerning the status of the Receivership, including issues related to the amounts and projected date of the final distribution, and the Receiver's continued asset recovery efforts. The Receiver and her professionals have made every effort to answer their questions and address their concerns and continue to refer them to the Receivership website located at www.hunterwisemanager.com, which is regularly updated with information regarding the distributions, important dates and deadlines, recent court filings of significance, including the Receiver's Status Reports and the Court's orders, questions frequently asked by end-customers, creditors and dealers, and the Receiver's answers thereto, and other updates regarding the Receiver's efforts to fulfill her duties under the Court's Orders.

The Receiver maintains a list of all known end-customers and creditors of the Hunter Wise Entities but has not attached that list to this Report to protect them from potential telemarketing frauds, to which some end-customers fell victim. To prevent further abuses, the Receiver has posted a warning regarding telemarketing fraud on the home page of the Receivership website.

IV. ACCOUNTING OF RECEIVERSHIP FUNDS AND TOTAL VALUE OF ASSETS OF RECEIVERSHIP ESTATE

As of June 30, 2018, the Receivership Estate held cash on hand in the amount of \$8,156,822.20 in the Estate's fiduciary accounts at Iberia Bank.³ See Receivership Receipts and Disbursements attached hereto as **Exhibit "B"**. Upon adding the cash on hand to the market value of the remaining metals of the Estate, including \$84,826.47 worth of precious metals being stored at DDS as of June 30, 2018, the total value of the assets of the Receivership Estate as of June 30, 2018 was approximately \$8,241,648.67.⁴

V. ADMINISTRATIVE EXPENSES

The administrative expenses of the Receivership Estate comprise the expenses that the Estate has incurred in connection with marshaling, maintaining, and preserving the Defendants' assets, including the fees and costs incurred by the Receiver and her professionals. All administrative expenses of the Estate are reflected in the Receivership Receipts and Disbursements. See Exhibit C.

VI. CONCLUSION

The Receiver will continue to work with her team of professionals to liquidate the remaining metals, the shares in two closely held companies, and the judgments against dealers and/or their principals, in accordance with the Court-approved procedures for doing so. The Receiver will continue to perform all other duties as mandated by the Appointment Order, the Injunction Order, the Final Judgment against the Hunter Wise Entities and their principals, and the

³ Gibraltar Private Bank & Trust, the bank at which the Receiver maintained the Estate's fiduciary accounts since the inception of this Receivership, was acquired by Iberia Bank. Therefore, the fiduciary accounts are at Iberia Bank.

⁴ This amount does not include any of the unliquidated securities that the Martin Family Trust and the Jagers transferred to the Receiver the value of which the Receiver is investigating in connection with her efforts to liquidate them. See Sections II.B., *supra*.

Judgments and Restitution Orders against the other Defendants. The Receiver will make every effort to wrap up this Receivership and make the final distribution to customers holding allowed claims against the Estate during the next reporting period.

Respectfully submitted this 23rd day of July 2018.

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/s/ Kenneth Dante Murena

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July 2018, a true and correct copy of the Receiver's Eighteenth Status Report was served upon all counsel of record via CM/ECF, and via Email and/or U.S. MAIL to all parties listed on the attached Service List.

/s/ Kenneth Dante Murena

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