UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CONSUMER FINANCIAL PROTECTION BUREAU, Plaintiff, v. RICHARD F. MOSELEY, SR., et al., Defendants.	Case No. 4:14-cv-00789-SRB **RECEIVER'S FINAL REPORT AND APPLICATION FOR: (1) DISCHARGE OF RECEIVER; AND (2) APPROVAL OF FINAL FEE APPLICATION** JUDGE: Hon. Stephen R. Bough CTRM: 7B

Thomas W. McNamara, as Receiver, by and through his undersigned counsel, hereby submits his Final Report and files this Application for: (1) Discharge of Receiver and (2) Approval of Final Fee Application, thereby seeking an Order from the Court discharging the Receiver and approving the invoices for fees and expenses of the Receiver and his counsel for the period of March 10, 2020 through April 30, 2020.

INTRODUCTION

On September 8, 2014, the Consumer Financial Protection Bureau ("CFPB") initiated this lawsuit against three individuals (Richard F. Moseley, Sr., Richard F. Moseley, Jr., and Christopher J. Randazzo) and 20 entities (collectively, "Defendants") operating a payday lending business. The CFPB alleged that Defendants used a host of interrelated companies to defraud consumers by purchasing consumer financial information from third parties, using that information to originate online payday loans without the consumers' consent, attempting to convince consumers that they had, in fact, made these loans, and then using the "loans" to make repeated, unauthorized withdrawals from consumer accounts. *See* Doc. 3 (Compl.) at ¶ 1. Mr. McNamara was appointed as the temporary receiver on the following day, September 9, with the

Court's entry of a temporary restraining order. *See* Doc. 8 ("TRO"). He was appointed as Receiver a little under one month later, on October 3, 2014, with the Court's entry of a stipulated Preliminary Injunction. *See* Doc. 40 ("PI").

The Receiver was given a number of duties under the PI including, but not limited to: (1) taking custody and control of the Receivership Defendants' assets and documents, PI § XV.B, (2) preserving the value of the Receivership Defendants' assets, PI § XV.D, (3) protecting the interests of consumers who transacted business with the Receivership Defendants, PI § XV.G, (4) instituting or entering into litigation or arbitration to the extent necessary and advisable to preserve or recover the Receivership Defendants' assets, PI § XV.L, (5) defending, comprising, or otherwise disposing of actions instituted against the Receivership Defendants when needed to preserve the Assets of the receivership, and (6) reporting to the Court, PI § XX.

In the course of performing his duties as receiver, the Receiver:

- Preserved the Receivership Defendants' business records and pertinent electronic data (PI § XV.B);
- Worked to maximize the value of, and minimize the loss to, Assets of the receivership as defined in the PI (PI § XV.D), effectuating the vacation of the receivership site, the sale of vehicles, the marketing of a condominium located in Cancún, Mexico in which the receivership held a fractional interest, and the resolution of a number of tax issues faced by the Receivership Defendants;
- Protected consumers' interests by ceasing debt collection and notifying consumers of the CFPB action (PI § XV.G);
- Instituted an action against Katten Muchin Rosenman LLP ("Katten"), a law firm that advised Receivership Defendants in connection with Moseley, Sr.'s payday

lending activities, and resolved separate legal claims confidentially (PI § XV.L); and

- Defended actions brought against Receivership Defendants, including a garnishment claim brought against SJ Partners, LLC, which the Receiver settled.

In the process of doing so, the Receiver overcame a number of hurdles, most significantly the forfeiture of the entirety of the receivership's bank accounts in 2018. Despite these obstacles, the Receiver was able to transfer $3.6 million to the CFPB for consumer redress post-forfeiture. In light of the challenges faced, the Receiver views this as a resounding success, one which reflects the lengths to which he and his counsel pursued and preserved the receivership's assets.

Although the parties entered into a Stipulated Final Judgment which the Court entered via Order on August 10, 2018, *see* Doc. 214, the Receiver had claims against third parties, including Katten, that were unresolved. Similarly, as discussed in greater detail below, Kendal Blevins asserted a claim against the receivership. As the Court is aware, all claims have now been resolved. The Receiver believes that his role in this case is complete and hereby asks that the Court discharge him by this Application for Discharge. He further asks that in connection with his discharge, the Court approve his Final Fee Application, which is set forth below.

FINAL REPORT

As noted above, the Receiver faced a number of challenges in implementing both the TRO and the PI. Defendants' payday lending activities spanned years and their entire business model was premised on the obfuscation of their activities. The receivership estate itself was also significant and varied, and it took time for the Receiver to fully assess the existing assets and potential claims. The most substantial financial setback, of course, was the forfeiture of the funds in the receivership estate in connection with Richard Moseley Sr.'s criminal conviction.

The significant events of this receivership are set out below.

I. Immediate Access and Preliminary Report

The Receiver was appointed as temporary receiver on September 9, 2014, with the Court's entry of the TRO in this action. On September 10, 2014, the Receiver and his team entered and took control of the business premises identified in the TRO: 2 E. Gregory Boulevard, Kansas City, Missouri. The site – which was expansive – was equipped with the infrastructure to support the full-steam operation of Defendants' payday loan business, with space for more than 50 telephone sales representatives. At the time of entry, however, the site was operating at only a fraction of its capacity. It soon became apparent that the bulk of Defendants' operations had ceased at the end of 2013 after Defendants lost their ACH payment processor. The employees on site at the time of entry were working for a state licensed loan company under the dba piggycash.net ("Piggycash"). The Piggycash business was a distinct business with new vendors, modest initial goals, and a professed interest in compliance, but unlike Defendants' prior businesses, the Receiver determined that it was not profitable.[1]

After taking possession of and control over the site, the Receiver served asset freeze notices on banks and other financial institutions at which Defendants were known to have accounts, freezing approximately $10.8 million in the aggregate. The Receiver also secured the physical documents and electronic data located on site, which appeared to be the entire universe of materials: there was no evidence that any documents were stored off-site, and the relatively small amount of hard-copy records was explained by evidence that 141 boxes of documents had been shredded in June 2014. Once the site and assets were secure, the Receiver suspended

[1] The Receiver did not analyze whether or not the Piggycash business could operate lawfully given that it was not profitable.

operations in compliance with the TRO and began the process of assessing Defendants' business operations.

The Receiver's review of the documents available on site confirmed that Defendants had operated a substantial payday loan business from the same location under various monikers, from 2008 to 2013, and from a different office in the same neighborhood, from 2003 to 2008. In order to operate this business free of regulatory oversight, Defendants utilized offshore entities – initially, four Nevis entities (the "Nevis Lenders"), and later four New Zealand entities (the "Hydra Lenders"). In addition to running the business through these offshore entities, Defendants used a labyrinth of shell companies, domestic and offshore, to conduct their business, seemingly with the intent to divert attention from their business and to conceal their operations.

As the Receiver previously reported to the Court, Defendants' payday loan business appeared to be largely, if not entirely, dependent on its relationship with eData Solutions, LLC ("eData"), a company founded and headed by Joel Tucker. Each Nevis and Hydra Lender had a "Processing Services Agreement" with eData to provide "turnkey" services in three key categories: (1) computer processing services to match and verify loan leads through its proprietary lead filtering system; (2) loan processing services using its proprietary loan processing system to process all loan transactions; and (3) business consulting services regarding matching and verification and loan transaction processing. Through its agreements with the Receivership Defendants, eData controlled both the front end (regular leads or auto-fund loans[2]) and the back end (collection of delinquent accounts) of the Receivership Defendants' operations.

[2] The agreements that eData had with the Nevis and Hydra Lenders included provisions that the ultimate decision to accept a lead would be the client's, and that the client would contact a lead prior to a final lending decision, but with a critical exception – eData would provide an "auto-funding" program for some, or all, of the portfolio, under which Receivership Defendants as

The Receiver's full initial assessment of Defendants' operations is available in his Preliminary Report to the Court. *See* Doc. 37.

II. Implementation of the PI

After the PI was entered and the Receiver's appointment renewed, the Receiver's focus shifted from identifying, locating, and securing the payday loan business to terminating its operations, vacating their office location, and assembling any additional assets not already frozen by the TRO – *i.e.*, fulfilling his duties as outlined in the PI.

A. Preserving Documents and Data (PI § XV.B)

Before the receivership site was vacated (see discussion below), the Receiver's team removed and preserved both hard drives and business records, either at a local storage facility or at the Receiver's office. The Receiver has maintained all such records through this date.

B. Preserving the Value of Receivership Defendants' Assets (PI § XV.D)

1. Vacation of Receivership Site

Following his appointment, the Receiver took several immediate steps to minimize costs to the receivership. Initially, the Receiver arranged for the office occupied by the Receivership Defendants to be shut down and vacated after allowing Defendants and employees to retrieve their personal belongings. Hard drives and business records were preserved, while the remaining office furniture and equipment were left for an auctioneer to photograph and sell at auction. The office space was vacated and possession returned to the landlord around November 30, 2014.

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lender would have no contact with the consumer. As a result, consumers with auto-funded loans might not even know they had received a loan to begin with.

2. Sale of Vehicles

As part of the receivership, the Receiver took possession of two vehicles: (1) a 2008 Mercedes Benz SL550R; and (2) a 2007 BMW M6. The Receiver asked the Court for permission to sell these vehicles in order to obviate the need to pay to store the vehicles and to prevent further depreciation in the vehicles' value. By an Order entered on May 18, 2016, the Court granted the Receiver's unopposed motion and authorized the Receiver to sell both the vehicles. *See* Doc. 145. Minus commissions and fees, the sale of these vehicles resulted in the net receipt of $31,825 for the 2008 Mercedes Benz and $29,450 for the 2007 BMW M6.

3. Mexican Condominium

The receivership had a 50% interest in a condominium in Cancún, Mexico. Because this asset appeared to have substantial equity, the Receiver continued to make monthly mortgage and fee payments (pro-rated with the co-owner). The Court authorized the Receiver to sell the Mexican condominium by order on May 18, 2016 (Doc. 145). Converting this asset to cash, however, proved difficult due to a number of issues – particularly the fractional nature of the receivership's interest and the foreign situs of the property. The Receiver hired a broker to market the property, but due to poor market conditions, a sale did not materialize. The Receiver was able to set the contours of a sale to the co-owner, but prior to the completion of the sale, the interest was forfeited. The Receiver later coordinated with the forfeiture authorities and the co-owner/purchaser and that coordination allowed the sale to be completed in the context of the forfeiture proceeding.

4. Resolution of Tax Issues

After taking control of the Receivership Defendants, the Receiver determined that it would be necessary to consult with tax professionals. The Receiver retained Squar Milner in

March 2015 to provide accounting services, prepare income tax returns for certain Receivership Defendants and related entities, and evaluate tax issues that might arise in the receivership case.

Squar Milner first tackled the 2014 returns, which posed a unique challenge in that they largely dealt with pre-receivership activities. The firm ultimately prepared 2014 federal and state returns for eleven (11) entities, including detailed disclosure statements describing the case, the Receiver's inability to vouch for pre-receivership books/records, each entity's corporate/organizational information, entity-specific financial results, and receivership financial transactions occurring during the reporting year. Since that time, Squar Milner has prepared and filed federal, state, and local tax returns for certain Receivership Defendants for 2015 through 2019; reviewed and responded to dozens of tax notices; responded to inquiries from the Receiver's team regarding various tax reporting issues; and assisted with litigation consulting needs.

Both the Receiver and Squar Milner made significant efforts to limit the expense of this work to the receivership. Given the volume of work required (Squar Milner prepared three hard-copy originals each of 161 unique state and federal tax returns, for a total of 483 original tax returns) and the complexities inherent in filing taxes for insolvent entities in receivership, however, it was inevitable that the work performed by Squar Milner would be a significant expense. To date, the Receiver has paid Squar Milner $176,172.62 for its services. From March 1, 2019 through April 10, 2020, Squar Milner has invoiced the Receiver for an additional amount of $20,269.37 in fees and costs. The work performed by Squar Milner, and the costs and fees associated with it, are described more fully in the attached Declaration of Stacy Elledge Chiang.

C. Protecting Consumer Interests (PI § XV.G)

Soon after his appointment, the Receiver contacted all known third-party debt collectors engaged by the Receivership Defendants and instructed them to cease all efforts to collect debts from consumers. These debt collectors confirmed they ceased all debt collection efforts on behalf of the Receivership Defendants. Although the Receiver learned of a few continued efforts to collect debts from consumers in the name of the Receivership Defendants, he determined that such efforts were likely undertaken by third parties fraudulently seeking to collect on debt they did not own. The Receiver was unable to track down the third parties engaged in such conduct.

D. Instituting Actions to Recover Receivership Defendant Assets (PI § XV.L)

1. *McNamara v. Katten* (W.D. Mo.), Case No. 4:16-cv-01203-SRB

The law firm Katten Muchin Rosenman LLP represented the Receivership Defendants beginning around August 2009 and into 2012. After the Receiver was appointed in 2014, he determined that grounds existed to bring a complaint against Katten for malpractice and filed suit against the firm in November of 2016. The action was settled in September 2019 on confidential terms.[3]

The Receiver did not undertake this lawsuit lightly. Prior to bringing suit against Katten, the Receiver engaged in a two-tiered review of the potential malpractice claim: first, the Receiver conducted a review of documents collected from the Receivership Defendants and Katten's client file, after which the Receiver's counsel concluded that a viable claim for malpractice existed. But before filing suit, the Receiver engaged an outside expert in the area of

[3] Because this lawsuit was the source of both significant receipts to and disbursements by the receivership (though with the former far outweighing the latter), the Receiver believes the matter merits a substantial discussion in this final report.

federal consumer protection laws to review the potential claim. It was only after this expert reported his opinion that Katten had committed malpractice that the Receiver filed suit against Katten.

The Receiver alleged that Katten provided deficient advice to Moseley, Sr. and the Receivership Defendant regarding the legality of their payday lending model. The Receiver also alleged that if Katten had provided non-negligent legal advice, the Receivership Defendants could have either made the loan documents compliant or ceased operations. Either action would have spared the Receivership Defendants exposure to the millions of dollars in liability resulting from the instant action.

After pre-suit discussions failed to result in a settlement, the Receiver filed a formal complaint against Katten for providing negligent legal advice as to the applicability of TILA, EFTA, and CFPA to the Receivership Defendants on November 11, 2016. Katten moved to dismiss the complaint on January 13, 2017; the Court denied that motion on March 9, 2017, and soon thereafter denied Katten's motion to certify the order for interlocutory appeal. Shortly after Katten's motion was denied, the case was stayed pending the conclusion of the criminal trial of Moseley, Sr. in the Southern District of New York. *See McNamara v. Katten*, Doc. 44 (July 27, 2017). Though the stay was in place until June 27, 2018, *see id.*, Doc. 59, the parties continued to engage in both discussions and informal discovery for the duration of the stay. When the stay was lifted, the firm of Bartle & Marcus, LLC substituted in as counsel for the Receiver and depositions began in earnest, continuing even as the complaint was amended and Katten's second motion to dismiss was filed and denied following oral argument.

In the summer of 2019, both parties briefed substantial motions for summary judgment consisting of hundreds of pages of briefing and exhibits. On July 19, 2019 the Court ruled on the

pending summary judgment motions. The Receiver's motion for summary judgment on Katten's *in pari delicto* defense was granted, with the Court concluding the defense did not apply. With respect to Katten's motions, the Court denied Katten's motions for summary judgment in part, finding: (1) the Receiver's suit was not barred by the doctrine of collateral estoppel; (2) a genuine dispute of material fact existed with respect to the Receiver's negligence claim; and (3) the damages award in the judgment to which the CFPB and Moseley, Sr. stipulated was not uncollectible. The Court did conclude, however, that Katten bore no liability for the so-called "unauthorized" loans, which were doled out to consumers without those consumers' knowledge or agreement, thereby rendering the Receiver's summary judgment motion on Katten's intervening cause defense moot.

Following the Court's ruling on the motions for summary judgment, the parties engaged in multiple in-person mediations and settlement conferences, but were unable to immediately reach a settlement. The parties finally settled on September 19, 2019 – less than one month before trial was scheduled to take place – on confidential terms. On November 29, 2019 the Court approved the settlement agreement and payment of attorney's fees. *See* Doc. 263. The parties then stipulated to dismiss the action with prejudice, which the court granted on November 25, 2019.

The Katten litigation was hard-fought. The confidential nature of the settlement prevents the Receiver from discussing any details, but the Receiver believed that his counsel on the case – McNamara Smith LLP and later, Bartle & Marcus, LLC – achieved a tremendous result for the receivership. Without this settlement (and the confidential resolution of other claims noted below), little if any additional money would have been available for distribution to the CFPB for consumer redress consumers given the S.D.N.Y. forfeiture order, discussed below.

2. Confidential Settlement

The Receiver resolved additional third-party claims through settlement on confidential terms, which the Court reviewed and approved.

3. Other Potential Claims Considered

The Receiver considered bringing other clawback or similar actions against a number of targets, upon whom the Receivership Defendants' operation was almost entirely dependent. However, they were already being pursued by other parties in both the civil and criminal contexts, leading the Receiver to conclude that there would be little, if any, money left for the receivership to recover.

E. Defending Actions Brought Against Receivership Defendants (PI § XV.M)

1. Blevins Garnishment Claim

On November 14, 2019, Kendal Blevins filed a formal claim in this action after issuing a writ of garnishment to Receivership Defendant SJ Partners, LLC a few months earlier.[4] Blevins had a $420,000 judgment (plus accruing interest) against Worldwide Wireless, LLC, from which SJ Partners had received a total of $274,260 in distributions. Blevins claimed she was entitled to more than $140,000 of these funds (which were allegedly transferred after her claim arose).

The Receiver retained the law firm of Geiger Prell to represent him in this matter. The parties both briefed motions for summary judgment, but before the motions were decided the parties settled the case on April 3, 2020. Blevins released all claims against SJ Partners in exchange for $58,000. The Court officially dismissed Blevins' claim on April 20, 2020, thereby concluding the last outstanding matter in this receivership.

[4] The stay of actions was lifted with respect to Blevins only on July 16, 2019.

2. Other Litigation

In early May 2019, Richard Moseley, Jr. informed the Receiver that George Hengle and other plaintiffs filed a complaint against RM Partners, LLC and other defendants in the United States District Court for the Eastern District of Virginia. *See Hengle, et al. v. Asner, et al.*, Case No. 3:19-cv-00250-REP. The Receiver contacted plaintiffs' counsel, provided information about the receivership, and informed them of the stay of actions provision. On May 21, 2019, the plaintiffs dismissed RM Partners, LLC without prejudice. *See Hengle*, Doc. 32.

III. Forfeiture of Receivership Assets to S.D.N.Y.

Once the Receiver's appointment was confirmed with entry of the PI, he proceeded to implement his duties according to its terms as discussed *supra*. He faced a unique hurdle in 2018, however, when the Southern District of New York pursued forfeiture of the assets in the receivership bank accounts as part of its criminal prosecution of Richard Moseley, Sr. *See* Doc. 199-1. At the time, the Receiver was still seeking to enlarge the receivership estate by pursuing claims against third parties. Ultimately, $9,905,285.20 was transferred to the U.S. Marshals in connection with the S.D.N.Y. forfeiture. *See* Doc. 220. This represented the entirety of the receivership's assets at the time of the transfer, and at the time of the Receiver's next quarterly report, only $2,573.12 remained in the receivership accounts to finance the receivership going forward. *See id.* Nonetheless, following the forfeiture and as discussed below, the Receiver was ultimately able to distribute $3.6 million to the CFPB for consumer redress as a result of confidential settlements he pursued in this action. *See* Doc. 285.

IV. Receivership Accounting

Upon the Order granting the TRO the Receiver froze approximately $10,812,445.77. On August 21, 2018, in accordance with the Order of Forfeiture (Doc. 199-1), the funds in the

receivership's bank account – $9,905,285.20 – were delivered to the U.S. Marshals via wire transfers at the direction of the U.S. Attorney's Office for the Southern District of New York. This transfer, which was made in connection with the forfeiture order entered against Moseley, Sr. in the criminal case against him, represents the most significant expense to the receivership. Other expenses included professional fees (legal and accounting) and electronic and hard copy data storage costs.

The most significant receipts to the receivership were related to the confidential settlements the Receiver obtained, which are discussed in greater detail above. Following these settlements, a distribution was made directly to the CFPB for consumer redress in the amount of $3,600,000.00. Other receipts included the sale of the vehicles (discussed above) and distributions related to a pre-receivership investment made by a Receivership Defendant.

Attached as Exhibit A is a Receipts and Disbursements Summary for the receivership period of September 9, 2014 through April 30, 2020. It shows aggregate receipts of $15,746,128.39, less disbursements of $15,495,192.64, for net cash as of this Final Report of $250,935.75.

The Receiver's Final Fee Application for the period of March 1, 2020 through April 30, 2020 is set forth below. If the invoices in this Final Fee Application, which total $39,346.63, are approved for payment in full, and the requested reserve of $10,000 is approved, net cash will be $201,589.12, which will be immediately disbursed to the CFPB.

APPLICATION FOR DISCHARGE AND APPROVAL OF FINAL FEE APPLICATION

This Application for Discharge is made on the grounds that the underlying case has now been resolved as to all Defendants, and Mr. McNamara has completed his duties as defined in the TRO and the PI. The Final Fee Application seeks approval to pay fees and expenses for services

during the period March 1, 2020 through April 30, 2020 as follows: $1,621.41 fees to the Receiver and his staff payable to TWM Receiverships, Inc. dba Regulatory Resolutions; $6,118.75 fees and $12.10 expenses to Receiver's counsel McNamara Smith LLP; and $11,325.00 fees to counsel Geiger Prell; and $20,111.00 fees and $158.37 expenses to tax accountants Squar Milner, LLP.

The Final Fee Application also seeks authorization to hold back $10,000.00 as a reserve for final administrative costs, which may be expended without further order of the Court, and after 120 days any unexpended funds from that reserve shall be disbursed to the CFPB. If the invoices in this Final Fee Application are approved for payment in full, and the requested reserve of $10,000.00 is approved, net cash for immediate transfer to the CFPB will be $201,589.12.

The Final Fee Application is made pursuant to Sections XV(I) and XIX of the Preliminary Injunction, which provide that the Receiver and all personnel hired by the Receiver are entitled to reasonable compensation and for the cost of actual out-of-pocket expenses to be paid from the assets of the Receivership Defendants, based upon periodic requests to the Court for payment.

The Application for Discharge and Final Fee Application is based upon the Final Report included herein, this Application, the Declaration of Thomas W. McNamara and the proposed

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Order filed concurrently with this Application, and upon such other pleadings and oral and documentary evidence as may be presented at or before the time of the hearing on the Application.

Dated: May 12, 2020

MCNAMARA SMITH LLP

By: /s/ Logan D. Smith

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 2020, I electronically filed the foregoing document, with the Clerk of the Court for the Western District of Missouri by using the CM/ECF system which will send a notice of electronic filing to all parties participating in the Court's CM/ECF system and, to those parties not participating in the Court's CM/ECF system, mailing in the U.S. Mail a true and correct copy of the foregoing document, postage prepaid and addressed as follows.

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