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10 *Thomas W. McNamara*

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13 FEDERAL TRADE COMMISSION,

14 Plaintiff,

15 v.

16 CONSUMER DEFENSE, LLC, et al.,

17 Defendants.
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Case No. 2:18-cv-00030-JCM-BNW

**RECEIVER'S INTERIM REPORT AND
ACCOUNT**

JUDGE: Hon. James C. Mahan

1 **RECEIVER’S INTERIM REPORT AND ACCOUNT**

2 **A. The Receivership**

3 In addition to the usual duties of a receiver (primarily, the preservation of assets), the
4 Receiver’s efforts have been focused on three areas: (i) litigation in the instant case (almost
5 entirely related to filings by Defendant John Hanley (“Hanley”)), (ii) the servicing and
6 maintenance of mortgage loans owned by Receivership Entity American Home Loans, LLC
7 (“AHL”), and (iii) the investigation of potential clawback actions.

8 First, the Receiver has spent substantial time responding to filings made by Hanley. The
9 resources available to both the Receiver and the Receivership Estate have been significantly
10 taxed by Hanley’s litigation tactics. From the time he began proceeding *pro se*—November 20,
11 2018—through the present, as this Court is aware, Hanley filed numerous motions, oppositions,
12 and appeals in this case. Responding to Hanley’s unnecessary filings has unfortunately put a
13 significant burden on the Receivership Estate.

14 Second, the Receiver continues to maintain and service mortgage loans held by AHL.
15 Specifically, we have prepared responses to borrowers’ inquiries, mortgage and payoff
16 statements, and tax documents for the borrowers. The AHL-funded loans are discussed in more
17 detail *infra*.

18 Finally, the Receiver has used his investigative and subpoena powers to explore a handful
19 of potential clawback targets. However, none of the potential targets have turned out to be
20 appropriate targets for a clawback action. It is unlikely that any serious clawback targets will
21 emerge at this point.

22 **B. Assets of the Receivership Estate**

23 1. Real Property

24 There are two pieces of real property at issue here. First, Defendant AM Property
25 Management, LLC is the owner of a condominium property in Park City, Utah, purchased in
26 September 2014 for \$1.3 million. The property is subject to a \$700,000 mortgage. At the time
27 this lawsuit was filed, Hanley offered the Park City condo for short term rentals through various
28 websites, such as VRBO, HomeAway, Airbnb and started exploring selling the property.

1 Second, Defendant Zinly, LLC is the titled owner of the office building at 41 West 9000
2 South, Sandy, Utah 84070 (the “Sandy Office”). The Sandy Office, which is located in a suburb
3 of Salt Lake City, is a two-story stand-alone building with approximately 5,820 square feet of
4 useable space in a suburban office park. It was purchased in October 2016 for \$700,000 and is
5 subject to a \$510,000 mortgage. The mortgagee is Olmstead Capital, LLC (“Olmstead”).

6 The Receiver moved for authorization to sell both properties. The Court granted the
7 Receiver’s motion on January 18, 2019, holding that it would “authorize private sale of the
8 properties and appoint three neutral appraisers pursuant to 28 U.S.C. § 2001(b).” ECF No. 182
9 at 6. The three neutral appraisers were approved on April 30, 2019. *See* ECF No. 205. After the
10 Park City Condo was listed on May 24, 2019, the Receiver received several offers and agreed to
11 sell the property for \$1.9 million. On August 30, 2019, the Receiver filed a motion requesting
12 that the Court approve the sale. *See* ECF No. 270. The Court approved the \$1.9 million sale on
13 October 9, 2019, with close of escrow initially set for October 11, 2019. ECF No. 298.
14 However, Hanley filed a notice of appeal of the Court’s order approving the sale of the Park City
15 Condo. ECF No. 311. The Receiver and the buyer agreed to extend escrow due to Hanley’s
16 appeal. *See* ECF No. 324. On March 19, 2020, the Ninth Circuit dismissed Hanley’s appeal for
17 failure to prosecute. *See FTC v. Hanley*, Case No. 19-17326, ECF No. 5 (9th Cir. Mar. 19,
18 2020). We expect the sale of the Park City Condo to close this month.

19 With respect to the Sandy Office, the Court appointed three appraisers on April 30, 2019,
20 the Receiver obtained appraisals and listed the property. While the Receiver received offers for
21 the property, the payoff demand from Olmsted, the holder of the mortgage, exceeded the highest
22 offer received. Rather than litigating over whether Zinly defaulted on the loan before the
23 commencement of the instant action and appointment of the Receiver or the current balance
24 owed under the note, the Receiver and Olmsted engaged in extensive settlement discussions,
25 resulting in a settlement whereby Olmsted will pay \$80,000 to the Receiver. In exchange, the
26 Receiver will transfer the Sandy Office Building to Olmsted by deed in lieu of foreclosure. *See*
27 ECF No. 342. Hanley (again increasing costs to the Receivership Estate) opposed the proposed
28 settlement. *See* ECF No. 343. On May 1, 2020, the Court approved the settlement agreement

1 between the Receiver and Olmsted. *See* ECF No. 346. We are in the process of transferring the
2 property to Olmsted and expect this to be completed shortly.

3 2. Vehicles

4 In January 2018, the Receiver took possession of four vehicles which were titled in the
5 names of Receivership Entities. Those vehicles were:

- 6 • 2008 Mercedes Benz S550 (owned by Brown Legal, Inc.)
- 7 • 2007 Chevrolet Suburban (owned by Brown Legal, Inc.)
- 8 • 2014 Porsche 911 Carrera 4S (owned by AM Property Management, LLC)
- 9 • 2015 Forest River Viking V-Trec Camping Trailer (owned by AM Property
10 Management, LLC)

11 The Receiver moved for authorization to sell the vehicles, which the Court granted,
12 holding that the Receiver was authorized pursuant to 28 U.S.C. § 2004 to “use commercially
13 reasonable sales methods, such as receiving proposals from dealers and comparing those offers
14 with other sales avenues,” to market and sell the vehicles. ECF No. 182 at 7.

15 Since then, the Receiver has taken steps to sell the vehicles, which has proven more
16 complicated than initially expected. After Hanley was unable to provide the vehicle titles, we
17 had to obtain duplicate titles for all four vehicles. We also had to obtain a lien release for one of
18 the vehicles. The Chevy, Mercedes Benz, and Porsche vehicles have sold, while the camping
19 trailer remains on the market.

20 Both the Chevy and the Mercedes were sold via a wholesale dealer sale after it was
21 determined that the repairs needed to sell the vehicles at retail would likely be greater than the
22 retail price of the cars. Since Hanley expressed an interest in the vehicles, we offered the
23 Mercedes and the Chevy to Hanley. After Hanley failed to respond, the vehicles were sold via a
24 dealer wholesale sale.

25 The Mercedes had more than 110,000 miles and required extensive mechanical repairs (at
26 least \$5,000 in repairs). In light of the estimated retail value of \$8,000 and significant costs to
27 repair the vehicle, it was sold AS-IS for \$4,500. The Receivership Estate netted \$4,275 for the
28 Mercedes after paying 5% commission to the local used car dealer who arranged the sale.

1 The Chevy had more than 200,000 miles, significant cosmetic issues, including rust
2 spots, and also required mechanical repairs (approximately \$1,500). The Chevy was sold AS-IS
3 for \$1,500. After 5% commission, the Receivership Estate netted \$1,425 for the Chevy.

4 As previously reported, Hanley attempted to sell the 2014 Porsche 911 Carrera 4S to a
5 local Porsche dealer in violation of the TRO. Upon demand, the dealer turned the Porsche over
6 to the Receiver when provided a copy of the TRO. *See* ECF No. 26 at 11. Once the Court
7 authorized the Receiver to sell the Porsche, we offered the vehicle to the same local Porsche
8 dealer, but the offer was below retail. The Receiver entered a consignment agreement to sell the
9 vehicle through a local used car dealer. Recently, we agreed to sell the vehicle for \$77,500. The
10 Receivership Estate will net \$73,461.65 after deducting for emissions testing and 5%
11 commission to the used car dealer. We expect the sale to be completed shortly.

12 3. Safe Deposit Boxes

13 In response to the temporary restraining order, JPMorgan Chase (“Chase”) identified
14 three safe deposit boxes leased by Sandra Hanley. Following entry of the Order for Permanent
15 Injunction and Monetary Judgment (ECF No. 320), the Receiver contacted Chase and obtained
16 the three safe deposit boxes, which contain:

- 17 • \$26,741 in cash
- 18 • Jewelry (ring, earrings, and gemstone, value unknown)
- 19 • Assorted papers and documents (AHL mortgage loan documents)
- 20 • Personal papers for the Hanleys (*e.g.*, Social Security Card, marriage certificate)

21 Personal papers and personal items with *de minimis* value will be returned to Sandra
22 Hanley and Jonathan Hanley. All other items will be liquidated.

23 4. Loan Modifications and Home Loans

24 As noted in the Receiver’s Preliminary Report, AHL played the role of substitute lender
25 for a limited number of homeowners which resulted in a small portfolio of mortgage loans
26 identified in AHL’s records as “AHL Fundings.” *See* ECF No. 26 at 11-12, 20-21; *see also* ECF
27 No. 26-2 at 68-87 (Receiver’s Preliminary Financial Report). The bulk of these loans belong to
28 homeowners who were unable to secure a modification and usually involved lower-end

1 distressed homes. AHL negotiated and funded a “short payoff” for these homeowners with the
 2 lender and simultaneously entered into a First Trust Deed mortgage with the homeowner, by
 3 which AHL became the secured lender. AHL thus became the owner of a small portfolio of 25
 4 mortgage loans.¹ The Receiver has continued to manage those loans and collect payments from
 5 the homeowners. Additionally, as part of his duties, the Receiver has corresponded with
 6 homeowners, serviced the loans, and prepared statements (including Form 1098 Mortgage
 7 Interest Statements) as necessary.

8 These mortgage loans are Receivership Estate assets. Until the Receivership is wound
 9 down, the Receiver intends to continue collecting payments from the homeowners. As wind
 10 down approaches, the Receiver will explore options for resolution of the loans – whether by their
 11 sale to a third party or by other means.

12 **C. Receivership Bank Account**

13 Attached as Exhibit A is a Receipts and Disbursements Summary for the receivership
 14 through April 30, 2020. Receipts were \$332,207.13 (\$206,195.80 from frozen bank and
 15 merchant accounts, \$120,311.33 from mortgage loan payments, and \$5,700 from the sale of two
 16 vehicles). Disbursements were \$203,511.44, the largest components of which were legal fees
 17 and expenses (\$55,506.39), Receiver’s fees and expenses (\$59,069.70), forensic accountant’s
 18 fees (\$10,359.92), and computer forensic expert fees and expenses (\$6,538.09) previously
 19 approved by the Court. ECF No. 113.² Other significant disbursements include Park City condo
 20 expenses (\$33,321.20), Sandy office expenses (\$21,177.04), and storage fees (\$10,916.65).

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24 ¹ In two instances, one in Iowa and one in Mississippi, AHL actually purchased the
 25 homeowner’s home as a short sale and then entered into loan arrangements with the homeowners
 – those loans are included in the 25 mortgages identified above.

26 ² Because of the precarious financial state of this receivership, the Receiver has not filed a fee
 27 application since the initial application on March 12, 2018. *See* ECF Nos. 74 (First Fee
 28 Application) and 113 (Order Granting First Fee Application). We intend to submit a fee
 application shortly as the sale of the Park City Condo will result in the Receivership Estate being
 able to pay the fees.

1 The receivership bank account has a balance of \$128,695.69 as of April 30, 2020.

2 Dated: May 13, 2020

THOMAS W. MCNAMARA

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4 By: /s/ Thomas W. McNamara
Thomas W. McNamara
Court-Appointed Receiver
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2020, pursuant to Fed. R. Civ. P. 5(b), I served via CM/ECF or delivered by email and mailing in the U.S. Mail, a true and correct copy of the foregoing **RECEIVER'S INTERIM REPORT AND ACCOUNT**, postage prepaid and addressed to the following:

VIA CM/ECF

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and Sandra X. Hanley*

/s/ Edward Chang

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