

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 14-81397-CIV-MARRA

FEDERAL TRADE COMMISSION and
STATE OF FLORIDA,

Plaintiffs,

v.

BOOST SOFTWARE, INC.,
VAST TECH SUPPORT LLC, et al.,

Defendants.

FINAL REPORT OF THE RECEIVER

David S. Mandel, the Court-appointed Receiver for Vast Tech Support LLC, OMG Tech Help LLC, Success Capital LLC, Jon Paul Holdings LLC, OMG International Group LLC, and any subsidiaries, divisions, or affiliates (collectively “Receivership Defendants”) by and through undersigned counsel, hereby files this Final Report pursuant to the Court’s Stipulated Orders regarding these Receivership Defendants (D.E. 133, 135, 154) and the Court’s recent Order amending certain responsibilities of the Receiver (D.E. 164) (collectively “Amended Stipulated Orders”).

I. SUMMARY

Pursuant to the Amended Stipulated Orders, the Receiver has been working to complete his obligations to liquidate assets and wind down the Receivership Defendants.¹ In short, those Orders directed the Receiver to take the necessary steps to liquidate the assets of the Receivership Defendants, distribute and pay any net proceeds to the Plaintiffs to satisfy the monetary judgment

¹ At this time, the only outstanding issues are the filing of Receivership Defendants’ 2016 tax returns by April 15, 2017, responding if needed to an IRS audit of Success Capital LLC, and any related follow-up regarding 2016 tax filings which the Receiver will address in a supplemental report.

in the Stipulated Orders, wind down the Receivership Defendants' businesses, and dissolve the Receivership Defendants' estate. Upon the Court's review of any objections and the Court's approval of his Final Report, the Receiver will withhold any amount allowed by the Court to be reserved for subsequent actions and shall turn over all other remaining Receivership Estate funds to the Plaintiffs for partial satisfaction of the judgment. D.E. 154 at 8-11, D.E. 133 at 8-11, D.E. 135 at 8-10, *see also* D.E. 164.

Among the tasks assigned to the Receiver by the Court, the Receiver has accounted for the Receivership Defendants' finances and total assets, wound down the businesses, and provided a description of any other actions that must be taken to wind-down the Receivership. *See* Amended Stipulated Orders. Further, the Receiver has detailed below the need for specific subsequent actions and the amount of funds the Receiver has requested to withhold to complete these subsequent actions, which will be addressed in a supplemental report and subsequent fees and costs application. D.E. 154 at 8-11, D.E. 133 at 8-11, D.E. 135 at 8-10.

II. FINAL REPORT

a. Background

Plaintiffs Federal Trade Commission and the State of Florida brought this telemarketing fraud and deceptive practices lawsuit against the Vast Corporate Defendants and others alleging misrepresentations made to consumers about purported problems with Pursuant to the Court's appointment, the Receiver took control of property and assets of Vast Corporate Defendants. The Receiver's counsel and financial accountants, KapilaMukamal LLP, reviewed the Vast Corporate Defendants' records, interviewed employees and customers, and investigated the business practices. Furthermore, the Receiver and his digital forensic experts, Jesus Pena of Andrews International, took possession of all electronically stored information ("ESI"). After concluding he could not operate the business legally or profitably, the Receiver closed the business.

The Receiver set up a website, an email address and a telephone number to communicate with all potential consumer victims of the Receivership Defendants' activities as well as the former employees and creditors of the Receivership Entities. The Receiver's counsel has continued to respond to inquiries and provide updated information regarding the case to the public.²

b. The Receiver Liquidated the Majority of Defendants' Assets and Vacated the Business Premises and Storage Unit

With the Court's approval (D.E. 85, 86), the Receiver engaged an auctioneer to sell the majority of the Receivership's assets located in the office premises and a business storage unit. Pursuant to an agreement with the Plaintiffs, the Receiver maintained the original Receivership Defendants' computers and servers in a Receivership Estate storage unit and did not sell them during the public auction. The public auction took place on June 9, 2015; most items were sold and the proceeds were deposited with the Receivership Estate. With the Court's approval, the Receiver donated all usable unsold items to charity. D.E. 95. The Receiver vacated the Vast Defendants' office space, terminated the lease and unburdened the Estate from rent, utility bills and insurance. Further detail of the full scope of the Receiver's actions are set forth in various Status Reports previously filed with the Court. D.E 56, 67, 87, 109; *see also* D.E. 110.

c. Entry of Stipulated Permanent Injunctions and Monetary Judgments for Receivership Defendants, and the Receiver Appointed to Wind Down the Receivership Entities

On February 3, 2016, the Court entered Stipulated Orders for Permanent Injunction and Monetary Judgment as to Success Capital, LLC and Elliot Loewenstern (D.E. 135) and Jon-Paul Holdings, LLC and John Paul Vasta (D.E. 133). On June 20, 2016, the Court entered the Stipulated Order for Permanent Injunction and Monetary Judgment as to Vast Tech Support, LLC

² The Receivership Estate's website is paid for through November 2017, as it is a yearly subscription. Upon termination of the Receivership, the Receiver will post notice of the termination on the website to inform the public, as well as an appropriate contact from Plaintiffs regarding any questions about any potential future relief.

and OMG Tech Help LLC. D.E. 154 (D.E. 135, 133 and 154 are referred to collectively as the “Receivership Stipulated Orders”).³

Under the Receivership Stipulated Orders, the Receivership Defendants agreed to various forms of both monetary and equitable relief as well as compliance with certain provisions to settle the claims set forth in the Complaint by Plaintiffs. D.E. 154 at 4-7; D.E. 135 at 3-7; D.E. 133 at 3-7. Furthermore, Plaintiffs were given the option to utilize any funds paid by the monetary judgment to redress consumers who were affected by Receivership Defendants’ actions set forth in the Complaint. D.E. 154 at 6, D. E. 133 at 6, D.E. 135 at 6. Upon the Court’s final approval of compensation to the Receiver for his winding down duties, the Receiver is directed to pay all remaining funds in the Receivership to Plaintiffs as partial satisfaction of the judgment against Receivership Defendants, and the Court will direct the Clerk of the Court to return the Receiver’s \$25,000 bond. D.E. 154 at 10-11; D.E. 133 at 10; D.E. 135 at 10.

As of June 20, 2016, the Court entered a final order against the remaining defendants and closed the case. *See* D.E. 156. On September 20, 2016, the Court stayed all deadlines for 90 days. D.E. 158.

After September 20, 2016, the Plaintiffs requested to take possession of certain remaining computers and hardware containing ESI. On October 21, 2016, after review of the Receiver’s paper file index and review of particular requested files, Plaintiffs made copies certain paper documents for its records. On November 8, 2016, the Receiver filed an amended motion for the Court’s approval to transfer possession of and responsibility for certain remaining assets and electronically stored information to Plaintiffs. D.E. 162. On November 23, 2016, the Court granted the Receiver’s Motion, and amended the Receiver’s winding down duties under the

³ Additionally, regarding non-Receivership Defendants, the Court entered Stipulated Orders for Permanent Injunction and Monetary Judgment as to Defendants Boost Software and Amit Mehta on February 3, 2016 (D.E. 134, 136), and as to Defendant Mark Donahue on June 20, 2016 (D.E. 155).

Receivership Stipulated Orders. D.E. 164. Specifically, the Court permitted the Receiver to transfer any computers or hardware containing ESI and certain paper files to the Plaintiffs' possession, and gave Plaintiffs sole responsibility for maintaining and securing this information.

Id. The Court has granted the Receiver's motions to extend the time to file his Final Report until January 11, 2017. D.E. 166, 168.

d. Receiver Completed His Wind Down Duties Under the Amended Stipulated Orders, Other Than Pending IRS Matters

i. The Receiver Transferred Possession of Certain Items to Plaintiffs, Destroyed all Remaining Hardware, ESI and Hard Documents, Vacated Storage Unit, and Canceled GoogleDocs Maintenance

In furtherance of the Amended Stipulated Orders, on December 5, 2016, the Plaintiffs took possession of all servers and hard drives from the Receiver's storage unit. On the same day, the Plaintiffs took possession of certain ESI contained on free-standing hard drives and jump drives that were in the Receiver's counsel possession. On December 7, 2016, the Receiver's forensic consultant managed the proper disposal of all remaining computer plastic shells and miscellaneous hardware left over from the Plaintiffs' retrieval of hard drives from the stored computers. Regarding any remaining hard drives and jump drives in the Receiver's counsel's possession, the Receiver has physically destroyed these items. The Receiver also canceled the Google Docs account that had maintained certain email accounts as of December, 2016.

The Receiver's counsel provided the Plaintiffs with access to all hard copy documents in the Receiver's possession, and provided them with copies of any requested documents. On December 15, 2016, the Receiver's forensic accounts completed destruction of all hard copy records in the Receiver's storage unit and vacated the Receiver's storage unit. On December 19, 2016, the Receiver's counsel's office destroyed any remaining paper files.

The Receiver notes that both the Receiver's counsel and his accountants have maintained certain ESI on their internal computer systems, including some customer information, in order to address outstanding issues that are still pending (to be explained further below). Upon the completion of the Receiver's winding down duties, the Receiver will delete and destroy any remaining ESI from the Receivership Entities.

ii. The Receiver Filed Dissolution Notices for Receivership Entity Corporations

The Receiver's counsel filed dissolution notices with the State of Florida regarding all Receivership Entities incorporated in Florida, including OMG Tech Help LLC, Jon Paul Holdings LLC, OMG Total Protection LLC, Success Capital LLC and Vast Tech Support LLC, and received notices of dissolutions.⁴

iii. The Receiver Has Filed All Necessary Tax Forms

The Receiver's forensic accountants have filed all necessary tax forms for the Receivership Entities for 2015 and responded to multiple inquiries from the Florida Department of Revenue ("FDOR) and the IRS.

iv. The Receiver Has Accounted for Receivership's Finances and Total Assets

The Receivers' forensic accountants have organized and managed all the finances for the Receivership Estate, and accounted for all fees and expenses to the Estate. In short, the Receivership Estate's assets came from the cash originally seized upon taking over the entities and the proceeds of the auction where the Receiver sold most of the assets in the office.

⁴ The Receiver notes that one Receivership entity, OMG International Group, LLC, was incorporated in the State of Delaware but the charter has been revoked and is inactive due to failure to appoint a new registered agent.

The Receiver's forensic accountants have provided the summary of receipts, disbursements and cash balance of the Receivership Estate in the following chart as of January 3, 2017:

Receipts:	
Turnover of funds from frozen accounts	\$ 1,350,414.60
Insurance claim	26,989.00
Other receipts	26,361.81
Security deposit refund	7,124.58
Proceeds from auction	6,291.00
Total Receipts	1,417,180.99
Disbursements:	
Professional fees and expenses	655,616.93
Rent	107,252.52
Health insurance premiums	97,141.76
Receiver's fees and expenses	63,812.47
Taxes - Federal	38,944.90
Vast Tech - Wells Fargo payroll and fees	15,871.88
Secure/maintain property	15,992.01
Other	9,308.80
Storage	7,037.01
Insurance	6,059.74
Child support and garnishment remittance	886.96
Taxes - State	197.50
Total Disbursements	1,018,122.48
Cash balance as of January 3, 2017	\$ 399,058.51

The Receiver's and Kapila Mukamal's sixth interim fee applications for services rendered to and expenses relating to the Receivership dating from March through December 2016 are being finalized and will be filed within five (5) business days from the date of this filing. These will include, among other things, storage fees and the destruction and disposal of ESI and hard documents.

v. The Receiver Has Certain Outstanding Tasks Yet To Completed In the Wind Down Process And Requests \$17,500 Be Maintained In Receivership Estate For This Purpose

As part of the final process to wind down the Receivership Defendants, the Receiver has and his professionals have certain limited activities that have not been completed, primarily relating to tax filings due in April 2017 and responding to inquiries from the IRS regarding the audit of Receivership Entity – Success Capital LLC. The Receiver requests to maintain in the Receivership account a specific amount of funds to complete these activities, which the Receiver will address in a supplemental report and supplemental application to the Court for fees and expenses, as allowed under the Amended Stipulated Orders.

Specifically, the Receiver’s forensic accountants estimate a total of \$15,000 in fees and expenses will be needed to complete the following future tasks in furtherance of the Receiver’s winding down duties: 1) prepare and file tax returns for each Receivership Entities for 2016 and any related tax forms (1099, etc.); 2) attend to and respond to tax notices to Receivership Entities from the FDOR and the IRS; 3) attend to, respond, and finalize a current IRS audit of Success Capital LLC’s 2015 tax return; 4) attend to and respond to any trailing issues for the 2016 return filings; and 5) respond to any other informational requests from the Receiver’s counsel or the Plaintiffs.

These tasks could not be completed before the filing of this Final Report because their completion depends on the timing of the IRS. The IRS has not yet issued 2016 tax forms; also, the IRS’s audit of Success Capital is on-going and has no specific end date. Further, the ongoing inquiries from the FDOR and the IRS regarding 2015 tax filings provide no indication for the completion of these processes. In light of these future tasks, the Receiver’s forensic accountants estimate that the 2016 tax returns will be completed by March 31, 2017, and hope the other tax issues will be resolved by that time, although that is not certain.

The Receiver's counsel estimates a total of \$2,500 of additional fees and expenses including preparation and filing of this Final Report and a supplement report, and responding to any other potential trailing issues, including tax filings and tax audits, and requests from the Plaintiffs.

In sum, the Receiver requests that \$17,500 be maintained in the Receivership Estate in order to complete these future wind down tasks. The Receiver will file a supplemental report regarding these additional tasks as they are completed. Simultaneous with filing of the supplement report, the Receiver will file a subsequent fee application.

III. The Receiver's and Forensic Accountant's Fees Application For The Period from March through December 2016

The Receiver and his forensic accountants are in the process of completing their respective fees and expenses applications regarding their ongoing work in this case for the period from March through December 2016. Upon review by the Plaintiffs, those applications will be filed promptly with the Court.

IV. Notice to Creditors

In further compliance with the Amended Stipulated Orders, the Receiver shall make copies of the filed Final Report of the Receivership Defendants and mail to all known creditors with a notice stating that any objections to paying any assets of the Receivership Defendants to satisfy the Receiver's costs and expenses, and monetary judgment. The Receiver's notice will direct that any objection must be submitted to the Court and served by mail upon the Receiver and the parties within thirty (30) days of the mailing of the Final Report. D.E. 154 at 10-11, D.E. 133 at 9-10, D.E. 135 at 9-10; see also D.E. 164.

The Receiver will also post this Final Report and the Notice to Creditors on the Receiver's website in order to inform the public of this objection period.

WHEREFORE, the Receiver respectfully requests this Court enter an Order: 1) approving the Final Report; 2) allowing for the Receiver to withhold \$17,500 in fees to complete the winding down tasks, and to file a subsequent report and fee application at the earliest possible date, and 3) any other relief the Court deems just and necessary. It has been an honor to serve this Court as Receiver.

Dated: January 11, 2017

By: /s/ Nina Stillman Mandel
NINA STILLMAN MANDEL
Florida Bar No.: 843016
nsm@mandel.law
CAMELLIA NORIEGA
Florida Bar No.: 102777
cn@mandel.law
MANDEL & MANDEL LLP
1200 Alfred I. duPont Building
169 East Flagler Street
Miami, Florida 33131
Telephone: (305)374-7771
Facsimile: (305) 374-7776

Counsel for the Receiver, David S. Mandel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 11, 2017, a true and correct copy of the foregoing was filed by CM/ECF.

/s/ Nina Stillman Mandel