

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.

RECEIVER'S THIRD STATUS REPORT

David S. Mandel, the court-appointed Receiver of Vast Tech Support, LLC, OMG Tech Help, LLC, Success Capital, LLC, Jon-Paul Holdings, LLC, and any related entities (together "Vast Corporate Defendants" or "Receivership Entities"), files his Third Status Report to inform the Court, as well as customers and creditors, of the Receivership's activities to date.¹

I. PROCEDURAL BACKGROUND

On November 10, 2014, the Federal Trade Commission (the "FTC") and the Attorney General's Office for the State of Florida (the "AG") (together the "Government") filed a civil complaint, charging the Defendants with deceptive business practices and alleging consumer injury of approximately \$22 million dollars. D.E. 1, 4 (the "Complaint"). On November 12, 2014, on the Government's motion, the Court entered a Temporary Restraining Order that, among other things, appointed David S. Mandel as Receiver over the Vast Corporate Defendants (the

¹ The Receiver's previous status reports were filed on December 16, 2014 and February 20, 2015, respectively. See D.E. 56, 67.

“T.R.O.” or “Receivership Order”), and freezing the Vast Corporate Defendants’ assets. D.E. 1, 5, 6, 11, 12 & 13. The Government’s motion for preliminary injunction against the Vast Corporate Defendants and Elliot Loewenstern, Jon-Paul Vasta, and Mark Donohue (together “the Individual Defendants”) remains pending. D.E. 33, 42, 43, 41; *see also* D.E. 44.

On Jan. 12, 2015, the Court granted the Receiver’s motion to extend the Receivership Estate to include a related entity, OMG International Group LLC (“OMG International”). D.E. 60. On January 20, the Receiver sought the Court’s approval to pay the health care premiums of the Vast Corporate Defendants’ employees for the month of January 2015, and on January 21 the Court granted this motion. D. E. 61, 62.

On February 24, 2015, the Court issued a Scheduling Order setting this case for trial on July 25, 2016. D.E. 68. On February 25, 2015, the Government moved for a clerk’s entry of default against Defendant Jon-Paul Vasta for his failure to file an answer in this action and the Clerk of Court entered an Order of Entry of Default against Defendant Vasta on same day. D.E. 70, 72. Likewise, on March 13, 2015, the Government moved for a clerk’s entry of default against Vast Tech Support, LLC, OMG Tech Help, LLC, Success Capital, LLC, and Jon-Paul Holdings, LLC (“Vast Corporate Defendants”) for these Defendants’ failure to file an answer in this action. D.E. 78. The Clerk of Court entered an Order of Entry of Default against the Vast Corporate Defendants on March 18, 2015. D.E. 79.

The Receiver filed a motion for the Court’s approval to conduct an auction of certain Vast Corporate Defendants’ property on April 23, 2015. D.E. 85. The Court granted the Receiver’s motion on April 27, 2015. D.E. 86.

II. THE RECEIVER’S ROLE AND RESPONSIBILITIES

The Court directed the Receiver to engage in various activities, including: (1) “[a]ssume full control of the Vast Corporate Defendants . . .;” D.E. 13, Receivership Order, Sect. XII. ¶A; (2)

“[t]ake exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or under the control, the Vast Corporate Defendants, wherever situated” and “[t]ake all steps necessary to secure and take exclusive custody of each location from which the Vast Corporate Defendants operate their businesses;” *Id.*, ¶¶B, C; (3) “[c]onserve, hold, and manage all Assets of the Vast Corporate Defendants;” *Id.*, ¶D; (4) “[c]hoose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;” *Id.*, ¶H; (5) “[m]ake payments and disbursements from the receivership estate that are necessary . . . for carrying out the directions of, or exercising the authority granted by, this Order;” *Id.*, ¶I; (6) “apply to the Court for prior approval of any payment of any debt or obligation incurred by the Vast Corporate Defendants prior to the entry of this Order, except payments the Receiver deems necessary or advisable to secure the Assets of the Vast Corporate Defendants, such as rental payments;” *Id.*; (7) “[c]ooperate with reasonable requests for information or assistance from any state or federal civil or criminal law enforcement agency;” *Id.*, ¶U; and (8) “[f]ile timely reports with the Court at reasonable intervals, or as otherwise directed by the Court.” *Id.*, ¶V.

Pursuant to the authority granted in the Receivership Order, the Receiver retained the following professionals to search, recover and protect the Receivership Estate's corporate assets, and to otherwise untangle the financial and operational affairs: (1) the law firm of Mandel & Mandel LLP; (2) the law firm of Meland Russin & Budwick, P.A. (collectively both law firms referred to as “Counsel”) (3) the forensic accounting firm of KapilaMukamal LLP (“Kapila”); and (4) the firm of Andrews International to serve as the Receiver’s digital forensics expert (“digital forensics expert” or “Andrews”).

Upon his appointment, the Receiver took immediate possession and control over the Vast

Corporate Defendants' offices, and promptly began the process of marshaling the assets to protect customers' and creditors' interests. The Receiver also commenced an inquiry into the business affairs and financial condition of the Vast Corporate Defendants.

To quickly provide information to customers, creditors, and employees, the Receiver established an informational website at omgtechhelp.com, and established an email address: OMGTechhelp-Receiver@mandel-law.com, dedicated to Receivership business. In addition, Mandel & Mandel LLP dedicated an extension on its telephone system for communications relating to the Receivership.

Upon taking control of the Receivership Entities, the Receiver determined that he could not operate the Vast Corporate Defendants' business legally or profitably, and therefore, he suspended the ongoing business operations. Soon after taking over the Vast Corporate Defendants, the Receiver confirmed that the entities' bank accounts were frozen. The Receiver also investigated the status of essential expenses, including rent, insurance, telecommunications, computers and internet access, and others. The Receiver has set forth below the status of his activities, investigation and analysis of the assets of the Vast Corporate Defendants to date.

A. Taking Possession of Receivership Property, Segregating Assets that Belong to Estate and Preparing for Auction

Since the filing of the second status report, the Receiver has continued to maintain the Vast Corporate Defendants' business premises, including all physical property, computers, computer servers, and business records, located at 2855 S. Congress Ave, Suite AB, Delray Beach, Florida 33445. Additionally, the Receiver has maintained all assets located in an offsite storage unit. The Receiver has made periodic inspections, and preserved the property, including paying the rent, and essential utilities. *See* Receivership Order, Sect. XII. ¶¶ C, I.

With regard to the electronic data, the Receiver's digital forensic experts from Andrews

International continued to maintain company data and address technology issues associated with maintaining this data. Also, in order to eliminate the monthly costs of maintaining the active status of various employee company email accounts, Andrews initiated a forensic download of certain accounts. Pursuant to the download, the data from these certain email accounts are now forensically maintained by the Receiver, and these accounts were canceled. The Receiver's computer consultant kept certain employees' email accounts active, and will forensically maintain these accounts throughout the litigation. The Receiver's computer consultant has secured all currently known locations of electronic data and information and continues to maintain any necessary information.

Further, the Receiver's computer consultant has dealt with the removal and return of multiple items of leased technology equipment located in the corporate office. Additionally, Andrews provided assistance with accessing data in order to respond to specific former employees' requests for information. Andrews also assisted with determining values of stolen items in relation to the Receiver's successful insurance claim.

Further, Andrews has continued to assist the Receiver regarding the Vast Tech computers and servers, including identifying computers for purposes of imaging and/or backup up data. Andrews has prepared a strategic plan for storage of the computers, including conducting an inventory, labeling, and organizing the computers in preparation for storage. Similarly, Andrews has assisted the Receiver's counsel in responding to inquiries from the Government.

B. Overview of Forensic Accountants' Activities

The Receiver's forensic accountants at Kapila have continued to assist the Receiver with the investigation and analysis of the Vast Corporate Defendants' books and records, preparation of all necessary federal and state tax filings, and other treasury functions, among other tasks. Kapila spent a significant amount of time analyzing the financial records of the Vast Corporate

Defendants, and providing substantial assistance to the Receiver and his counsel and the digital forensic consultant with requested information necessary for investigation and preservation of the assets of the estate.

i. Bank Accounts

Pursuant to the Government's request, Kapila opened a segregated Receiver bank account in the name of Boost Software, Inc., on March 19, 2015, in order to potentially place funds from RevenueWire Inc. ("RevenueWire") that were the proceeds of revenue generated from the Receivership Entity Vast Tech Support, LLC for Defendant Boost Software, Inc. ("Defendant Boost"). However, pursuant to a revised stipulation between the Government and Defendant Boost, which requested that RevenueWire transfer these monies into the Court's Registry pending settlement negotiations and/or further order of the Court, the Court issued an Order directing the monies be deposited into the Court Registry. D.E. 83.

ii. State and Federal Tax Filings

Kapila prepared and filed the following fourth quarter and annual tax forms for the Vast Corporate Defendants: (1) Federal payroll and unemployment Forms 941 and Forms 940; (2) State of Florida Unemployment Forms RT-6; and (3) 2014 Forms W2 and 1099 wage and information reporting forms; and (4) extensions of time to file for the 2014 Federal Income Tax Returns.

Kapila has assisted the Receiver's counsel in responding to notices from the IRS and the State of Florida regarding payroll and other compliance-related requests. Additionally, Kapila has responded to numerous requests from tax authorities. Kapila also began compiling financial data for 2014 in order to facilitate completion of income tax returns for the Vast Corporate Defendants.

iii. **Treasury Functions**

Kapila continues to maintain the bank account records for the Receivership Estate and accounted for receipts and disbursements from November 13, 2014 (the “TRO Service Date”) through the Receiver’s Third Status Report. Further, the Receiver’s forensic accountants have reconciled the Receivership accounts, and provide the necessary deposits and disbursements as directed by the Receiver. The balance in the Receivership account as of April 27, 2015, totals \$709,763.99 and consists of the following:

<i>Receipts:</i>	
Turnover of funds from frozen accounts	\$ 1,350,414.60
Other receipts	16,913.51
Total Receipts	1,367,328.11
<i>Disbursements:</i>	
Professional fees and expenses	347,848.16
Health insurance premiums	97,141.76
Rent	89,377.10
Taxes – Federal	38,944.90
Receiver's fees and expenses	46,446.08
Vast Tech - Wells Fargo payroll and fees	15,871.88
Costs to secure/maintain property	10,127.28
Insurance	6,059.74
Other expenses	4,860.26
Child support and garnishment remittance	886.96
Total Disbursements	657,564.12
Cash balance as of April 27, 2015	\$ 709,763.99

III. Forensic Analysis and Case Administration

Pursuant to the request of Receiver's counsel, Kapila analyzed and investigated payments made for office furniture and equipment from the Vast Tech Corporate Defendants' bank accounts to assist in the identification of Receivership assets. The Receiver's forensic accountants reviewed and analyzed the combined QuickBooks reconstruction for the Vast Tech Corporate Defendants' and the OMG International bank reconstruction, and prepared detail and summary schedules for the Receiver's review.

Regarding case administration, Kapila coordinated with Moecker Auctioneers for a site review and inventory of Vast Tech Defendants' corporate assets in connection with the Receiver's request to the Court approval of a public auction of certain assets. Furthermore, Kapila responded to miscellaneous requests for information such as employment verification, payroll, health insurance and notices from various agencies.

IV. Overview of Counsel's Activities

1. Vast Corporate Defendants' Office and Maintenance of Assets

Since taking possession of the corporate office and the office site storage unit, counsel has maintained all corporate documents, data and assets. Regarding the Vast Corporate Defendants' Office, the Receiver's notices regarding the appointment of the Receiver, the shutdown of the business, and the Receiver's contact information remain at the building. In order to maintain the premises and assets inside the premises, counsel continues to pay rent and utilities. Likewise, the Receiver continues to pay rent for the storage container in order to preserve these assets.

Due to the division of electricity between tenants within the building where the Vast Defendants office is located, the Receiver's counsel has worked with the landlord to correct an overpayment of electricity predating the Receivership, and has received a first installment of reimbursement for the overpayment. Counsel continues to work with the landlord to complete full reimbursement for the unrelated tenant's portion of the electricity bill.

In order to lessen the expenses on the Estate, as of the filing of the last status report, the Receiver has been in the process of preparing to exit the leased business premises and storage unit, and preparing his request the Court's approval of a public auction of certain Estate property.

In furtherance of this objective, the Receiver's counsel has negotiated with Vast Tech's landlord who initially asserted ownership to certain office furniture in the business premises. With the assistance of Kapila, counsel researched the purchase history of certain assets. Additionally, counsel analyzed the lease agreement for the Vast Corporate Office and provided a thorough analysis to the landlord. After discussion and negotiation with the landlord, the landlord agreed that the Receiver owns all furniture inside the business premises.

Additionally, the Receiver's counsel has communicated with the individual Defendants regarding their assertion of personal ownership of any property inside the business premises and storage unit. The Receiver's counsel met with Defendant Jon-Paul Vasta at the Vast Corporate Office, and returned one item to him. Mr. Vasta signed an affidavit attesting that this item was not purchased with Receivership funds.

Likewise, Defendant Loewenstern has asserted ownership of personal items and documents located in the business office that he claims are either related to non-Receivership Entity businesses or personal finances or were purchased with non-Receivership funds. The Receiver's counsel met with Mr. Loewenstern for him to identify specific personal items and documents. Regarding the documents, Mr. Loewenstern has prepared an affidavit stating the documents and personal items were unrelated to any Receivership entities.

Further, counsel has been negotiating with Mr. Loewenstern's counsel regarding the specific furniture, office equipment or artwork items that Mr. Loewenstern asserts were not purchased with funds from the Receivership Entities. Mr. Loewenstern and his counsel are in the process of providing a signed affidavit attesting as to his ownership of the various items and confirming he did not use Receivership funds to purchase the items. The Receiver's counsel consulted with the Government, who did not object to the return of any items so long as the items were not purchased with monies from the Estate.

Similarly, the Receiver's counsel has conferred several times on the telephone and in person with the Government about selling the Vast Tech personal property located in the office space and storage unit.

Counsel has worked with the Receiver's digital consultant on finalizing the data download, on-going maintenance of data, additional productions of data, and on-going plan for forensic preservation of the computers. Additionally, counsel and the digital forensic consultant have continued to manage the production of any additional information requested by the Government and Defendants. Further, as noted above, counsel and the digital forensic expert have worked with the Government on organizing the imaging of the computers prior to storage.

The Receiver's counsel worked with the insurance adjuster regarding the Receivership's claim for stolen property which resulted in approval of the claim. The Receiver is currently awaiting the receipt of the payment from insurance.

2. Management of Third Party Invoices

The Receiver's counsel also continues to receive all mail for Vast Corporate Defendants. Counsel maintains an extensive list of invoices from vendors and creditors received via mail and email. Counsel regularly updates the detailed list of creditors and customers/victims. Moreover, Receiver's counsel responds to various vendors' inquiries about payment for services prior to the appointment of the Receiver.

3. Business Decisions and Employee-related Issues

Since filing the Second Status Report, the Receiver's counsel and accountants discussed information requests regarding employees from government agencies, forensic analysis results, end-of-year tax processing, and made various determinations to benefit the Receivership Estate. Also, the Receiver's counsel worked with Kapila on updating the ongoing financial analysis, and provided the issuance of additional letters as necessary in order to assist their analysis.

In furtherance of the Vast Tech Corporate Defendants' tax obligations, the Receiver's counsel and Kapila continue to work on filing taxes for the Receivership Entities. Additionally, counsel received notice regarding the status of the trademark application for a Vast Tech Corporate Defendant, discussed the application with trademark counsel and the Government; the Receiver determined not to pursue the trademark application.

The Receiver's counsel and his staff have continued to respond to inquiries from former employees requesting the status of this case and information from their own employee files. In order to respond to these requests, counsel visited the Vast Tech Office to locate specific employment files, responded to phone calls, and prepared written responses. Additionally,

counsel has responded to inquiries from employees regarding their insurance status, and worked with the insurance agent and related agencies regarding individual status. Furthermore, counsel continues to respond to employees' threats of potential lawsuit for alleged unpaid salaries and purported violations of the WARN Act, 29 U.S.C. § 2101, *et seq.*

Also, counsel has researched and responded to various letters from government agencies requesting information and status regarding the Receivership Entities and employees' pay. As part of the counsel's response, the Receiver's forensic accountants provided counsel with the company's financial information and employment history.

4. Asset Recovery

The Receiver's counsel and Kapila also contacted additional institutions to demand immediate turnover of any Receivership funds and facilitated the return of certain funds to the Estate. In addition, counsel has contacted several service providers in order to assess any new assets to benefit the Estate. Counsel strategized with the accounting and digital experts regarding any necessary services and ways to lessen the fees on the Estate.

With assistance of the forensic accountants at Kapila, the Receiver's counsel remains focused on identifying any additional funds that may be targeted to be returned to the Estate via negotiation, litigation or other means.

5. Notices to customers and creditors

Counsel continues to respond to calls, emails and letters from employees, customers and third party vendors via email and telephone on a daily basis. When any additional follow-up is needed, counsel has provided any available information in response to the inquiries, and taken appropriate action if necessary. In order to keep the public informed, counsel regularly updates the website with case information.

6. Communication with the Government

The Receiver's counsel remains in constant communication with the Government regarding the Receiver's activities in furtherance of preserving the Estate. Further, counsel responded to various inquiries and requests for information by the Government. Additionally, the Government's forensic computer consultant and the Receiver's counsel and computer consultant continued to work together to secure all electronic data.

7. Cooperation with the Individual Defendants

In furtherance of the Receiver's ongoing cooperation with the Individual Defendants, the Receiver's counsel continued to work with Individual Defendants to provide them with information and access to data and documents.² Counsel met with Defendant Loewenstern in order to allow him identify any personal items in the corporate office and later to remove certain documents related to his personal affairs or non-Receivership Entity businesses. The Receiver's counsel has also worked with Individual Defendants in responding to their particular requests and assisted them with their inquiries.

V. REPORT ON THE RECEIVER'S INVESTIGATION

In addition to the efforts enumerated above regarding marshaling assets, the Receiver and his professionals have performed many services in connection with Vast Corporate Defendants, including, but not limited to:

- a. closing the related businesses and identifying customers, creditors, and investors;
- b. interviewing employees;

² As previously noted, Defendants Donahue and Vasta still have not contacted the Receiver about access to Vast Corporate Defendants' information or documents. However, the Receiver previously advised Defendant Loewenstern's counsel that he does not object to Loewenstern sharing any Vast Corporate Defendant information with the co-Defendants.

- c. obtaining and reviewing all financial records to trace fraudulent transfers and other asset diversions;
- d. investigating and attempting to reconstruct the Vast Corporate Defendants' financial and operational affairs, despite disorganized and incomplete records;
- e. analyzing potential claims to be pursued on behalf of the Receivership estate;
- f. communicating via email and telephone with customers and creditors of the Defendants;
- g. communicating and coordinating efforts with the Government;
- h. interviewing creditors of the Vast Corporate Defendants;
- i. locating and conducting an inventory of assets belonging to the Defendants;
- j. locating and consolidating Vast Corporate Defendants' banking accounts into interest bearing accounts under the Receiver's control;
- k. analyzing account receivables;
- l. reviewing legal authorities on property issues, securities issues, debt collection and Receivership issues;
- m. researching transfers of Receivership funds to various entities and individuals, and offshore accounts and activities;
- n. securing the Vast Corporate Defendants' computer network from outside access;
- o. imaging and preservation of all electronic data and information;
- p. gaining access to the Vast Corporate Defendants' websites and domains;
- q. changing all security passwords for computers, websites and electronic funds transfer software; and
- r. updating the Receivership website to provide notice to consumers and creditors about the status of the Government's action against the Defendants.

VI. SUPPLEMENTAL REPORTS

The Receiver will file further reports at reasonable intervals, or as otherwise directed by the Court.

Dated: April 30, 2015

Respectfully submitted,

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Counsel for the Receiver, David S. Mandel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 30, 2015, a true and correct copy of the foregoing was filed by CM/ECF, and that a copy of the foregoing was sent by email and regular U.S. Mail to the following Individual Defendants who are *pro se*:

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/s/ Nina Stillman Mandel