

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 FIFTH 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, OMG International Group, LLC, and any related entities (together "Vast Corporate Defendants" or "Receivership Entities"), files his Fifth 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"), 5. 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 "T.R.O.")

¹ The Receiver's previous status reports were filed on December 16, 2014, February 20, April 30, and August 17, 2015, respectively. See D.E. 56, 67, 87, 109.

or “Receivership Order”), and freezing the Vast Corporate Defendants’ assets. D.E. 1, 5, 6, 11, 12 & 13. On February 3, 2016, the Court entered Stipulated Orders for Permanent Injunction and Monetary Judgments against the following entities and individuals: Jon Paul Holdings, LLC and Jon-Paul Vasta (D.E. 133); Boost Software, Inc. (D.E. 134); Success Capital, LLC and Elliot Loewenstern (D.E. 135); and Amit Mehta (D.E. 136). On March 1, 2016, the Court granted the parties’ joint motion to stay deadlines as to Vast Tech Support and OMG Tech Help LLC for 90 days (D.E. 139, 140). Further, the Court granted the Government’s unopposed motion for a 30-day extension of the April 4 filing deadline for substantive pretrial motions regarding Defendant Mark Donohue (D.E. 141, 142).

II. THE RECEIVER’S ROLE AND RESPONSIBILITIES

Under the Receivership Order, 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) “[i]nstitute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts or arbitration proceedings as the Receiver deems necessary and advisable to preserve or recover the Assets of the Vast Corporate Defendants, or that the Receiver deems necessary and advisable to carry out the Receiver’s mandate under this Order, including but not limited to, actions challenging fraudulent or voidable transfers;” *Id.*, ¶N; (8) “[c]ooperate with reasonable requests for information or assistance from any state or federal civil or criminal law enforcement agency;” *Id.*, ¶U; and (9) “[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”).

A. Overview of Counsel’s Activities

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.

During the course of the past six months since the Receiver's last status report, the Receiver and his counsel have provided many services and performed various actions in connection with his responsibilities in this matter, including but not limited to: completing the process of vacating the Vast Corporate offices; resolving and finalizing negotiations with the landlord; overseeing the storage of all computers, servers, and related items until further notice; addressing various tax issues in consultation with the forensic accountants at KapilaMukamal; regularly conferring with customers via email and/or telephone; periodically conferring with the Government and reviewing documents regarding various issues including but not limited to proposed settlement agreements on behalf of the several Vast Corporate Defendants, reviewing and providing financial analyses and documentation, and analyzing the proposed permanent injunction against Vast Tech LLC.

After taking control of the Receivership Entities and determining that he could not operate the Vast Corporate Defendants' business legally or profitably, the Receiver promptly suspended the ongoing business operations. The Receiver confirmed that the Receivership entities' bank accounts were frozen; investigated the status of essential expenses, including rent, insurance, telecommunications, computers and internet access, and others; with the Court's permission, the Receiver conducted a public auction of Receivership assets in the corporate offices; removed all items to be stored or abandoned; and vacated the Vast Defendants' corporate office.

With regard to the electronic data, the Receiver's digital forensic experts continue to maintain company data and have addressed many technology issues associated with this data. The Receiver continues to maintain the active email accounts of important employees. Additionally, the Receiver maintains the forensic download of canceled employee company email accounts. The Receiver's computer consultant has secured all currently known locations of

electronic data and information and continues to maintain any necessary information.

B. Overview of Forensic Accountants' Activities

The Receiver's forensic accountants, Kapila, have continued to assist the Receiver with his investigation to preserve and maximize the value of the assets. Such efforts have included the analysis of the Vast Corporate Defendants' books and records, the preservation of electronic and paper records, the auctioning of assets from the Vast Tech corporate office, tax compliance matters, the preparation of all necessary Federal and state tax filings, and the Receivership treasury functions, among other tasks.

i. Forensic Analysis

Kapila reviewed and analyzed the combined QuickBooks reconstruction for the Vast Tech Corporate Defendants' and the OMG International bank reconstruction to identify disbursements to insiders and other noteworthy transfers for the Receiver's review. Furthermore, Kapila reviewed the Vast Tech QuickBooks reconstruction and bank records to research the purchase of computer equipment and identify any other assets available for sale at auction.

ii. Case Administration - Preservation of Records and Auction

Kapila also assisted the Receiver's counsel with securing, preserving and moving the financial, accounting, human resource and other records from the corporate office in Delray Beach to the Receiver's new secure storage site. Additionally, Kapila assisted the Receiver's forensic digital expert with document management – cataloguing, storing and moving the hard drives and other computer equipment to preserve Vast Tech's IT assets.

Since the auction of the Receivership property, Kapila has maintained in storage the remaining items, particularly the computers, servers and related items, until the litigation is completed and upon further order of the Court. Furthermore, the Receiver's accountant continues to assist with miscellaneous requests for information such as financial analysis relating to court

filings, employment verification, payroll, and other notices from various agencies.

iii. State and Federal Tax Filings

The Receiver is obligated to comply with the IRS requirements in order to prevent any exposure to the Receivership Estate. Kapila compiled and organized financial data from QuickBooks, bank records and the Receivership bank accounts for 2014 in order to facilitate preparation of the income tax returns for the Vast Corporate Defendants.

The Receiver continues to receive notices from the IRS and the State of Florida that require Kapila's review and assistance in responding, including various tax, payroll and other compliance related requests. The Receiver's forensic accountant has responded to numerous requests from taxing authorities.

iv. Treasury Functions

Kapila maintained the bank account records for the Receivership Estate and accounted for receipts and disbursements beginning from November 13, 2014 (the "TRO Service Date") through the Receiver's Fifth Status Report. Also, Kapila continues to reconcile the Receivership bank accounts and make necessary deposits and disbursements as directed by the Receiver.

The net balance of \$449,496.52 in the Receivership account as of February 29, 2016 consists of the following:

Column1	Column2
Receipts:	
Turnover of funds from frozen accounts	\$ 1,350,414.60
Insurance claim	26,989.00
Other receipts	26,249.35
Security deposit refund	7,124.58
Proceeds from auction	6,291.00
Total Receipts	1,417,068.53
Disbursements:	
Professional fees and expenses	613,433.22

Rent	110,880.62
Health insurance premiums	97,141.76
Receiver's fees and expenses	59,018.62
Taxes - Federal	38,944.90
Vast Tech - Wells Fargo payroll and fees	15,871.88
Secure/maintain property	15,828.01
Other	9,308.80
Insurance	6,059.74
Child support and garnishment remittance	886.96
Taxes - State	197.50
Total Disbursements	967,572.01
Cash balance as of February 29, 2016	\$ 449,496.52

IV. REPORT ON THE RECEIVER'S INVESTIGATION

In addition to the efforts described 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
- b. identifying customers, creditors, and investors;
- 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;
- 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: March 24, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 24, 2016, 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