

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 FOURTH 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 Fourth Status Report to inform the Court as well as customers and creditors of the Receivership's activities to date.<sup>1</sup>

**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

---

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

things, appointed David S. Mandel as Receiver over the Vast Corporate Defendants (the “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 April 23, 2015, the Receiver filed a motion for the Court’s approval to conduct an auction of certain Vast Corporate Defendants’ property, which the Court granted. D.E. 85, 86. On June 9, 2015, the auctioneer hired by the Receiver conducted an auction of the Vast Corporate Defendants’ property, excluding computers and related items; the Receiver continues to preserve those items. *See* D.E. 94. On June 16, 2015, the Receiver filed an expedited motion requesting the Court’s approval to abandon certain property that the Receiver was not able to sell at the auction. D.E. 94. The Court approved the Receiver’s Motion on June 17, 2015. D.E. 95. On June 30, 2015, the Receiver vacated the Vast Corporate offices and terminated the lease.

Regarding nonparty NJB Companies’ motion to quash the Government’s subpoena and motion for protective order, the Receiver joined the Government’s supplemental brief regarding this issue, filed on July 30, 2015. D.E. 105, 106.

## **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) “[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”).

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](http://omgtechhelp.com), and established an email address: [OMGTechhelp-Receiver@mandel-law.com](mailto: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, Conducting the Auction and Surrendering the Corporate Office and Storage Unit**

Since the filing of the third status report, the Receiver obtained the Court's permission to conduct a public auction of Receivership assets in the corporate offices, hired an auctioneer to conduct the auction, completed the auction, removed all items to be stored or abandoned, and vacated the office.

In preparation for the auction, the Receiver's auctioneer Martin Claire Services & Co., LCC ("Claire") conducted an extensive itemization of all saleable items in the corporate office and storage unit. Upon Claire's assessment and consultation with Receiver's counsel, the items in the storage unit were deemed unusable. As a result, the Receiver's counsel surrendered these items to the storage unit business and terminated this lease.

To promote the auction and solicit bids for the items in the corporate office, the Receiver's auctioneer posted an itemized list of saleable auction items on their website two weeks prior to the auction date, as well as advertising in various local newspapers for two weeks prior to the auction. The Receiver's counsel also responded to inquiries regarding potential interest in purchasing certain items and questions about the auction. The Receiver's auctioneer, counsel and the forensic accountants from Kapila worked together to prepare the corporate office for the auction by organizing items to make the items and office most appealing to potential buyers.

The Receiver's counsel conferred with the landlord regarding ownership of certain disputed items. In preparation for the Receiver's exit from the corporate office, Kapila and the Receiver's counsel inventoried and stored all hard documents. Further, the Receiver agreed to the Government's request that the Receiver store all computers and servers until the end of the litigation; as such, the Receiver's counsel and digital forensic expert from Andrews International prepared a detailed inventory of the computers and assisted in the relocating these computers to the Receiver's new secure storage unit.

Regarding furniture claimed by Defendant Elliot Loewenstern, Mr. Loewenstern provided the Receiver with a sworn affidavit stating that none of the items were purchased with the Receivership Entities' funds. Thereafter, the Receiver allowed Mr. Loewenstern to remove these particular items from the Vast office.

The Receiver's auctioneer successfully conducted the public auction with the assistance of the Receiver's counsel and Kapila on June 9, 2015. Various items of the Receivership Estate were sold at this auction and the auction net proceeds were deposited into the Receivership account. Despite the auctioneer's best efforts, some furniture and office items were not sold. After discussion with Kapila and Claire, and upon counsel's further review of the lease terms regarding potential charges for leaving abandoned property in the office after the lease termination, the Receiver determined that the most beneficial option for the Estate would be to donate any remaining property or having it removed by a junk service. Accordingly, counsel identified certain appropriate charities for donation and filed an expedited motion to abandon the property. The Court granted this motion.

All items not sold at the auction (or otherwise stored by the Receiver) were donated to a charity; the remaining items were removed by junk removal services. On June 30, 2015, the Receiver's counsel met with the landlord's agent, completed a final walk-through of the corporate office, and handed over the keys to the office.

Having exited the office and eliminated the previous storage unit, the Receivership Estate is no longer burdened by these expenses, including the rents, utility bills, or property insurance. The Receiver maintains a new storage unit containing the Entities' hard documents and computers, but this expense is significantly lower than the previous costs.

With regard to the electronic data, the Receiver's digital forensic experts continued to maintain company data and address technology issues associated with maintaining this data. As indicated in the previous report, 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 digit expert with document management – cataloguing, storing and moving the hard drives and other computer equipment to preserve Vast Tech's IT assets.

On the day of the auction, Kapila attended the auction along with counsel and assisted counsel with inventorying and accounting for sales, donating and disposing of the remaining

equipment and furnishings, and vacating the corporate offices in compliance with the lease terms. Furthermore, the Receiver's accountant responded to miscellaneous requests for information such as 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 multiple notices from the IRS and the State of Florida that required Kapila's attention to assist the Receiver in responding to 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 from November 13, 2014 (the "TRO Service Date") through the Receiver's Fourth 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 \$638,180.32 in the Receivership account at August 17, 2015 consists of the following:



<b>Receipts:</b>	
Turnover of funds from frozen accounts	\$ 1,350,414.60
Insurance claim	26,989.00
Other receipts	25,494.97
Security deposit refund	7,124.58
Proceeds from auction	6,291.00
<b>Total Receipts</b>	<b>1,416,314.15</b>
<b>Disbursements:</b>	
Professional fees and expenses	433,178.31
Rent	109,069.02
Health insurance premiums	97,141.76
Receiver's fees and expenses	51,646.95
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
<b>Total Disbursements</b>	<b>778,133.83</b>
<b>Cash balance as of August 17, 2015</b>	<b>\$ 638,180.32</b>

### III. Overview of Counsel's Activities

#### A. **Vast Corporate Defendants' Office and Storage Unit, and Maintenance of Assets**

Since taking possession of the corporate office and the office site storage unit and surrendering these locations for the benefit of the Estate, counsel has maintained all corporate documents, computers, and data. As noted above, counsel assisted in the administration of the auction, the disposition of any unsold items and the surrendering of the previous storage unit and corporate office.

In furtherance of this objective, the Receiver's counsel negotiated with Vast Tech's landlord regarding the ownership to certain items in the business premises in order to verify

whether they could be sold at auction. Counsel resolved these issues and only items belonging to the Receivership were sold at the auction

Additionally, the Receiver's counsel communicated with Mr. Loewenstern's counsel regarding his assertion of personal ownership of certain office furniture inside the business premises. Mr. Loewenstern provided an affidavit attesting to his ownership of certain office and furniture items and confirming he did not use Receivership funds to purchase the items. Upon receipt of this affidavit, the Receiver's counsel returned these items.

Counsel has worked with the Receiver's digital consultant regarding on-going maintenance of data and on-going plan for forensic preservation of the computers. Further, as noted above, counsel and the digital forensic expert have worked together regarding the move of the computers to secure long-term storage.

The Receiver's counsel obtained the remaining security deposit from the landlord. Counsel also worked with the insurance adjuster regarding the Receivership's claim for stolen property, which was approved, and the Receivership received the payment.

#### **B. Management of Third Party Invoices**

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

#### **C. Business Decisions and Employee-related Issues**

Since filing the third 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 tax related requests, and made various decisions in order to benefit the Receivership Estate. Additionally, the Receiver's counsel worked with Kapila on updating the ongoing financial analysis. In furtherance of the Vast Tech Corporate Defendants' tax obligations, the Receiver's counsel and Kapila worked together to file taxes for the Receivership Entities. The Receiver's counsel and his staff have continued to respond to requests from former employees regarding the status of this case.

**D. Asset Recovery**

The Receiver's counsel, Kapila and the forensic digit experts have strategized and discussed ways to lessen the expenses of the Estate. With assistance of Kapila, counsel remains focused on identifying any additional funds that may be targeted to be returned to the Estate via negotiation, litigation or other means.

**E. Notices to customers and creditors**

The Receiver's Counsel continues to respond to calls, emails and letters from employees, customers and third party vendors via email and telephone. 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.

**F. Communication with the Government and Participation in On-Going Case**

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

In order to further the Receiver's objective of procuring information relevant to any future potential proceedings that the Receiver may pursue to benefit the Estate against any transfer of money or other proceeds directly or indirectly traceable from Vast Corporate Defendants, counsel has appeared telephonically at the deposition of a Government witness. Similarly, counsel appeared telephonically at the hearing on a non-party's motion to quash a government subpoena. In response to the Court's order for supplemental briefing regarding whether the law requires the exhaustion of discovery from parties before seeking the same information from non-parties, the Receiver's counsel provided research to the Government and joined the Government's supplemental brief.

**G. Cooperation with the Individual Defendants and Nonparty Partner of Receivership Entities**

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.<sup>2</sup>

**IV. 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
- b. identifying customers, creditors, and investors;
- c. interviewing employees;

---

<sup>2</sup> As previously noted, Defendants Donahue and Vasta have never 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.

- d. obtaining and reviewing all financial records to trace fraudulent transfers and other asset diversions;
- e. investigating and attempting to reconstruct the Vast Corporate Defendants' financial and operational affairs, despite disorganized and incomplete records;
- f. analyzing potential claims to be pursued on behalf of the Receivership estate;
- g. communicating via email and telephone with customers and creditors;
- h. communicating and coordinating efforts with the Government;
- i. interviewing creditors of the Vast Corporate Defendants;
- j. locating and conducting an inventory of assets belonging to the Defendants;
- k. locating and consolidating Vast Corporate Defendants' banking accounts into interest bearing accounts under the Receiver's control;
- l. analyzing account receivables;
- m. reviewing legal authorities on property issues, securities issues, debt collection and Receivership issues;
- n. researching transfers of Receivership funds to various entities and individuals, and offshore accounts and activities;
- o. securing the Vast Corporate Defendants' computer network from outside access;
- p. imaging and preservation of all electronic data and information;
- q. gaining access to the Vast Corporate Defendants' websites and domains;
- r. changing all security passwords for computers, websites and electronic funds transfer software; and
- s. 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: August 17, 2015

Respectfully submitted,

MANDEL & MANDEL LLP  
1200 Alfred I. duPont Building  
169 East Flagler Street  
Miami, Florida 33131  
Telephone: (305)374-7771  
Facsimile: (305) 374-7776  
[nsmandel@mandel-law.com](mailto:nsmandel@mandel-law.com)  
[cnoriega@mandel-law.com](mailto:cnoriega@mandel-law.com)

By: */s/ Nina Stillman Mandel*  
NINA STILLMAN MANDEL  
Florida Bar No.: 843016  
CAMELLIA NORIEGA  
Florida Bar No.: 102777

MELAND RUSSIN & BUDWICK, P.A.  
3200 Southeast Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 358-6363  
Facsimile: (305) 358-1221  
Peter D. Russin  
Florida Bar No.: 765902  
[prussin@melandrussin.com](mailto:prussin@melandrussin.com)  
Lawrence Pecan  
Florida Bar No.: 99086  
[lpecan@melandrussin.com](mailto:lpecan@melandrussin.com)

*Counsel for the Receiver, David S. Mandel*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 17, 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*:

Mark Donahue  
1030 W. Heritage Club Cir.  
Delray Beach, FL 33428  
markdonohue1@me.com  
*Pro Se*

Jon-Paul Vasta  
18317 Fresh Lake Way  
Boca Raton, FL 33498  
jonpaulvasta@gmail.com  
*Pro Se*

/s/ Nina Stillman Mandel