

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT,
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTERS STABLE-VALUE FUND, LP,
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,
FOUNDING PARTNERS GLOBAL FUND, LTD., and
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

RECEIVER'S SEVENTH STATUS REPORT

Daniel S. Newman, as Court-appointed receiver (the "Receiver") for Defendant Founding Partners Capital Management Company ("FPCMC") and the Relief Defendants Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. (collectively, the "Receivership Entities"), respectfully files his Seventh Status Report (the "Seventh Report"). This Seventh Report addresses information and issues that occurred from July 2014 to present.

I. INTRODUCTION

On April 20, 2009, the United States Securities and Exchange Commission filed its complaint ("SEC Action") against FPCMC and William L. Gunlicks ("Gunlicks"), alleging that

BROAD and CASSEL

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

FPCMC and Gunlicks had engaged, and were engaging, in a scheme to defraud investors and violate the federal securities laws. [D.E. 1]. In the Complaint, the SEC sought, among other relief, entry of a temporary restraining order and a preliminary injunction. After reviewing the SEC's submission, on April 20, 2009 the Court entered an Order Freezing Assets of Founding Partners and Gunlicks (the "Asset Freeze Order"). The Asset Freeze Order also applies to Founding Partners Stable-Value Fund, L.P., ("Stable-Value"), Founding Partners Stable-Value Fund II, L.P. ("Stable-Value II"), Founding Partners Global Fund, Ltd., ("Global Fund") and Founding Partners Hybrid-Value Fund, L.P. ("Hybrid-Value") (collectively, "Founding Partners Funds").

On April 20, 2009, the Court also entered an order (the "Initial Receivership Order") appointing a receiver (the "Initial Receiver") for Founding Partners and the Founding Partners Funds (collectively, the "Receivership Entities"). [D.E. 9]. The Initial Receiver was subsequently removed by Court Order on May 13, 2009. [D.E. 70]. Daniel S. Newman, Esq. (the "Receiver") was appointed Replacement Receiver by Court Order on May 20, 2009 (the "Receivership Order"), which Order superseded the Initial Receivership Order. [D.E. 73]. The Receivership Order provides that the Receiver shall, among other things:

- (a) Take immediate possession of all property, assets and estates of every kind of Founding Partners and each of the Founding Partners Relief Defendants, whatsoever and wheresoever located, including but not limited to all offices maintained by Founding Partners and the Founding Partners Relief Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of Founding Partners and the Founding Partners Relief Defendants wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order... ; and

- (b) Investigate the manner in which the affairs of Founding Partners and the Founding Partners Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of Founding Partners or the Founding Partners Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in Founding Partners and the Founding Partners Relief Defendants ...

II. BACKGROUND AND RECENT EVENTS

A. FP Designee Board Activity and Distribution of Membership Interests

As described in the Receiver's last report, on July 3, 2014, after a hearing on the issues, the Court approved the Receiver's Recommendations and the fairness of distributing FP Designee interests pursuant to Section (3)(a)(10) of the Securities Act (the "Order"). [D.E. 430]. In the Order, the Court approved and adopted the positions taken by the Receiver: (i) in his Recommendations [D.E. 396]; (ii) in his Response to Objections [D.E. 417]; (iii) in his Pre-Hearing Brief [D.E. 423]; and (iv) at the June 10, 2014 hearing on the fairness concerning the distribution of interests in FP Designee. The Court also directed the Receiver to begin the process of distributing membership interests in the FP Designee to approved claimants (the "Incoming Members"). [D.E. 430].

i. Role on the FP Designee Board

From inception through approximately January 27, 2015, the Receiver: (i) was Chairman of the FP Designee Board (the "Board"); and (ii) served as a board member for subsidiaries Promise Healthcare, Inc. ("Promise") and Success Healthcare, LLC ("Success"). During this time, the Board was actively involved in decisions and changes facing FP Designee, Promise, and Success, including, among other things, business and finance issues and implementation of

corporate governance. The Receiver also served as Chairman for the nominating, governance and compensation Board committees, which further addressed specific issues at the entities.

ii. *Amendment of FP Designee Limited Liability Agreement*

On July 28, 2014, the Receiver, in consultation with Board and its counsel, filed a Motion for Approval to Execute Amendment to the FP Designee Limited Liability Agreement (the "FPD Amendment Motion"). [D.E. 435]. The Receiver filed the FPD Amendment Motion to effectuate changes to the FP Designee Limited Liability Agreement. The proposed changes were recommended by the Board in consultation with the Board's advisors. The Board believed, and the Receiver agreed, that the proposed amendments were appropriate and necessary to: (a) ensure that all membership interest transfers were consistent with the regulatory requirements; (b) protect the continuity of the Board; (c) protect minority interest holder rights by placing restrictions on business transactions between FP Designee and large interest holders, including any transactions that might be inconsistent with the purpose of the establishment of FP Designee; and (d) ensure the balance of power and prevent undue influence upon the Board. *Id.* On August 22, 2014, the Court entered an Order declining jurisdiction with regard to the issue, at which time the Amended LLC Agreement was executed and put into place. [D.E. 441].

iii. *Distribution of Membership Interests*

Shortly after entry of the Order, FP Designee retained a Manager of Investor Relations ("MIR") to assist with the distribution of membership interests and to act as a liaison between the company and Incoming Members. Outside counsel, working closely with management of Promise and Success, took steps necessary to ensure that all regulatory requirements related to the distribution were satisfied. The MIR assisted in these efforts by obtaining necessary information. The MIR set up a system to communicate with Incoming Members directly. The

MIR forwarded Incoming Members necessary paperwork and materials, including the Form of Joinder Agreement to FP Designee LLC, the Second Amended LLC Agreement, the By-Laws, and Private Transfer Request forms, all of which were required to distribute the membership interests out.

Because FP Designee is a holding company for subsidiaries that own and/or operate certain health care facilities, healthcare regulators required approval of Incoming Members who were about to become owners after the distribution process. Thus, FP Designee needed to obtain information from Incoming Members, to be submitted to the appropriate regulatory authorities for approval. General Counsel for Promise and Success assisted by the MIR designed the process and required paperwork to obtain the information necessary for FP Designee to obtain regulatory approval and efficiently recognize the distribution of membership interests on FP Designee's books and records.

iv. *Successful Distribution and the Receiver's Resignation from the Board*

By January 2015, over 90% of FP Designee membership interests had been successfully distributed to Incoming Members, in accordance with the Order. Accordingly, on January 27, 2015, both the Receiver and the Joint Liquidator Ian Stokoe resigned their positions as members of the Board. In accordance with its governing documents, the Board elected two new members to the Board: Mr. Don Pollard, Managing Partners of Credit Value Partners, and Evatt Tamine, CEO and Trustee of Edge Capital. Mr. Pollard and Mr. Tamine joined the remaining Board members, Mr. James Brown (new Board Chairman), Mr. Keith Kennedy, and Mr. Ed Woodbury. On or about February 25, 2015, the MIR sent notice of the Board changes to all members.¹

¹ Board Resolutions approving same were executed on or about January 27, 2015.

As of this Seventh Report, the Receiver has no connection to the operations of FP Designee and/or any of its subsidiaries.²

III. LITIGATION

A. The Gunlicks Family Litigation³ in this Court

On July 22, 2014, the Receiver and the Gunlicks Defendants jointly submitted a Motion for Approval of the Settlement Agreement. [GFL, D.E. 65].⁴ Based on the sworn financial statements produced by the Defendants, affidavits executed by the Defendants, and additional documentation produced by the Defendants' spouses,⁵ the Receiver believed that it was in the best interest of the Receivership Estate to settle his claims for the sum of \$30,000 and other valuable consideration. The Receiver retained full recourse against the Defendants for the shorter of five (5) or the length of the Receivership if the Defendants' sworn financial statements were proven to be materially false.

On September 3, 2014, the Court entered an Order approving the Receiver's Joint Motion for Approval of Settlement, at which time the Settlement Agreement went into effect.⁶ [GFL, D.E. 68]. The Court agreed to retain jurisdiction over the matter pending compliance with the terms of settlement.

² The Receiver also resigned from the Boards of FP Designee subsidiaries Promise and Success on March 1, 2015.

³ The "Gunlicks Family Litigation" is Case No. 11-479, United States District Court for the Middle District of Florida – the Receiver's action against Nissa Cox, Annalee Good, William V. Gunlicks, the William L. Gunlicks Irrevocable Trust F/B/O Nissa Cox, the William L. Gunlicks Irrevocable Trust f/b/o Annalee Good, and the William L. Gunlicks Irrevocable Trust f/b/o William V. Gunlicks.

⁴ Docket entries in the Gunlicks Family Litigation will hereafter be cited as [GFL, D.E.].

⁵ All of which were material inducements to the Receiver's entry into the Settlement Agreement.

⁶ There were no objections from investors to the settlement.

B. The Receiver's Ernst & Young/Mayer Brown Litigation

As previously reported, on December 30, 2010, the Receiver, represented by Court-approved special counsel, sued the Receivership Entities' former auditor Ernst & Young ("E&Y"), along with the Receivership Entities' former counsel Mayer Brown LLP ("Mayer Brown"). The lawsuit was filed in for the Seventeenth Judicial Circuit in and for Broward County, Florida.

On January 6, 2015, the Receiver filed a Motion to Amend Complaint. The Amended Complaint added allegations and seeks, among other things, punitive damages.⁷ On March 11, 2015, Mayer Brown filed a Motion to transfer the venue of the case to the Complex Business Division of the Seventeenth Judicial Circuit in and for Broward County Florida. On May 6, 2015, the Court granted Mayer Brown's Motion to Transfer, and as such this action is now before the Honorable Judge John Murphy in the Complex Business Division of the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida. Mayer Brown and the Receiver are engaged in significant discovery at this juncture.⁸

With regard to E&Y, on March 10, 2015, E&Y filed a motion to stay the action pending a ruling on its Motion to Compel Arbitration. That Motion has not yet been heard. The parties are seeking to resolve the issue of arbitration. Absent a resolution, the matter will be scheduled for hearing before the Court.

⁷ The Amended Complaint added particularity with respect to the claims of individual investors who assigned their claims to the Receiver, as well as specific allegations concerning Mayer Brown's own representations to the SEC in the course of an SEC investigation into the conduct of Gunlicks and FPCM.

⁸ On February 12, 2015, Counsel for the Receiver served requests for production of documents upon Mayer Brown and E&Y. On March 2, 2015, Mayer Brown served a First Request for Production of Documents on the Receiver's Counsel.

IV. OTHER MATTERS

In addition to the events detailed above, the Receiver was also involved in the following matters:

A. Realty Capital Partners, LLC

As indicated in the Receiver's prior reports, Hybrid Value owns an investment in RCP Capital Partners LLP ("RCP"). [D.E. 294]. RCP managed thirteen investment properties, consisting of residential and commercial developments located in 6 different states. Several attempts have been made by Hybrid Value to sell its current holdings back to RCP and other limited partners of the project. Those attempts to date have been unsuccessful.

i. RCP I-35/ Loop 288, LTD

One of RCP's investment properties is managed by RCP I-35/ Loop 288, LTD ("Loop 288").

In or about January 015, RCP reported that Loop 288 received its first oil and gas royalty payment of approximately \$246,000. As RCP indicated within its most recent capital call letter, Vantage Energy, the oil and gas company that leases the partnership's mineral rights, drilled seven (7) wells, which are now producing.

ii. RCP Hometown Apartments, LTD

Another of RCP's investment properties is managed by RCP Hometown Apartments, LTD ("Hometown"). In December 2014, construction of one of the apartment complexes for Hometown was completed.

iii. RCP San Diego Medical, Ltd

Another RCP investment property is managed by RCP San Diego Medical, Ltd ("SD Medical"). In April 2008, the original plan for the SD Medical's construction of a medical office building received final Site Development Plan (SDP), but the approval expired when building

did not begin within the year. In or about August 2014, RCP met with the City of San Marcos and confirmed that medical office development continues to be a permitted use for the property and that the approval can be re-issued upon the submittal of a new application. In or about August 2014, RCP also met with two leading brokerage firms in the San Diego market – CBRE and Lee & Associates – to discuss sales options for the land. According to RCP, these brokerage groups confirmed the site is in a desirable location and medical development would be one of the highest and best uses.

B. Franklin Street Properties - 50 South Tenth Street

As indicated in the Receiver's prior reports, Hybrid Value invested money in numerous holdings, including Franklin Street Properties ("FSP"). [D.E. 294]. FSP is an investment firm that manages real estate assets. FSP managed three commercial office buildings: (i) "Galleria North" in Dallas, Texas; (ii) "Phoenix Tower" in Houston, Texas; and (iii) "50 South Tenth Street" in Minneapolis, Minnesota. Each of the three properties was classified as a private real estate investment trust.

In September 2014, the 50 South Tenth Street property was sold to a third party for \$164.5 million. That same month, FSP filed a plan of dissolution and an initial liquidating distribution was made in the amount of \$92,000 per preferred share. According to the Receivership books and records, Hybrid Value owned 1 preferred share in 50 South Tenth Street. As such, on September 9, 2014, the Receivership received a check in the amount of \$92,000 for the one (1) share of 50 South Tenth Street.

C. Advanced Diamond Technologies

As indicated in the Receiver's prior reports, Hybrid Value invested money in numerous holdings, including Advanced Diamond Technologies ("ADT"). [D.E. 294]. ADT was formed

in December 2003 to commercialize Ultrananocrystalline Diamond (“UNCD”) technology from Argonne National Laboratory. ADT is the licensee to the Argonne portfolio of application and process patents for using and synthesizing UNCD films.

Hybrid Value holds approximately 590,551 Series C preferred shares, which amounted to approximately 6.12% ownership of ADT in 2011. This resulted from an initial investment of approximately \$750,000.

In the August 2014 shareholder letter, the company reported several profitable months. Specifically, four (4) of the immediate past six (6) months. As reported by ADT, there remained a significant backlog of shareholders looking to sell with no present buyers. Current management holds no stock and is not a buyer as of the last conversation.

F. The Receiver's Applications for Fees

The Receiver filed a Seventh Application for Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals, contemporaneous with this Status Report.

CONCLUSION

The Receiver will be filing additional reports with the Court to advise the Court of the status of the Receivership.

Respectfully submitted,

BROAD AND CASSEL

Attorneys for Receiver

One Biscayne Tower, 21st Floor

2 South Biscayne Boulevard

Miami, FL 33131

Tel: (813) 225-3011

Fax: (813) 204-2137

By: /s/ Jonathan Etra

Jonathan Etra, Esq.

Florida Bar No. 0686905

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive Notices of Electronic Filing.

Dated: June 8, 2015.

By: /s/ Jonathan Etra
Jonathan Etra, Esq.

SERVICE LIST

<p>Robert K. Levenson, Esq. Miami Regional Trial Counsel Securities and Exchange Commission 801 Brickell Avenue, Suite 1800 Miami, FL 33131 305-982-6341 (direct dial) 305-536-4154 (facsimile) levensonr@sec.gov <i>Counsel for U.S. Securities and Exchange Commission</i> <u>Service via CM/ECF</u></p>	<p>Gabrielle D'Alemberte, Esq. The D'Alemberte Trial Firm, P.A. 1749 N.E. Miami Ct. Suite 301 Miami, FL 33132 gabrielle@dalemberte.com <i>Counsel for William & Pamela Gunlicks</i> <u>Service via CM/ECF</u></p>
--	--