

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 PARTNERS 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 NINTH 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 Ninth Status Report (the "Ninth Report"). This Ninth Report addresses information and issues that occurred from approximately January 2017 to present.

BROAD and CASSEL

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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 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“Receiver”) was appointed Replacement Receiver by Court Order on May 20, 2009 (the “Receivership Order”), which Order superseded the Initial Receivership Order.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. LITIGATION UPDATE

A. The Broward Litigation

i. Procedural Update and Deadlines

As previously reported, 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 the Seventeenth Judicial Circuit in and for Broward County, Florida (the "Broward Litigation").

On December 9, 2016, the trial court approved a confidentiality agreement governing discovery in the Broward Litigation. Subsequently, on April 21, 2017, this Court extended the Order Governing the Use of Confidential Discovery Information entered in this action at D.E. 191 to permit the use of covered confidential information in the Broward Litigation. [D.E. 475]. Similarly, on April 19, 2017, this Court in *Newman v. Sun Capital, Inc., et al.*, Case No. 09-445 (the "Sun Litigation") extended the Order Governing the Use of Confidential Discovery Information entered in the Sun Litigation at D.E. 178 to permit the use of covered confidential information in the Broward Litigation. [D.E. 347].

On April 20, 2017, a Status Conference was held during which the trial court approved an Order regarding the case schedule and certain discovery (the “Scheduling Order”). The Scheduling Order provides, among other things, that:

- Calendar call to obtain a specific trial date shall occur on Thursday, November 29, 2018.
- Trial will occur between January 2 and March 29, 2019, subject to the trial court’s availability and scheduling.
- Fact discovery, including written fact discovery, oral fact discovery, and non-party discovery, shall end on May 11, 2018.
- Expert disclosures addressing subject matters on which the disclosing party bears the burden of proof shall be served on or before May 24, 2018. Responsive expert disclosures by the other party shall be served on or before June 28, 2018. The period for expert discovery including all expert discovery, ends on August 3, 2018.
- The final date to file Motions for Summary Judgment or Partial Summary Judgment shall be August 30, 2018. Responses in opposition shall be filed on or before October 4, 2018 and Reply Briefs in Support of such motions shall be filed on or before October 25, 2018. The parties have agreed to consult with the trial court to schedule the date for oral argument on such motions and will request a date in November 2018.

In addition to the April 20, 2017 status conference setting the aforementioned deadlines, the parties attended hearings on June 7, August 3, August 24, October 2, and October 30, 2017. At those hearings, the Receiver’s counsel addressed various other procedural and discovery issues, including but not limited to: (i) Mayer Brown’s request to take two depositions of each Assignor (one for discovery and one for trial), which the Receiver opposed, and the trial court,

agreeing with the Receiver, denied; (ii) Mayer Brown's demand to depose the Fla. R. Civ. P. 1.310(b)(6) corporate representative for Hybrid Value, as appointed by the Receiver, which the trial court granted; (iii) Mayer Brown's motion to compel the deposition of the Receiver's forensic accountants, which the trial court granted in part by permitting deposition questions as to the documents and declarations the forensic accountants produced, but prohibiting questions as to the forensic accountants' work product and mental impressions; and (iv) Mayer Brown's motion to compel testimony from other experts involved in the Receiver's litigation with Sun Capital, Inc., which the trial court granted.

The next status conference in this action is scheduled for December 4, 2017. The trial court ordered E&Y to appear at that status conference given the appellate ruling discussed below.

ii. Discovery

Beginning in the early summer of 2017, the parties began engaging in active discovery. The Receiver has responded to several sets of written discovery propounded by Mayer Brown and has produced approximately four million pages of documents. Mayer Brown has responded to the Receiver's written discovery and has produced hundreds of thousands of pages in response. Discovery is also being sought from non-party witnesses. The parties estimate that between 80 and 100 depositions will take place.

iii. E&Y Appeal Update

On July 5, 2017, the Florida Fourth District Court of Appeals ("Fourth DCA") affirmed the trial court's Order compelling arbitration for all claims against E&Y. On July 27, 2017, the Receiver filed a Motion for Clarification and Rehearing with the Fourth DCA. By Order dated October 11, 2017, the Fourth DCA reversed in part and affirmed in part the Order compelling

arbitration for all claims against E&Y, as follows. The Fourth DCA affirmed the trial court ruling compelling arbitration of all of the claims of Founding Partners, and the claims of the Assignors for breach of fiduciary duty and aiding and abetting breach of fiduciary duty. However, the Fourth DCA reversed the trial court's Order compelling arbitration of the Assignors' negligent misrepresentation, fraud, and aiding and abetting breach of statutory duty counts against E&Y. Upon issuance of a Mandate, those claims will be litigated in the Broward Litigation. E&Y has indicated it intends to seek re-hearing under appeal of the Fourth DCA's recent order. On October 24, 2017, the Fourth DCA granted E&Y an extension of time through November 6, 2017 to seek rehearing under Fla. R. App. P. 9.330 and 9.331.

B. The Louisiana Action

On January 13, 2017, Civil District Court for the Parish of Orleans, State of Louisiana, in Case No. 09-12364 (the "Louisiana Action"), entered an order dismissing the Archdiocese of New Orleans's (the "Archdiocese") claims against Founding Partner Capital Management Co. with prejudice. As of that date, the Receivership has had no further involvement in the Louisiana Action.

IV. LANCELOT RECEIVERSHIP

On May 31, 2017, Stable Value received a \$105,569.60 distribution in connection with *S.E.C. v. Thomas Petters, et al.*, United States District Court for the District of Minnesota, Case No. 09-01750 (the "Petters Litigation"). Stable Value submitted a claim in the Petters Litigation, as previously reported. This was the first distribution the Receivership received in the Petters Litigation from the SEC Receiver. Based on information to date, additional distributions may be forthcoming, but the Receiver cannot estimate with any certainty the amounts of any such future distributions.

V. HYBRID HOLDINGS UPDATE

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 April 2017, RCP reported that Loop 288 completed a capital call to fund the partnership's carrying costs through the fall of 2019. RCP further reported that Loop 288 signed a loan modification agreement with its lender, which waives the requirement to make annual principal reduction payments. Additionally, RCP also reports that several buyers have expressed interest in purchasing a portion of the land for future roadway expansion. To date, preliminary engineering studies have been conducted.

ii. RCP Hometown Apartments, LTD

Another of RCP's investment properties is managed by RCP Hometown Apartments, LTD ("Hometown"). With the sale of the remaining tract of land in August 2016, the partnership no longer had assets and was wound-down in the tax year 2016, according to RCP.

iii. RCP San Diego Medical, Ltd

Another RCP investment property is managed by RCP San Diego Medical, Ltd ("SD Medical") in San Diego County, California. The Receiver received two updates from SD Medical since his last Status Report to the Court. In August 2017, RCP reported that a contract to sell was entered into with a developer of a senior housing project for \$2,450,000, which would

require more than a year to close. In October 2017, RCP reported that the buyer was moving forward with the sale and that the first \$15,000 non-refundable monthly payment toward the purchase price was received. If the buyer continues with the sale, it is required to release \$15,000 each month until the scheduled closing date in late July 2018, according to RCP.

iv. RCP Lakeside, Ltd

Another RCP investment property is RCP Lakeside, Ltd. ("Lakeside") in Flower Mound, Texas. RCP reported that the property immediately to the north and to the east are under construction, and there has been strong interest in this site. Because a zoning restriction requires that a full-service hotel be constructed first, a new general partner has been appointed to allow it to take the lead in the efforts to rezone the property for a wider variety of uses. RCP reports that with the combination of the construction activity in the area and the new general partner, the outlook has improved for a timely disposition of this investment.

iv. RCP Argyle 114, Ltd.

The last RCP investment property is RCP Argyle 114, Ltd. ("Argyle") located in Argyle, Texas. The last update of January 2017 reported residential development activity near this property. The continued delivery of completed lots and the constructions of homes should have a positive impact for this property, according to RCP.

B. Franklin Street Properties - 50 South Tenth Street

As indicated in the Receiver's prior reports, Hybrid Value invested funds in 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.

FSP made its final liquidating distribution to the Receiver for “Galleria North” in June 2017, totaling \$3,125.00.

FSP made its final liquidating distribution to the Receiver for “50 South Tenth Street” in September 2017, totaling \$645.00.

C. Advanced Diamond Technologies

As indicated in the Receiver's prior reports, Hybrid Value invested money in Advanced Diamond Technologies (“ADT”). [D.E. 294]. The Receiver telephonically attended the annual shareholders meeting held on September 19, 2017. There is nothing else to report.

D. H.I.G. Realty Fund

Nothing to report.

E. National Advisors Holdings, Inc.

As of April 2016, the Receivership owned 7.26% of the outstanding shares of National Advisors Holdings, Inc. (“NAH”), making it the largest single shareholder in the partnership. At a presentation held on October 2, 2017, NAH advised shareholders that new firms and advisors were brought in to put together a strategic plan to integrate companies and increase assets. NAH reports that it believes this will increase trust referrals and bring in additional revenue.

V. FEE APPLICATION

The Receiver will be filing an Eleventh Application for Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals.

CONCLUSION

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

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2017, 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: November 3, 2017.

Respectfully submitted,

BROAD AND CASSEL

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By: /s/ Jonathan Etra
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SERVICE LIST

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