

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 EIGHTH 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 Eighth Status Report (the "Eighth Report"). This Eighth Report addresses information and issues that occurred from July 2015 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

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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"Receiver") was appointed Replacement Receiver by Court Order on May 20, 2009 (the "Receivership Order"), which Order superseded the Initial Receivership Order.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 previous reports, 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].

After the FP Designee transaction was closed, the process of distributing FP Designee interests out to claimants was also challenging and time-consuming. By January 2015, over 90% of FP Designee membership interests had been successfully distributed to Incoming Members, in accordance with the Order. Much of the Receiver's work since the distribution of FP Designee interests has been follow-up with the company. Because of their knowledge of the transaction, and their access to transaction documents, the Receiver and his professionals, until recently,

remained involved in issues related to the FP Designee. In particular, the Receiver: (i) handled follow-up questions from FP Designee related to distribution and tax issues; (ii) acted as a liaison between the FP Designee and other entities and individuals involved in the distribution process; (iii) satisfied FP Designee's requests for documents and information related to the transaction; and (iv) followed up with FP Designee on the distribution process to ensure there were no issues.

B. In re: Lancelot Investors Fund II, L.P. – Interim Distribution

The Receivership previously submitted a \$5,000,000 creditor claim in *In re: Lancelot Investors Fund II, L.P.*, Case No. 08-28226 ("Lancelot") which is a pending chapter 7 bankruptcy in the Bankruptcy Court for the Northern District of Illinois. On November 3, 2016, counsel for the bankruptcy trustee in that matter informed the Receiver that the Court had authorized interim distributions to approved claimants. Enclosed with the letter was a check for \$182,142.26, which represents the first interim distribution on the Receivership's claim. The trustee's communication further indicated that there would be additional distributions after the settlement of pending litigation, the liquidation of the estate's last real estate interest, and after receipt of distributions from the liquidation trust.

III. LITIGATION

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

i. The 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 July 24, 2015, the Receiver filed a Revised Motion to Amend Complaint, attaching a proposed Third Amended Complaint. The Revised Motion to Amend Complaint amended and superseded the then-pending motion to amend, which was previously reported as having been filed on January 6, 2015.

On July 28, 2015, following a status conference with the trial court, the parties entered into an Agreed Order: (i) granting the amendment sought by the Receiver; (ii) setting a briefing schedule for E&Y's renewed motion to compel arbitration in response to the Third Amended Complaint; (iii) setting a briefing schedule for Mayer Brown's renewed motion to dismiss the Third Amended Complaint; and (iv) ordering a second status conference after the briefing of the above-referenced renewed motions.

Thereafter, the Receiver's Third Amended Complaint (the "TAC") was filed on August 3, 2015. Mayer Brown's Motion to Dismiss the TAC (the "MTD") was filed September 2, 2015. E&Y's Revised Motion to Compel Arbitration and Stay or Abate Claims Against It (the "Motion for Arbitration") was filed September 8, 2015. The Receiver's response papers in opposition to E&Y's Motion for Arbitration and Mayer Brown's MTD were all filed on October 13, 2015. E&Y and Mayer Brown filed reply briefs in support of their motions on November 23, 2015.

On April 26, 2016, the trial court heard argument on Mayer Brown's MTD. The next day, April 27, 2016, the trial court heard argument on E&Y's Motion for Arbitration. The following week, on May 2, 2016, the Receiver submitted a proposed order denying Mayer Brown's MTD. Mayer Brown took issue with the proposed order and filed a motion to strike the proposed order on May 4, 2016, to which the Receiver promptly responded.

On May 20, 2016, the trial court entered its order denying Mayer Brown's MTD and ordering Mayer Brown to file an answer and affirmative defenses within twenty (20) days. The

same day, May 20, 2016, the trial court entered an order granting E&Y's Motion for Arbitration. With respect to the order granting E&Y's demand for arbitration, the Receiver filed a Motion for Clarification and/or Reconsideration on June 15, 2016. Two days later, on June 17, 2016, the Receiver appealed the trial court's order granting E&Y's request for arbitration.

On June 23, 2016, E&Y filed a motion seeking the abandonment of the Receiver's request for reconsideration, claiming that the pending appeal abandoned the motion. The Receiver promptly opposed that motion.

On June 30, 2016, Mayer Brown filed its Answer and Affirmative Defenses to the TAC.

Pursuant to appellate court order extending the deadline, on July 15, 2016, the Receiver filed his Initial Brief in the Fourth District Court of Appeals, appealing the trial court's order granting E&Y's request for arbitration. On August 1, 2016, E&Y moved to dismiss the appeal. The Receiver promptly opposed the motion to dismiss on August 16, 2016. E&Y's motion to dismiss the appeal was denied by the Appellate Court on September 28, 2016, and E&Y's response to the Initial Brief was filed on December 13, 2016.

Most recently, a status conference in this matter was held on December 9, 2016, during which the court approved a confidentiality agreement governing discovery in this action.¹ The court ordered the parties to set a date in April 2017 for another status conference to address additional case management issues.

ii. Local Counsel

On April 25, 2016, Broad and Cassel was replaced by Grossman Roth Yaffa Cohen, P.A. as local counsel. Broad and Cassel had been serving as temporary local counsel for the Receiver

¹ The filing of this Report was delayed until after the completion of the status conference, so that the Receiver could provide the most recent information available.

in the Broward Litigation, due to the withdrawal of Colson Hicks.²

B. The Louisiana Action

On April 3, 2015, the Archdiocese of New Orleans (the "Archdiocese") filed a Motion for Relief from Order Requiring Stay of Louisiana State Court Proceedings (the "Motion"). [D.E. 451]. The Archdiocese sought relief from the stay in order to re-institute claims against the Sun Capital Defendants, William Gunlicks, and Equitas Capital Advisers, LLC in Louisiana state court (the "Louisiana Action"). The Archdiocese did not seek relief to re-institute its claims against FPCMC in the same lawsuit. [D.E. 451 at ¶¶ 20-21].

On June 8, 2015, the Court granted in part and denied in part the Archdiocese's Motion and entered an Order lifting the stay of the proceedings in Louisiana. [D.E. 461]. In the Order lifting the stay, the Court further held that "[t]o the extent the receivership proceedings have rendered the claims against FPCMC in the Louisiana Action subject to dismissal, the parties to the Louisiana Action are free to move for appropriate relief in Louisiana state court." [D.E. 462 at 3-4].

While the Archdiocese may be able proceed with its claims against the non-Receivership entities outside of the Receivership, the Receiver and the Archdiocese agree that the Archdiocese cannot bring claims against any of the Receivership Entities, including FPCMC. As such, the Receiver and the Archdiocese continue to negotiate the language and manner of the FPCMC's dismissal from the Louisiana Action.

² The Colson Hicks attorney who served as local counsel changed firms, and at that time, Colson Hicks no longer wished to remain local counsel.

IV. 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 or about January 2015, RCP reported that Loop 288 received its first oil and gas royalty payment of approximately \$246,000. RCP indicated in an update dated July 2016 that due to the royalty revenue decrease, its partnership would commence a capital call to its current investors. On October 3, 2016, the Receiver was contacted regarding the capital call. Hybrid Value did not participate in the capital call, which was for approximately \$2,800. As a result, Hybrid Value's holdings in this project were diluted by approximately 1.6%.

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 has assets and will be wound-down in the tax year 2016 with a final K-1 coming in early 2017. Combined with previous distributions, the latest equates to a return of approximately 100% of the original equity invested.

iii. RCP San Diego Medical, Ltd

Another RCP investment property is managed by RCP San Diego Medical, Ltd ("SD Medical"). The Receiver's last report included an update on the options for the sale of land, which included RCP's retainer of a broker for the sale. There is no further update.

iv. RCP Lakeside, Ltd

Another RCP investment property managed by RCP Lakeside, Ltd in Flower Mound, Texas. RCP reported that the overall market for the project is positive and that the project is doing well. New projects adjacent to the site are slated for construction. That said, the project has been marketed by HFF, a national brokerage, since August 2015 with no buyers coming forward.

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.

In December 2015, FSP made its final liquidating distribution. The project has been completed.

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.

The latest shareholder meeting for the company was held on March 2016. ADT reported that revenues, gross profit, and EBITDA were all trending positive. ADT reported that a bank line of credit is in place and cash is stable at roughly \$800,000.

While there is no market amongst the shareholders or investors to acquire the Founding Partners' position, according to ADT the prospects for the company remain very optimistic. Both management and current investors know Founding Partners is looking to exit its position.

D. H.I.G. Realty Fund

Based on the Statement of Partners' Capital as of June 30, 2016 (unaudited), Hybrid Value has received \$843,945 in distributions based on an original contribution, net of \$995,960. The Statement of Partners' Capital reflects a remaining capital commitment outstanding for Hybrid Value in the amount of \$4,040. To date, Hybrid Value has not been asked to make this

capital contribution. If Hybrid Value is ever asked to make this contribution, the Receiver will report it to the Court.

E. National Advisors Holdings, Inc.

As of April 2016, the Receivership owned 7.26% of the outstanding shares, making it the largest single shareholder in the partnership. National Advisors Holdings, through a proxy vote, requested authorization to issue additional share class and an additional 3.1 million shares of capital stock amongst other proxy-related requests. While counsel for National Advisors stated that the capital raise would not be dilutive, after the Receiver and his professionals finished their due diligence, they made the decision to vote against this item and all other proxy items because they did not believe they were in the best interests of the Receivership Estate. No further update has been provided by National Advisors Holdings.

V. FEE APPLICATION

The Receiver filed a Tenth Application for Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals, on November 17, 2016. [D.E. 471]. The Court granted the Tenth Application on December 8, 2016. [D.E. 472].

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 December 15, 2016, 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: December 15, 2016.

Respectfully submitted,

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SERVICE LIST

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