

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
PLAINTIFF,)	
)	
v.)	Civil Action No. 3:17CV-420- L
)	
)	
PATRICK O. HOWARD;)	
HOWARD CAPITAL HOLDINGS, LLC;)	
AND OPTIMAL ECONOMICS CAPITAL)	
PARTNERS, LLC,)	
)	
DEFENDANTS.)	

**RECEIVER’S QUARTERLY STATUS REPORT FOR THIRD AND FOURTH
QUARTER OF 2018**

Pursuant to the *Order Appointing Receiver* (Dkt. 10), W. Craig Stokley, in his capacity as Receiver for Defendants Patrick O. Howard, Howard Capital Holdings, LLC and Optimal Economics Capital Partners, LLC, submits his Status Report For the Third and Fourth Quarter of 2018. This Quarterly Status Report covers the period of time from July 1, 2018 through December 31, 2018.¹

Receiver’s Response to the Court’s November 16, 2018 Directive: In the Court’s most recent Order, dated November 16, 2018, the Court instructed the Receiver to include in this status report “a renewed assessment of whether the Receivership should be continued, as well as an

¹ Unless defined in the Status Report, defined terms have the meaning assigned in the *Order Appointing Receiver*. This Report is in addition to the Receiver’s previously submitted 30-day status report, covering the time period February 14, 2017 to March 16, 2017 (Dkt. 40), the Receiver’s Quarterly Status Report dated May 1, 2017 (Dkt. 60), the Receiver’s Second Quarterly Status Report, dated July 30, 2017 (Dkt. 96) the Receiver’s Third Quarterly Status Report, dated November 10, 2017 (Dkt. 98); the Receiver’s Fourth Quarterly Status Report, dated February 21, 2018 (Dkt. 105); the Receiver’s Quarterly Status Report for First Quarter of 2018, dated April 30, 2018 (Dkt. 111); and the Receiver’s Quarterly Status Report for Second Quarter of 2018, dated August 29, 2018 (Dkt. 120).

approximation as to the amounts he anticipates the investors receiving based on the current value of the Receivership estate.”

Whether the Receivership Should Be Continued:

Yes. During the third and fourth quarters of 2018, the Receiver has focused on investigating third party claims identified by Special Litigation Counsel Reid Collins & Tsai LLP (“RCT”). In connection with those efforts, RCT secured document productions from third parties who may have information relevant to potential claims by the Receiver. RCT has investigated this information as well as applicable law and identified claims against several third parties, and drafted a complaint. In December of 2018, the Receiver, through RCT, provided formal notice to certain parties of the Receiver’s intent to pursue those claims against them. The Receiver is currently engaged in discussions with those parties about the possibility of a pre-suit resolution which is anticipated to be complete in the first quarter of 2019. Should those efforts be successful, it is anticipated that the Receiver would have funds to distribute to the investors. The Receiver would anticipate seeking Court approval of a process to distribute funds to the investors and creditors on a pro-rata basis. The Receiver has logged all of the investor claims as well as all creditor claims so the process should be smooth. However, the Receiver anticipates the need to seek Court approval of a process which may include a notice and objection period, and final Court approval of a proposed distribution. In the event the Receiver’s efforts to reach out-of-court resolutions on its third-party claims are successful, the Receiver anticipates that this process would occur in the second quarter of 2019, and could possibly conclude this summer. However, such a conclusion would also require the SEC to finalize its motion for civil penalties (contemplated by the agreed judgment on liability that bifurcated the issue of civil penalties).

Should the Receiver’s efforts to reach a pre-suit resolution fail, the Receiver is prepared to

file suit on those claims which would require the need for the Receivership to remain open during the pendency of those claims.

What Anticipated Amounts Investors Will Receive:

The Receiver anticipates that the investors will receive their pro rata portion of common stock in Whrzt, Inc. and Unequal Technologies Company, as well as cash from any proceeds of third-party claims that may be asserted. Currently, the Receivership Estate holds 10,500,000 shares of common stock in Whrzt, Inc. At the time the Receivership Estate transacted to convert Whrzt, Inc.'s obligations into common stock, the Receivership held 60% of the total shares of outstanding Whrzt, Inc. stock. That amount may have subsequently been diluted; however, the Receivership Estate holds a substantial ownership stake in Whrzt, Inc., and has appointed a board member. This common stock is transferrable, and the Receiver anticipates the investors and creditors receiving their pro rata share of the common stock. The value of the Whrzt, Inc. stock is highly speculative, and at this time, the value is likely very low. As detailed below, there is evidence that may indicate that Whrzt, Inc. is a sham operation with no value whatsoever.

The Receivership Estate holds 666,667 shares of preferred common stock of Unequal Technologies Company. At the time these shares were issued, these shares represented .67% of the authorized shares of common stock. The value of these shares is also highly speculative, and likely very low.

As of the date of filing this report, the cash balance of the Receivership Estate is \$84,956.34. However, this amount does not reflect any billings from Receivership professionals from January 1, 2019 through present, it does not reflect certain sums due the accounting professionals that will be sought through a supplemental filing to cure the defect in the most recent fee application, and it does not reflect the 20% hold back from billings by Receivership

professionals that is currently outstanding. The 20% holdback is currently in excess of \$60,000. The Receiver does not anticipate that the Receivership Estate will have enough cash to pay for all the work necessary to complete the tasks needed to wind up this Receivership absent recovery from possible third-party claims. However, the Receiver recognizes that there are inherent risks associated with serving as Receiver – one being the possible lack of funds to pay all of the fees associated with carrying out the Receiver’s duties. As such, the Receiver intends to keep sufficient funds in the Receivership Estate to pay for remaining third-party professionals needs (accountants and website administrator), and counsel pursuing third-party claims is doing so on a contingency arrangement with the costs and expenses being advanced by the Special Litigation Counsel’s law firm.

I. CASE STATUS

A. SUMMARY OF ACTION BY RECEIVER

Since appointment on February 14, 2017, the Receiver has operated Howard Capital Holdings, LLC (“Howard Capital”) and Optimal Economics Capital Partners, LLC (“OE Capital”) (collectively, the “Receivership Entities”). As further described below, from July 1, 2018 through December 31, 2018, the Receiver has: (a) worked with its tax and accounting professionals to address tax issues related to the Receivership Entities including state franchise tax issues and responding to inquiries from investors related to the K-1s; (b) monitored the operations of WHRZT, Inc. after closing on a transaction with WHRZT, Inc. by which OE Capital obtained a substantial equity in WHRZT, Inc. and appointed a board member; (c) maintained an informational website regarding the receivership for investors, creditors, and interested third parties; (d) responded to investor inquiries and correspond with investors regarding information related to the receivership estate including taxes and other information contained on the receiver’s website; (e)

maintained books and records pursuant to the Court's orders and SEC guidelines; (f) investigated possible claims against third-parties and options related to same; and (g) prepared and planned for creditor and investor claims processes.

B. PROCEDURAL HISTORY SINCE LAST REPORT

On July 2, 2018, the Receiver filed a motion for authorization to pay certain professional service fees. Dkt. 119. The Court granted that motion in part and denied it in part on November 16, 2018. Dkt. 121. The Receiver made the payments authorized in that order, and intends to cure the defects contained in that motion in the coming days by submitting the correct back-up evidence to support the accounting professional fees.

C. OPERATIONS OF THE RECEIVER

As detailed in the Receiver's First Quarterly Report (Dkt. 40), the Receiver investigated the investments made by the Receivership Entities and determined that the Receivership Entities could not fund their current operations without infusion of additional investor capital. As a result, the Receiver, after careful examination of each of the businesses in which the Receivership Entities were engaged, discontinued all future funding and marketing activities of the Receivership Entities. During the second quarter of 2017, the Receiver focused on administrative matters related to the Receivership Estate, identifying any additional sources of recovery, minimizing expenses, and positioning the receivership estate to be in the best position to recover investor funds in the event any of the portfolio companies succeed in the future. During the third quarter, the Receiver's primary focus related to working with its tax and accounting professionals to address tax issues related to the Receivership Estate; finalizing and closing on a transaction with WHRZT, Inc. by which OE Capital obtained a substantial amount of equity in WHRZT, Inc.; managing issues related to the substantial inventory of approximately 38,000 units of TU Perform products that are

currently warehoused in Tampa, Florida on approximately 180 pallets and attempting to find a buyer for this product; responding to frivolous and unauthorized discovery from Patrick Howard; and investigating possible claims against third parties and options related to same. During the fourth quarter of 2017, the Receiver met with countless potential buyers of the TU Flow inventory and researched issues related to labeling and packaging that were making it difficult to recoup any value from the inventory; the Receiver identified a method and procedure to resolve the TU Flow inventory which the Receiver anticipates being fully resolved during the first quarter of 2018; responding to a search warrant obtained by the Department of Justice; and archiving certain files from the Receivership Estate. In addition, the Receiver has spent time and resources on his general day to day duties such as addressing tax issues; maintaining books and records pursuant to the Court's orders and SEC guidelines; responding to myriad inquiries from various third parties.

During the first quarter of 2018, the Receiver finalized the tax reporting for the Receivership Entities such that many of the investors would receive tax relief equal to their entire investment provided they meet certain requirements (namely, they used post-tax funds to invest), disposed of the TU Flow inventory pursuant to a final procedure approved by the Court, responded to the Court's inquiries and directives, began investigating and identifying the appropriate structure for a claims process, and investigated potential third party claims.

During the third and fourth quarters of 2018, the Receiver has focused on investigating third party claims identified by Special Litigation Counsel Reid Collins & Tsai LLP ("RCT"). In connection with those efforts, RCT secured document productions from third parties who may have information relevant to potential claims by the receiver. RCT has investigated this information as well as applicable law and identified claims against several third parties. In December of 2018, the Receiver, through RCT provided formal notice of the Receiver's intent to

pursue those claims. The Receiver is currently engaged in discussions with those parties about the possibility of a pre-suit resolution which is anticipated to be complete in the first quarter of 2019. Should those efforts fail, the Receiver is prepared to file suit on those claims.

1. Website.

The Receiver continues to communicate to investors, creditors and interested parties through his informational website that went live in April 2017, located at www.companyreceiver.com. The website contains a summary of the SEC's allegations, the case's procedural history, a summary of the initial actions taken by the Receiver, a link to the court filings, status updates, a contact form for communicating with the Receiver, and a section for making claims when and if a claims process becomes appropriate.

2. Notifications and communications with Investors.

During this quarter, the Receiver has responded to investor inquiries in person, over the phone, and by email on various subjects.

3. Tax Matters

During this quarter, the Receiver fielded calls and inquiries related to these Schedule K-1s.

D. PHYSICAL ASSETS

The known physical assets of the Receivership Estate at the beginning of this quarter were: (a) computer hardware from the Receivership Entities operations; and (b) several designer wrist watches.

The Receiver seized several designer wrist watches from Patrick Howard at the beginning of the receivership. During the fourth quarter of 2017, the Receiver met with Joe DeMesy with DeMesy Fine Watches and Jewelry to determine the best way to monetize this asset. The Receiver learned that several of the watches were fake and had no material value. Of the watches that were

not fake, they were valued in the aggregate at approximately \$1,500.

E. CASH AND CASH EQUIVALENTS

As of July 1, 2018, the Receivership Estate had cash on hand of \$126825.41. During the Report Period, the Receivership Estate received funds in the amount of \$45.83 and disbursed \$41,914.90, as evidenced by the accounting statement attached as **Exhibit A**. Aside from small payments for administrative expenses (e.g., subscription fees), the disbursements by the estate related to payments to Retained Professionals as expressly approved by Court Order [Doc. No. 121], and operating expenses.

To date, the Receivership Estate has accrued administrative expenses to the following vendors and Retained Professionals: Howard LLP related to tax and accounting; Net Vida related to the receivership website and investor communications, and the Receiver's fees and fees of the Receiver's counsel, Palter Sims Martinez PLLC (formerly Palter Stokley Sims PLLC).

F. CREDITOR'S CLAIMS

In most instances, the Receiverships Defendants were behind on their financial obligations. By way of example, as described above, OE Capital had never paid for storage of the TU™ FLO bottles, for which the warehouse claimed \$8,465.40 currently past due as of March 7, 2017 and for which the Receiver has been negotiating removal of the Tu Bottles to avoid those storage costs.

The Receiver and his team have identified numerous other potential claims against the Receivership Estate. The Receiver has received notice of several past due invoices for varying services including marketing events, legal services, and past-due commission payments, among other potential categories. At this point, the Receiver has not determined the validity of any particular claim. For example, the Receiver has questions about the validity and priority of certain debt. Similarly, the Receiver does not know whether equity investors who purchased prior to

February 14, 2017 should be considered creditors or merely equity holders. The Receiver anticipates making a recommendation to the Court regarding the priority of claims for approval.

The Receiver has conducted an initial investigation into the billing statements and books and records of the Receivership and cataloged the potential creditors of the Receivership Entities. No official claims have been submitted and a formal claims process is anticipated to be proposed by the Receiver for Court approval.

F. NOTICE REGARDING WHRZT, INC.

During the Reporting Period, the Receiver received an anonymous package containing evidence supporting the contention that the Chief Executive Officer of Whrzt, Inc. – James Nalley – and potentially others are operating Whrzt, Inc. as a sham along with Patrick Howard and others formerly associated with the Receivership Entities. The package is attached in its entirety here in **Exhibit B**. This allegation is not a surprise to the Receiver, and said information has been turned over to the Federal Bureau of Investigation, as well as the SEC. However, given this information, and the Receiver’s experience working with Whrzt, Inc., the Receiver is not optimistic that Whrzt, Inc. is anything more than another sham portfolio company used by Patrick Howard to defraud investors.

II. CONCLUSION

This Report for the Third and Fourth Quarters of 2018 is for the period of July 1, 2018 through December 31, 2018. The Receiver anticipates filing similar reports in accordance with the Court’s *Order Appointing Receiver*. The Receiver recommends that the receivership continue for the reasons set forth above.

Respectfully submitted,

/s/ Kimberly M. J. Sims

KIMBERLY M. J. SIMS

State Bar No. 24046167

ksims@palterlaw.com

PALTER SIMS MARTINEZ PLLC

8115 Preston Road, Suite 600

Dallas, Texas 75225-8009

Tel: 214-888-3106

Fax: 214-888-3109

W. CRAIG STOKLEY (RECEIVER)

State Bar No. 24046167

cstokley@stokleypllc.com

STOKLEY PLLC

8150 N. Central Expressway, Suite 550

Dallas, Texas 75206

Tel: 214-295-6414

Fax: 214-295-6412

ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

On January 18, 2019, I electronically filed this Status Report via the Court's CM/ECF filing system, which will send a notice of electronic filing to all CM/ECF participants. I further certify that I served a true and correct copy of the foregoing document and the notice of electronic filing via UPS and electronic mail on all non-CM/ECF parties and/or their counsel.

/s/ Kimberly M. J. Sims

KIMBERLY M. J. SIMS