

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICHAEL RANDO, VALERIE
RANDO, PROSPERITY TRAINING
TECHNOLOGY LLC, ELITE
CUSTOMER SERVICES, LLC,
DIGITAL BUSINESS SCALING
LLC, FIRST COAST
MATCHMAKERS INC.,
FIRST COAST MATCHMAKERS
LLC, FINANCIAL CONSULTING
MANAGEMENT GROUP LLC,
RESOURCE MANAGEMENT
INVESTMENTS, LLC,

Defendants.

Case No. 3:22-cv-00487-TJC-MCR

**RECEIVER'S UNOPPOSED MOTION TO MODIFY THE ASSET
FREEZE TO REIMBURSE RECEIVER FOR
RANDOS' PERSONAL EXPENSES**

Comes now, Receiver Maria M. Yip, through undersigned counsel, and files this Unopposed Motion to Modify the Asset Freeze to Reimburse the Receiver for her payment of personal expenses of Defendants Michael and Valerie Rando. In support of the motion, the Receiver states as follows:

1. On May 3, 2022, this Court entered a Temporary Restraining Order (“Order”) which appointed Maria M. Yip as the Temporary Receiver over the corporate defendants in this case (“Receivership Entities”). (Doc. 12)

2. The Order also froze the assets of the Receivership Entities as well as the assets of the individual defendants Michael and Valerie Rando.

3. Pursuant to Paragraph XIV.B. that Order, the Receiver was to “[t]ake exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or under the control of, any Receivership Entity, wherever situated.” The Receiver only has control over the assets of the Receivership Entities, not the personal assets of individual Defendants Michael and Valerie Rando (“the Randos”).

4. On May 25, 2022, a joint motion was filed with the Court to provide for living expenses for the Randos. (Doc. 33) The parties and the Receiver had agreed that the monies for the Randos’ personal living expenses were to come from a Fifth Third account ending in 1169 which was a personal account for Michael Rando. That motion was subsequently granted by the Court. (Doc. 35)

5. On June 14, 2022, the Randos filed a Motion to Modify the Asset Freeze for the payment of attorney’s fees (“Fees Motion”)(Doc. 51). The Fees Motion specifically requested that the fees be paid from the Randos’ Fifth

Third account ending in 1169. (Doc. 51 at p. 3) Neither the FTC nor the Receiver agreed to the Fees Motion.

6. This Court held a hearing on June 17, 2022, on the pending motions in the case. Among those motions considered was the Fees Motion. Additionally, at the hearing, the Randos made an *ore tenus* request for additional living expenses of \$50,000 (“Living Expense Request”).

7. On June 29, 2022, the Court entered an Order granting in part the Fees Motion in the amount of \$164,938.95 to the Randos’ law firm and granting the Living Expense Request in the amount of \$25,000 to the Randos. (Doc. 62) The Court stated that the “Receiver should remit these sums no later than July 8, 2022.” There was no reference as to which account these payments should come.

8. The Receiver assumed that these personal expenses, both legal fees and living expenses, would come from the same personal account as the previous living expenses had been paid (Fifth Third ending in 1169). During a conference call with the Randos’ counsel on July 1st, counsel for the Randos made clear that pursuant to the Court’s Order, the Receiver needed to make the payments.

9. Given the intervening federal holiday and the impending July 8th deadline to make payment, the Receiver made the two payments to meet the Court's deadline.

10. However, given the personal nature of these expenses, the Receiver does not believe that the Receivership Entities should be paying these expenses. Therefore, the Receiver respectfully requests that the Court modify the asset freeze and allow the withdrawal of \$189,938.95 from the Randos' personal Fifth Third account ending in 1169 to be deposited in the Receiver's Receivership bank account.

ARGUMENT

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *See S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *see also S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986); *Fed. Trade Comm'n v. MOBE Ltd.*, Case No. 6:18-CV-862-ORL-37DCI, 2021 WL 50335, at *1 (M.D. Fla. Jan. 6, 2021); *Fed. Trade Comm'n v. E.M. Sys. & Servs., LLC*, Case No. 8:15-cv-1417-T-23EAJ, 2016 WL 11110381, at *2 (M.D. Fla. Mar. 4, 2016). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *See Elliott*, 953 F.2d at 1566; *See also S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982);

MOBE Ltd., 2021 WL 50335, at *1; *E.M. Sys. & Servs., LLC*, 2016 WL 11110381, at *2.

A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See Official Comm. of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006); *see also Atl. Trust Co. v. Chapman*, 208 U.S. 360, 371 (1908) (“It is the court itself which has the care of the property in dispute. The receiver is but the creature of the court; he has no powers except such as are conferred upon him by the order of his appointment and the course and practice of the court.”).

Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F.2d 7, 10 (3d Cir. 1969); *see also Bendall v. Lancer Mgmt. Grp., LLC*, 523 Fed.Appx. 554, 557 (11th Cir. 2013) (“[A]ny action by a trial court in supervising an equity receivership is committed to his sound discretion

and will not be disturbed unless there is a clear showing of abuse.”) (internal citation and quotation omitted); *S.E.C. v. Pension Fund of Am. L.C.*, 377 Fed.Appx. 957, 961 (11th Cir. 2010) (same); *MOBE Ltd.*, 2021 WL 50335, at *1; *E.M. Sys. & Servs., LLC*, 2016 WL 11110381, at *2 (same). Such discretion is especially important considering that one of the ultimate purposes of a receiver’s appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982) (court overseeing equity receivership enjoys “wide discretionary power” related to its “concern for orderly administration”) (citations omitted).

Wherefore, the Receiver respectfully requests that pursuant to the Court’s TRO and the Court’s discretionary power to supervise an equity receivership, that the Court modify the asset freeze to allow the withdrawal of \$189,938.95 from the Randos’ Fifth Third account ending in 1169 to be deposited in the Receiver’s Receivership bank account.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the Parties and there was no objection to the relief sought herein.

Respectfully submitted,

/s/ Katherine C. Donlon

Katherine C. Donlon FBN 0066941

kdonlon@jclaw.com

JOHNSON, CASSIDY, NEWLON
& DeCORT P.A.

2802 N. Howard Avenue

Tampa, FL 33607

Tel.: (813) 291-3300

Fax: (813) 235-0462

Attorney for Receiver Maria Yip

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 20, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of electronic filing to all counsel of record.

/s/ Katherine C. Donlon

Attorney