

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

Case No. : 6:16-CV-02123-Orl-31DCI

v.

J. WILLIAM ENTERPRISES, LLC, a Florida
limited liability company, also d/b/a PRO
TIMESHARE RESALES;

PRO TIMESHARE RESALES OF FLAGLER
BEACH, LLC, Florida limited liability company;

JESS KINMONT, individually and as an officer
of J. WILLIAM ENTERPRISES, LLC and PRO
TIMESHARE RESALES, LLC;

and

JOHN P. WENZ, JR., individually and as an
officer of PRO TIMESHARE RESALES OF
FLAGLER BEACH, LLC,

Defendants.

**RECEIVER'S MOTION FOR ENTRY
OF ORDER DISCHARGING RECEIVER AND RELEASING
OR CANCELING BOND UPON TRANSFER OF REMAINING FUNDS TO PLAINTIFF**

Brian A. McDowell, the Court appointed Receiver ("Receiver") for J. William Enterprises, LLC, d/b/a Pro Timeshares Resales and Pro Timeshare Resales of Flagler Beach, LLC, by and through his undersigned counsel, requests that the Court enter an Order Discharging Receiver and Releasing or Canceling the Bond upon notice that Receiver has transferred all remaining receivership funds to Plaintiff, and as grounds therefore states:

1. On December 12, 2016, the Federal Trade Commission (“FTC”) filed its Complaint for Injunctive Relief and Other Equitable Relief (Doc. No. 2) against defendants J. William Enterprises, LLC (“JWE”), Pro Timeshare Resales of Flagler Beach, LLC (“Flagler”) (JWE and Flagler are collectively referred to as the “Receivership Defendants”), Jess Kinmont (“Kinmont”), and John P. Wenz, Jr. (“Wenz”) (Receivership Defendants, Kinmont, and Wenz are collectively referred to as “Defendants”). In its Complaint, the FTC alleges that the Defendants, through a common enterprise, engaged in a plan, program, or campaign to deceptively advertise, market, promote, offer for sale, or sell timeshare resale or rental services.

2. On December 13, 2016, the Court entered its *Ex Parte* Temporary Restraining Order (“TRO”) (Doc. No. 11) appointing Brian A. McDowell as temporary receiver over the Receivership Defendants.

3. The TRO required the Receiver to post a \$10,000.00 surety bond.

4. Receiver posted the bond on December 20, 2016 and filed a Notice of Filing Receiver’s Bond on January 17, 2017 (Doc. No. 66).

5. On December 27, 2016, the Court entered its Stipulated Preliminary Injunction Order with Asset Freeze, Appointment of a Permanent Receiver, and Other Equitable Relief (“Injunction”) (Doc. No. 55) appointing Brian A. McDowell as the Permanent Receiver over the Receivership Defendants.

6. The Injunction required Receiver to continue the \$10,000.00 surety bond.

7. On April 30, 2018, the Court entered its Stipulated Final Judgment and Order (“Final Judgment”) (Doc. No. 214), requiring the Receiver to immediately wind down the affairs and liquidate the assets of the Receivership Defendants, as well as certain assets of Wenz and Kinmont,

and transfer to Plaintiff any amounts over and above those necessary to manage the assets, employ agents, or pay his or his counsel's court-approved fees and expenses.

8. The Final Judgment also provided that upon approval of the Receiver's final report and request for payment, and final transfer of all remaining funds to Plaintiff, the receivership will be terminated.

9. The Receiver has wound down the affairs of the Receivership Defendants and liquidated the assets of the Defendants.

10. Contemporaneously with the filing of this Motion, the Receiver has filed his Final Post-Judgment Report and Accounting, in which he states as follows:

Two checks¹ in the combined amount of \$3,872.00 have been issued from the Receivership Accounts, but have not yet been cashed. The Receiver anticipates that he will receive a utility deposit refund² in the amount of \$166.17 on or around the week of December 17, 2018, and an interest credit of approximately \$1,700.00 on or around December 31, 2018.

11. Additionally, the Receiver is coordinating with the Plaintiff to transfer \$2,300,000.00 to Plaintiff, and has withheld a reasonable sum to satisfy payment of his and his counsel's fees and expenses ("Fees and Expenses"), as well as to satisfy other possible contingencies. Subsequent to the payment of Court-approved Fees and Expenses, clearance of the two checks referenced above (or replacement checks, as appropriate), and deposit of the expected sums, the Receiver will transfer to Plaintiff any amounts remaining in the Receivership Accounts.

12. The Receiver anticipates settling the Receivership accounts and transferring all

¹ Check No. 285, issued on November 27, 2018, was made payable to Hostek.com in the amount of \$72.00 for e-mail storage services. Check No. 287, issued on November 28, 2018, was made payable to Department of Legal Affairs, Escrow Account (Office of the Florida Attorney General) ("Office") in the amount of \$3,800.00, such amount representing proceeds to the Office from the sale of one piano and two statues at the Auction pursuant to an agreement between the Receiver and the Office.

² A refund in the amount of \$166.17 is in the process of being issued by the City of Port Orange, Florida, Utility Department.

remaining receivership funds to Plaintiff on or before January 25, 2019.

13. The Receiver requests the entry of an Order discharging Receiver and releasing or cancelling the Bond upon the Receiver filing a notice with this Court, in no event later than January 25, 2019,³ that all funds in the Receivership accounts have been transferred to Plaintiff.

MEMORANDUM OF LAW

This Court's power to appoint an equity receiver derives from its general equitable powers. A court of equity has inherent power to take possession and control of the property of a corporation by means of a receivership for the purpose of preserving it and administering it for payment to its creditors and those entitled to the property. See Burnite Coal Briquette Co. v. Riggs, 274 U.S. 208, 47 S. Ct. 575 (1927). A district court has broad powers and wide discretion to determine the appropriate relief in an equity relationship. See SEC v. Elliott, 953 F.2d 1560, 1566 (11th Cir. 1992); SEC v. Safety Finance Service, Inc., 674 F.2d 368, 372 (5th Cir. 1982); SEC v. Lincoln Thrift Ass'n, 577 F.2d 600, 609 (9th Cir. 1978). A district court's determination will not be disturbed absent a showing of an abuse of discretion. See Elliott, 953 F.2d at 1569-1570; see also, SEC v. Arkansas Loan & Thrift Corp., 427 F.2d 1171, 1172 (8th Cir. 1972).

Prayer for Relief and Signature Page to Follow

³ The Final Judgment states that “[u]pon approval of the Receiver’s final report and request for payment, *but no later than 270 days after entry of this Final Judgment and Order*, the receivership will be terminated” *See* Final Judgment at 19. The day that is 270 days after entry of the Final Judgment is January 25, 2019.

WHEREFORE, the Receiver requests that this Court enter an Order discharging Receiver and releasing or cancelling the Bond upon the Receiver filing a notice with this Court, not later than January 25, 2019, confirming that all funds in the Receivership accounts have been transferred to Plaintiff, and granting such additional relief as this Court deems necessary and appropriate.

Dated this 14th day of December, 2018.

Respectfully submitted,

/s/ Robert W. Davis, Jr.
Suzanne E. Gilbert, Esq.
Florida Bar No. 49048
suzanne.gilbert@hklaw.com
Edward M. Fitzgerald, Esq.
Florida Bar No. 010391
edward.fitzgerald@hklaw.com
Robert W. Davis, Jr., Esq.
Florida Bar No. 84953
robert.davis@hklaw.com
Holland & Knight LLP
200 S. Orange Avenue, Ste 2600
Orlando, Florida 32801
Tel.: (407) 425-8500
Fax: (407) 244-5288
Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of December, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF System, which will send electronic filing to all counsel of record.

/s/ Robert W. Davis, Jr.
Edward M. Fitzgerald, Esq.
Florida Bar No. 010391
edward.fitzgerald@hklaw.com
Robert W. Davis, Jr., Esq.
Florida Bar No. 84953
robert.davis@hklaw.com