

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.

SECOND INTERIM REPORT OF RECEIVER BRIAN A. MCDOWELL

(covering the period from December 20, 2016 through January 27, 2017)

Brian A. McDowell, as Permanent Receiver (“Receiver”) of J. William Enterprises, LLC and Pro Timeshare Resales of Flagler Beach, LLC, and pursuant to this Court’s Order dated January 4, 2017 (Doc. No. 61), by and through his undersigned counsel, files this Second Interim Report of Receiver (“Second Report”).

I. PROCEDURAL BACKGROUND.

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. Williams Enterprises, LLC, d/b/a Pro Timeshares Resales (“JWE”), Pro Timeshare Resales of Flagler Beach, LLC (“Pro Timeshare Flagler”) (JWE and Pro Timeshare 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. On December 13, 2016, the Court entered its *Ex Parte* Temporary Restraining Order (“TRO”) (Doc. No. 11) enjoining the Defendants from misrepresenting, or assisting others in misrepresenting, directly or indirectly, expressly or by implication, that Defendants have a buyer or renter for the consumer’s timeshare property, and appointing Brian A. McDowell as temporary receiver over the Receivership Defendants.

On December 20, 2016, the Receiver filed his First Interim Report (Doc. No. 45), detailing actions taken by the Receiver and his counsel to carry out his mandate under the TRO. As documented in the First Interim Report, the Receiver (i) took possession of JWE’s principal business location at 1607 S. SR 15-A, Suite 11, Deland, FL 32720 (the “Deland Premises”) and Pro Timeshare Flagler’s principal business location at 105/106 S. Anderson St., Bunnell, FL 32110 (the “Bunnell Premises), (ii) suspended the operation of the businesses, (iii) inspected and took inventory of physical items located at the Deland

Premises and Bunnell Premises, (iv) reviewed and analyzed financial records associated with bank accounts for the Receivership Defendants, Kinmont, and Wenz, (v) interviewed employees to better understand the business and whether the allegations in the Complaint were valid, (vi) examined the re-sale market for timeshare properties, and (vii) determined that the Receivership Defendants could not operate lawfully and profitably. In addition, pursuant to the TRO, the Receiver obtained a receiver's bond in the amount of \$10,000.00 (Doc No. 66).

On December 21, 2016, and continuing on December 22, 2016, the Court conducted a show cause hearing in connection with the FTC's Motion for Preliminary Injunction (Doc. No. 3). At the hearing, the Receiver testified about his actions taken pursuant to the TRO, the business of the Receivership Defendants, and his conclusion that the business could not operate lawfully and profitably. During the course of that hearing, the FTC and Defendants announced they had reached an agreement that the Defendants would stipulate to the entry of a preliminary injunction. As a result, on December 27, 2016, the Court entered the Stipulated Preliminary Injunction Order with Asset Freeze, Appointment of a Permanent Receiver, and Other Equitable Relief (the "Stipulated Preliminary Injunction") (Doc. No. 55). Pursuant to the Stipulated Injunction, Brian A. McDowell was appointed as the Permanent Receiver over the Receivership Defendants.

II. ACCOUNTS, RECEIPTS, AND DISBURSEMENTS.

The Receiver has recovered \$ 1,184,767.85 from Defendants and deposited those

amounts to the Receivership Accounts.¹ The Receiver's total receipts and disbursements as of January 26, 2017, are as follows:

Receipts:	\$ 1,184,767.85
Disbursements:	\$ 97,003.94
Balance:	\$ 1,087,763.91

An itemization of receipts and disbursements is attached as **Composite Exhibit A**.²

The Receiver has also identified certain brokerage accounts in the name of Kinmont held at TD Ameritrade. On January 25, 2017, the Receiver instructed TD Ameritrade to close all open positions and wire the proceeds from those account to the Receiver.³ Additionally, the Receiver has identified certain brokerage accounts in the name of Wenz at SunTrust and National Financial Services, LLC. The Receiver has contacted those financial institutions and communicated with them regarding the freeze on those accounts. The Receiver is in the process of examining each of those accounts and, if appropriate, will liquidate the holdings and transfer the proceeds to the Receivership Accounts. An itemization of these accounts is attached as **Exhibit B**.

¹ Seaside Account Number xxxxxx0309 corresponding to JWE and Kinmont, and Seaside Account Number xxxxxx7799 corresponding to Flagler and Wenz.

² These numbers do not reflect any compensation or cost reimbursement to Receiver or his counsel. The Receiver is filing an application for fees and costs through January 15, 2017, for himself and his counsel.

³ TD Ameritrade notified the Receiver that it will take approximately three (3) days for it to process the request.

II. RECEIVER'S ACTIVITIES

a. Winding-Up of Business of Receivership Defendants

The Receiver has terminated all business activities of the Receivership Defendants and has begun the process of winding-up the businesses. The Receiver has terminated or is in the process of terminating all known non-essential business services and vendors, including payroll, internet, phone, merchant account processing, and intends to maintain only power and other basic utility services necessary to physically preserve the Deland Premises and Bunnell Premises. The Receiver has also changed the mailing address for the businesses and has diverted all mail to the Receiver's office. As the Receiver learns of additional trade debt and vendors utilized by the Receivership Defendants, the Receiver will notify any such vendors that the Receivership Defendants are in receivership and no longer in operation.

In addition to notifying vendors, the Receiver is also in the process of modifying the Receivership Defendants' website and voicemail system to notify consumers of the FTC's action and the appointment of the Receiver. Additionally, the FTC has notified the Better Business Bureau of its lawsuit against Defendants, and to the extent possible, the Receiver will use the Better Business Bureau's resources to notify consumers of the receivership in order to conserve assets of the estate.

b. Payment of Wages for Receivership Defendants' Employees Through December 14, 2016

Pursuant to the Stipulated Preliminary Injunction, and as detailed on Composite Exhibit A, the Receiver has paid the outstanding claims for wages through December 14, 2016 to the employees of the Receivership Defendants who were employed as of that date.

To make such payments, the Receiver examined the outstanding wage affidavits submitted by the then-employees of the and determined that they were accurate and reasonable. In paying the claims, the Receiver utilized the Receivership Defendants' former payroll service, Paychex.

c. Disbursement to Kinmont and Wenz for Living Expenses.

Pursuant to the Stipulated Preliminary Injunction, and as detailed on Composite Exhibit A, on January 19, 2017, the Receiver disbursed \$5,250.00 to Wenz for living expenses. The Receiver has also delivered a check to Kinmont in the amount of \$4,500.00, but as of the date of this Report he has not deposited or cashed that check.

d. Disbursement to Fisher Rushmer for Attorneys' Fees.

Pursuant to the Stipulated Preliminary Injunction, and as detailed on Composite Exhibit A, on January 20, 2017, the Receiver disbursed \$50,000.00 to the law firm of Fisher Rushmer for attorneys' fees.

e. Preservation and Recovery of Assets Of The Estate

Since the filing of the First Interim Report, the Receiver is continuing to preserve the Deland Premises and Bunnell Premises, which are owned by JWE and Wenz, respectively. Because the two locations were owned by the Receivership Defendants or insiders, the Receiver intends to maintain the properties through the pendency of the Receivership. The Receiver continues to store the office equipment and other business related assets at those locations and is not incurring any rent charges to utilize them for storage.

In an effort to locate additional assets to bring into the estate for the benefit of claimants, the Receiver is in the process of reviewing the financial disclosures provided by the Defendants pursuant to the Stipulated Preliminary Injunction, and intends to issue subpoenas to their respective accountants and banking institutions in order to fully examine the financial condition and operations of the Defendants. In addition to reviewing the financial disclosures, the Receiver has conducted his own asset searches of Defendants. The Receiver has also requested copies from the FTC of the hard drive images of Kinmont and Wenz's primary computers in order to examine them for the potential recovery of additional assets.

If, upon review of all of the information available, the Receiver discovers any transfers that may be susceptible to avoidance actions, the Receiver will consider whether the pursuit of such actions would provide a material benefit to the Receivership Estate in light of the cost to the estate to seek avoidance of the transfers.

Dated this day 27th day of January, 2017.

Respectfully submitted,

/s/ Suzanne E. Gilbert

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Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2017, 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, and served a copy via U.S. Mail to: John P. Wenz, Jr., 6 River Place, Palm Coast, FL 32164.

/s/Edward M. Fitzgerald _____

Attorney

Exhibit A

JWE Account History				
DATE RECEIVED	Description	DEPOSITS	WITHDRAWALS	BALANCE
1/4/2017	Deposit (cash and coins found at DeLand location)	\$2,713.50		\$2,713.50
1/6/2017	Deposit (transfer from Pro Timeshares of Flagler Beach account in order to make J. William Enterprises payroll payment as quickly as possible)	\$23,007.30		\$25,720.80
1/6/2017	Wire transfer to Paychex (employee payroll)		\$25,695.80	\$25.00
1/6/2017	Wire transfer fee		\$25.00	\$0.00
1/11/2017	Deposit (from Wells Fargo account)	\$379,794.01		\$379,794.01
1/11/2017	Wire transfer fee		\$10.00	\$379,784.01
1/11/2017	Deposit (from Wells Fargo account)	\$507,874.56		\$887,658.57
1/11/2017	Wire transfer fee		\$10.00	\$887,648.57
1/12/2017	Deposit (from Wells Fargo account)	\$259,690.08		\$1,147,338.65
1/12/2017	Wire transfer fee		\$10.00	\$1,147,328.65
1/19/2017	Wire transfer to Paychex		\$551.00	\$1,146,777.65
1/19/2017	Wire transfer fee		\$25.00	\$1,146,752.65
1/19/2017	Check to John P. Wenz, Jr.		\$5,250.00	\$1,141,502.65
1/20/2017	Wire transfer to Paychex		\$2,038.30	\$1,139,464.35
1/20/2017	Wire transfer fee		\$25.00	\$1,139,439.35
1/20/2017	Check to Fisher Rushmer for Attorneys' Fees		\$50,000.00	\$1,089,439.35
1/24/2017	Payment to Duke Energy		\$430.53	\$1,089,008.82
1/25/2017	Check to former employee for reimbursement		\$200.00	\$1,088,808.82
1/25/2017	Wire transfer to Paychex		\$888.61	\$1,087,920.21
1/25/2017	Wire transfer fee		\$25.00	\$1,087,895.21
1/25/2017	Check order		\$25.72	\$1,087,869.49
1/25/2017	Payment to Bright House Networks		\$304.26	\$1,087,565.23
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EXHIBIT B

Entity	Account Name & Number	Account Balance
SunTrust Bank	John P. Wenz, Jr. POD Summer L. Wenz - 1000145223128	\$75,563.69
SunTrust Bank	John P. Wenz, Jr. POD Anaya Wenz	\$105,563.87
SunTrust Investments	John P. Wenz – F8R-129558	\$215,404.21
National Financial Services, LLC	John P. Wenz – LT6-014931	\$223.09 (as of December 31, 2016)
TD Ameritrade	Jess Kinmont - 868-295432	\$602,840.20 (at start of business on 1/25/17 – subject to market fluctuation)
TD Ameritrade	Jess Kinmont - 782-080169	\$12,370.40 (at start of business on 1/25/17 – subject to market fluctuation)