

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CONSUMER FINANCIAL PROTECTION
BUREAU and STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,
Department of Legal Affairs,

Plaintiffs,

Case no. 9:14 CV 80931/COHN/SELTZER

vs.

MICHAEL HARPER, et al.,

Defendants.

**RECEIVER'S FOURTH INTERIM REPORT, CONCERNING THE STATUS
OF VARIOUS MATTERS, INCLUDING MONEY TO BE PAID TO VICTIMS**

Mark J. Bernet, Receiver for The Hoffman Law Group, P.A., f/k/a The Residential Litigation Group, P.A., Nationwide Management Solutions, LLC, Legal Intake Solutions, LLC, File Intake Solutions, LLC, and BM Marketing Group, LLC (the "Receiver"), hereby files his fourth interim report, relating to the status of various matters.

I. THE COURT'S JUDGMENTS

On May 5, 2015, the Court entered Stipulated Final Judgments in favor of the Plaintiffs and against the Defendants Harper and Willcox. The Court entered a Stipulated Final Judgment against the Defendant Hoffman on May 6, 2015. In the judgments, each of the Individual Defendants is permanently enjoined from offering, selling, advertising or otherwise participating in the sale or advertising of Consumer Financial Products or Services. Each Individual Defendant also is enjoined from engaging in any telemarketing activities for five years. Also, each Individual Defendant was found to be liable to the Plaintiffs for \$11,730,579.00, except that the money judgments against Harper and Willcox were suspended so long as they surrendered to

the Receiver certain personal property, described below, for liquidation. The money judgment against Hoffman also was suspended, or did not go into effect, because Hoffman at the time was a Debtor in a bankruptcy case and had no ability to pay.¹ The judgments also imposed upon the Individual Defendants an obligation to report their activities to the Plaintiffs, on an annual basis.

On May 28, 2015, the Court entered its *Default Judgment and Order as to Corporate Defendants* (the "Default Judgment") (doc. no. 148), by which the Court entered a money judgment against the Receivership Defendants in the amount of \$11,730,579.00. The Default Judgment also permanently enjoined the corporate defendants from violations of state and federal law (more particularly described in the Court's preliminary injunctions), and directed the corporate defendants to pay civil penalties of \$10 million to the Plaintiff Consumer Financial Protection Bureau and \$6 million to the Plaintiff Florida Attorney General.

Pertaining to the Receiver, the Default Judgment directed the following:

1. That the Receiver transfer to the Plaintiffs \$655,736.98 of the funds he had collected from liquidating assets of the Receivership Estates through April 29, 2015.

Those funds are to be included in the fund that will be distributed to the consumer-clients of the Hoffman Law Group, who are the victims of the unlawful conduct. *See* Section VI below. The Receiver in fact transferred the funds to the Plaintiffs by wire transfer on June 5, 2015.

2. That the Receiver cooperate with the Plaintiffs to determine the identity and location of, and the amount of injury to, each Affected Consumer. The Receiver has taken possession of the electronic records of The Hoffman Law Group, which are

¹ On April 24, 2015, the Florida Supreme Court granted Hoffman's petition for disciplinary revocation of his Florida law license. Disciplinary revocation is tantamount to disbarment. Hoffman may not practice law in the State of Florida, although he is eligible to re-apply for admission five years after the date of the order. It is highly unlikely that Hoffman ever will be reinstated to practice law in Florida.

maintained through a file management software program known as Lead-Trac. The program is administered by a third-party software management company. The Lead-Trac system contains the names and contact information of all of the consumer-clients of the Hoffman Law Group. The Receiver has worked with the Plaintiffs to assure that they have access to the Lead-Trac system. The Receiver also has provided the Quickbooks program, containing the Hoffman Law Group's financial records, to the Plaintiffs so that they can ascertain how much each consumer-client paid. The Receiver also has received dozens of calls from consumer-clients; after filling them in on the status of the case, he passes their contact information along to the Plaintiffs. *See* Section VI below.

3. That the Receiver liquidate the assets of the Receivership Defendants.

The Receiver's efforts in this regard are discussed in Section II below.

4. That the Receiver file an interim report, by November 1, 2015, containing certain information. As a result of an error on the part of the Receiver, the Receiver did not file the report by the November 1 deadline. This Fourth Interim Report contains the information that should have been filed earlier.

5. That the Receiver continue to pursue viable claims and assets of the Receivership Estates, through December 31, 2015, or an extended date. The Receiver's efforts in this regard are discussed in Section III below.

II. LIQUIDATING ASSETS

The Receivership Defendants owned office furniture, filing cabinets, a conference table, and various other items, all of which were located at the offices of the Receivership Defendants. To reduce the amount of rent that needed to be paid, in December of 2014 the Receiver moved all of the furniture and other personal property out of two of the office suites occupied by the

Receivership Defendants and into the third. Thereafter, to vacate the remaining office and thereby terminate the lease obligation, the Receiver hired an auctioneer to liquidate the items. There was insufficient personal property to hold an auction, and so the auctioneer arranged to sell a significant portion of it to office equipment brokers. Attached as Exhibit "A" is the auctioneer's report of the sale, showing a net recovery to the Receivership Companies of \$5,047.00. The Receiver abandoned the items that could not be sold to the landlord.

Additionally, under orders from the Court the Individual Defendants Harper and Willcox surrendered to the Receiver certain personal property for liquidation. This included high-end watches, including Rolexes, Tag Heuers, Breitlings and Cartiers, as well as diamond and gold necklaces, bracelets and earrings. The Receiver also received a Glock .45 semi-automatic pistol and a Ruger .380 semi-automatic pistol. These items were sold at auctions held on July 11 and August 22, 2015. Attached as Composite Exhibit "B" are the auctioneer's reports that identify the items sold, the marketing undertaken, and the prices obtained. The Receiver netted \$45,391.20 from the auction of these items.

III. FRAUDULENT TRANSFERS AND OTHER POTENTIAL LAWSUITS

The Receiver analyzed the electronic data and financial records of the various receivership companies to ascertain whether the receivership estates would have causes of action. From this data the Receiver ascertained that the Receivership Defendants had potential fraudulent transfer actions against certain third parties. Several of these potential fraudulent transfer lawsuits could not be pursued in a cost-effective manner. The Receiver therefore focused on potential claims against The Law Offices of Michael E. Herskowitz, Esquire and several attorneys employed with that firm (collectively the "Herskowitz Lawyers"), and against attorney Philip R. Berwish.

The claim against the Herskowitz Lawyers involved a potential fraudulent transfer action to recover approximately \$563,000 that had been paid to them by The Hoffman Law Group for legal services. These services, in the Receiver's opinion, provided no value to The Hoffman Law Group because the lawsuits that were filed and pursued were not capable of obtaining the results that were promised. After extensive negotiations that involved an analysis of the financial resources of the Herskowitz Lawyers, the Receiver recommended that this Court approve a settlement that involved payment by the Herskowitz Lawyers to the Receiver in the amount of \$281,630.79. *See Receiver's Motion to Approve Settlement with the Law Offices of Michael E. Herskowitz, Esquire, Michael E. Herskowitz, Michael Lehrman and Carmel Maseng* (doc. no. 146). The Court approved the proposed settlement by its *Order Granting Receiver's Motion to Approve Settlement* (doc. no. 147). The Herskowitz Lawyers paid the agreed settlement amount in four installments, with the final installment being paid on July 31, 2015. The settlement funds remain in a receivership money market account.

The Receiver also determined that the Receivership Defendants held a viable claim against attorney Phillip R. Berwish. Berwish, a New York attorney, was engaged by The Hoffman Law Group to prepare the first "mass joinder" lawsuit filed on behalf of consumer clients. Berwish claimed to be an expert in preparing and prosecuting "mass joinder" lawsuits, having done so on behalf of The Resolution Law Group, a predecessor to The Hoffman Law Group.² Berwish was paid \$50,000 for his services, but the Receiver does not believe that The

² The Resolution Law Group was a Connecticut law firm created by attorney R. Geoffrey Broderick, who operated out of California. Broderick, working with the Individual Defendants Harper and Willcox, formed the similarly-named The Residential Litigation Group as a Florida law firm, to handle the "Florida Operations" of The Resolution Law Group. Broderick and Harper hired Hoffman to create the Residential Litigation Group; Hoffman subsequently split from Broderick and renamed the firm The Hoffman Law Group. The Florida and Connecticut Attorneys General have sued Resolution Law Group, Broderick and others in federal court in Tampa, in a case styled *Office of the Attorney General, State of Florida, et al. v. Berger Law Group, P.A., et al.*, case no. 8:14-cv-1825-T30-MAP. The causes of action asserted are similar to those asserted in this case. Judgments have been entered against all defendants in the Tampa case. The Receiver is serving as the receiver for the corporate defendants in that case.

Hoffman Law Group received reasonably equivalent value in return for the \$50,000. Also, in reliance on Berwish's advice that "mass joinder" lawsuits were not governed by MARS and present viable claims, The Hoffman Law Group proceeded with its business model that this Court has found violated MARS and created no viable lawsuits. The Receiver's effort to settle this claim prior to initiating litigation was not successful. As a result, the Receiver filed a lawsuit against Berwish in August of 2015. A more detailed discussion of this lawsuit is set forth in Section V below.

Finally, the Receiver discovered some evidence of a potential professional negligence claim against another law firm. The Receiver's attorneys devoted a fair amount of time to analyzing this potential claim, and the Receiver has discussed the potential claim with the Plaintiffs' attorneys. The Receiver has concluded, and the Plaintiffs agree, that the evidence discovered would not justify bringing any such lawsuit, for the reason that doing so would not be cost effective.

IV. IRS ISSUES

At the time of his appointment the Defendants Hoffman Law Group and Nationwide were operating their businesses. As a result, they were obligated to prepare and file state and federal tax returns for payroll withholding, unemployment, and the like, and to pay any taxes owed. The Receiver had difficulties at first obtaining access to the Receivership Defendants' financial records, due to a lack of cooperation by their controller, Erica McCartney. Ultimately, the Receiver was able to gain access to the companies' Quickbooks accounting records. The Receiver engaged the accounting firm that had represented the Receivership Defendants prior to this lawsuit and directed it to prepare necessary tax returns. This was accomplished during the

fourth quarter of 2014, and the Receiver reviewed, signed and filed the returns, and also sent payment to the IRS and the Florida Department of Revenue for the taxes that were owed.

IRS forms 940, 941 and 1120S federal tax returns contain a jurat above the signature line, by which the person who signs the returns swears that the information contained in the returns is accurate, under penalty of perjury. The Receiver's policy always has been that he cannot certify the accuracy of financial information of receivership defendants; instead, he can certify only that the information contained in the returns was taken from the records of the receivership defendants, but that he cannot vouch for the accuracy of those records.³ The Receiver therefore modified the jurat to reflect this. The Receiver reiterates, however, that all of the information in the returns derived from the Debtor's books and records, and that the Receiver paid all taxes owed, based on the returns.

In July of 2015, the IRS sent a form letter to the Receiver declaring that some of the federal tax returns he filed were "frivolous,"⁴ and that as a result the IRS was assessing a \$5,000 penalty on each of two returns. The letter did not identify why the IRS believed the returns were frivolous; the Receiver's best guess is that it may have to do with the Receiver's modification of the jurat. The Receiver hired tax lawyers from his firm, Akerman, to respond to the IRS's letter. The response was sent in August of 2015, but neither the Receiver nor his attorneys received any reply. However, in September, the IRS sent another form letter, stating that it had previously found some of the returns to be "frivolous" (again, there was no indication of why), and

³ The concern, obviously, is that companies engaging in fraudulent activities may extend such activity to their accounting records. The Receiver is not aware of any accounting irregularities in this case, although he has discovered errors, by Ms. McCartney, that cause him to question her accounting expertise.

⁴ The Receiver modified the jurat on all of the federal returns that he signed and filed, but the IRS referenced only two of those returns as being "frivolous." The Receiver made the same modification on the tax returns filed with the Florida Department of Revenue, but DOR has expressed no concerns.

demanding that the Receiver pay the \$10,000 "frivolous" penalty. The Receiver's attorneys responded to that letter. The matter remains pending.

V. REMAINING ASSETS

The assets that remain in the Receivership Estates include the following:

- Approximately \$362,000 cash;
- Computers and documents from the Receivership Defendants, which are stored in a storage facility; and
- The Berwish Lawsuit.

All cash remaining in the Receivership Estate at the conclusion of the case will be delivered to the Plaintiffs, to be paid to consumer-clients in accordance with the Default Judgment and Order (*see* Section VI below).

The Receivership Defendants' computers and documents contain personally identifiable information of their employees and their consumer clients. As such, these items must be protected. It is possible that law enforcement, or the Florida Bar, may want to take possession of these items; if so, and on the assumption that there will be appropriate safeguards in place, the Receiver will request permission from this Court to deliver the items. If law enforcement and the Florida Bar do not want to take possession of these items, the Receiver will seek permission from this Court to have them destroyed. Based on experience from prior cases, the cost of destruction should be in the range of \$1,500.

The Berwish Lawsuit remains pending. In September of 2015, Berwish filed a motion to dismiss the Complaint. The Receiver's attorneys filed a response in opposition. The motion remains pending. Separately, in a scheduling order the court directed the parties to appear for mediation by a date certain; however, Berwish moved to be excused from complying with the

mediation requirement until the court ruled on his motion to dismiss. As a result, mediation has not occurred. Moreover, and even though the scheduling order imposes discovery cutoff dates, the Receiver has not been able to conduct discovery because the case is not at issue, and the Receiver is not privy to the defenses that Berwish intends to raise. The Receiver recently moved for a status conference in the case and for an extension of all of the deadlines set forth in the scheduling order. The court responded by transferring the case to this Court. The claims raised in the Berwish Lawsuit are for (i) the recovery of the \$50,000 in fees paid to Berwish, and (ii) the recovery of in excess of \$1 million, representing the amounts charged and collected by The Hoffman Law Group from the consumer-clients who were included in the failed "mass joinder" lawsuit that Berwish filed. This, of course, does not represent the "value" of the claims, because it is not likely that Berwish is capable of paying a \$1 million judgment. More will be known when the parties are directed to mediate.

VI. CONSUMER REDRESS PROCESS

The Receiver continues to receive letters, telephone calls and e-mails from consumer clients asking for information concerning whether they will receive any of their money back. The Restitution Fund is established by the money that the Receiver recovers on behalf of the Receivership Defendants. The Default Judgment entered by the Court awards redress to Affected Consumers — consumer-clients who paid the Defendants for mortgage assistance relief products or services between April 1, 2012, and May 28, 2015. Plaintiff CFPB is responsible for administering redress for consumers.

The \$655,737 collected by the Receiver and paid to the Plaintiffs pursuant to the Default Judgment and Order will be used for redress in this case. In addition, the CFPB will use money from the CFPB's Civil Penalty Fund to provide compensation to consumers who were harmed by

Defendants' activities. The CFPB has allocated \$11,074,842 to this case. Thus, a total fund of \$11,730,579 will be dedicated to administering and providing compensation to consumers, or 100 percent of the amount for which the Defendants have been found liable. More information about the CFPB's Civil Money Penalty Fund is available online at http://files.consumerfinance.gov/f/201512_cfpb_faqs_cpf.pdf.

The administrative process of providing restitution to consumer clients requires that the Receiver and the Plaintiffs have an accurate data base of consumer clients, their contact information, and the amounts that they paid to The Hoffman Law Group. The Receiver has made the records of the Hoffman Law Group available to the Plaintiffs; these records, contained in a software program known as "Lead-Trac" and the company's Quickbooks accounting records, contain the information of consumer clients as of July 14, 2014. Dozens, if not hundreds, of consumer clients have been in contact with the Receiver and the Plaintiffs since that time, and so the database is continuing to be updated. **Consumer clients who have moved or changed e-mail addresses or telephone numbers are encouraged to send their updated information to the Receiver.**

VII. AMOUNTS OWED BY THE RECEIVERSHIP DEFENDANTS

The Receiver has a monthly obligation to a storage facility of \$176, for storage of the Receivership Defendants' computers and paper records. All taxes owed have been paid; although the IRS has asserted its "frivolous" penalty of \$10,000 (*see* Section IV above), the Receiver does not anticipate that he will have to pay that penalty.

The Receivership Defendants also will be obligated to pay the fees and costs charged by the Receiver and his attorneys. These are subject to court approval. As of January 31, 2016, the

outstanding fees billed by the Receiver's lawyers, from July 1, 2015, is approximately \$62,000.⁵ The Receiver typically reviews his attorneys' fee bills and adjusts them downward before presenting them to the Court. The Receiver will not request payment of all of the \$62,000 that is presently shown as owed. The precise amount that the Receiver requests will be determined shortly. The Court ultimately will decide how much should be paid to the Receiver's attorneys.

The Receiver has outstanding fees, from April 1, 2015, through January 31, 2016, totaling slightly more than \$32,000. Again, this is the "raw" total, and has not been reviewed by the Receiver for possible adjustments. As with the Receiver's attorneys' fees, any fees paid to the Receiver first will need to be approved by the Court.

The Receiver invites the questions and comments of the Court and the parties.

Dated: Tampa, Florida
February 9, 2016

/s/ Mark J. Bernet

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⁵ The fees fall into three general categories: Fees relating to investigating possible causes of action; fees relating to the IRS issues; and fees relating to the Berwish Lawsuit. Each category represents approximately one-third of the total.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was served by CM/ECF to Melissa Guidorizzi, Esquire, 1700 G Street NW, Washington, DC 20552, e-mail melissa.guidorizzi@cfpb.gov; Leanne Hartmann, Esquire, 1700 G Street NW, Washington, DC 20552, e-mail leanne.hartmann@cfpb.gov; Maureen Elin McOwen, Esquire, 1700 G. Street NW, Washington, DC 20552, e-mail molly.mcowen@cfpb.gov; Amanda Arnold Sansone, 3507 E. Frontage Road, Suite 325, Tampa, Florida 33607, e-mail amanda.sansone@myfloridalegal.com; Hector E. Lora, Esquire, The Lora Law Firm, LLC, 174 N.E. 106th Street, Miami Shores, Florida 33138, e-mail hectorlora@bellsouth.net; John A. Richert, Esquire, Hornstine, Pelloni & Hornstine, LLC, 13575 58th Street North, Clearwater, Florida 33760, e-mail john@hornstine.com; and Andrew N. Cove, Esquire, Cove & Associates, P.A., 225 S. 21st Avenue, Hollywood, Florida 33020, e-mail anc@covelaw.com, main@covelaw.com, this 9th day of February, 2016.

/s/ Mark J. Bernet
Receiver

cc: Louis Hornstine, Esquire (via e-mail)