

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 20-CV-21964-Altonaga

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT
GROUP, CORP.; *et. al.*

Defendants.

OBJECTIONS TO RECEIVER’S MOTION FOR APPROVAL OF DISTRIBUTION PLAN

Interested Parties Paycation Travel, Inc., Xstream Travel, Inc. and David Manning (collectively the “Claimants”) hereby object to the Receiver’s Motion for Court Approval of Distribution Plan (the “Motion”) for the following reasons:

Background

1. On May 11, 2020, the Securities and Exchange Commission (“SEC”) filed a Complaint for Injunctive and Other Relief (*See* Dkt. 1) (the “Complaint”) in the United States District Court for the Southern District of Florida against Defendants TCA Fund Management Group Corp. (“FMGC”) and TCA Global Credit Fund GP, Ltd. (“GP”) (FMGC and GP are hereinafter referred to collectively as “Defendants”) as well as Relief Defendants Feeder Fund LP, Feeder Fund Ltd., and the Master Fund. The SEC also filed an Expedited Motion for Appointment of Receiver (the “Motion for Appointment”). *See* Dkt. 3.

2. Jonathan E. Perlman is the Court-appointed Receiver (the “Receiver”) over FMGC and GP as well as the Relief Defendants TCA Global Credit Fund, LP (“Feeder Fund LP”), TCA Global Credit Fund, Ltd. (“Feeder Fund Ltd.,” and with Feeder Fund LP, “Feeder Funds”), TCA

Global Credit Master Fund, LP (the “Master Fund”) (Master Fund, together with Feeder Funds, are the “Funds”), and Receivership Entity TCA Global Lending Corp. (“Lending Corp”) (Defendants, the Funds, and Global Lending are hereinafter referred to collectively as the “Receivership Entities”), pursuant to this Court’s order appointing the Receiver. *See* Dkt. 5.

3. On February 28, 2022, the Receiver filed a Motion for Approval of Distribution Plan and First Interim Distribution (the “Receiver’s Motion”). *See* Dkt. 208.

4. Pursuant to this Court Order entered on March 3, 2022, all objections and responses to the Receiver’s Motion must be filed with the Court and served on the Receiver by April 29, 2022. *See* Dkt. 215.

5. In the Receiver’s Motion, the Receiver has proposed to distribute approximately \$55,000,000.00, “representing approximately 83% of the Receivership’s current cash balance”. According to Receiver’s calculations, eligible investors will receive approximately 25% of the funds invested and no unsubordinated investors will have out-of-pocket losses great than 75% of the cash invested in the Receivership Entities. *See* Dkt. 208 at p. 2. The Receiver proposed distribution under the Rising Tide method. *Id.*.

6. Claimants object to the Receiver’s recommendation that 83% of the Receivership’s current cash balance be distributed to investors and subscribers for the reasons set forth below.

Objections and Memorandum of Law

7. Under the circumstances of this case, which includes Defendants’ deceptive conduct in violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the fraudulent activities among certain officers, directors and employees of the Defendants; the proposed Distribution Plan (the “Distribution Plan”) does

not ensure that other parties, e.g., parties to various court proceedings involving the Receivership Entities, will receive a just compensation.

8. SEC receiverships are equitable proceedings that seek to redistribute the proceeds of a fraud to the victims. Unlike a bankruptcy case, there is no statutory prescription setting forth how assets recovered in a receivership should be distributed. Instead, district courts should adopt a distribution plan that is “fair and reasonable” because receiverships are equitable proceedings. *CFTC v. Barki, LLC*, No. 3:09 CV 106-MU, 2009 WL 3839389 (W.D.N.C. Nov. 12, 2009) (quoting *S.E.C. v. Byers*, 637 F. Supp. 2d 166, 174-75 (S.D.N.Y. 2009)); *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 332-33 (7th Cir. 2010) (“In supervising an equitable receivership, the primary job of the district court is to ensure that the proposed plan of distribution is fair and reasonable.”); *SEC v. Wang*, 944 F.2d 80, 81-85 (2d Cir. 1991); *SEC v. Byers*, 637 F. Supp. 2d 166, 174 (S.D.N.Y. 2009).

9. The Receiver is currently acting on behalf of the Receivership Entities in numerous lawsuits (*See* Dkt. 203, p. 16), including case no. 199-03524-2016 pending in Collin County, Texas (the “Collin County Lawsuit”). The Collin County Lawsuit was brought by the Claimants against TCA Global Credit Master Fund, Montbriar, Inc. and Jeremy Monte, amongst others. The litigation is currently stayed. The Claimants pled claims against the Master Fund and Jeremy Monte for fraud and conspiracy and requested relief including damages and attorney’s fees. The Claimants were not investors, but instead, were non-investor victims. Given the motivation of the Master Fund to artificially increase its profits and its net asset value through its illegal revenue recognition practices, the Master Fund and all other related entities intentionally disregarded any reasonable due diligence and entered into their self-serving loans and investment banking service agreements. The lack of due diligence by the Master Fund and its related entities allowed for

Jeremy Monte, the Master Fund, and others to engage in an attempted illegal taking of Claimants' business which caused Claimants to lose millions of dollars. Prior to the stay in the Colling County Lawsuit, close to \$1.5 million previously held by a third-party credit merchant vendor, World Pay U.S., Inc, was placed in escrow with the Texas court. However, that amount equates to a fraction of the amount that the Master Fund and others took from the Claimants. It is believed by Claimants that they are owed more than \$10,000,000.

10. The future of the lawsuits involving the Receivership Entities is currently unknown and their outcomes are impossible to determine by the Receiver.

11. The proposed Distribution Plan which would distribute 83% of all cash reserves to investors significantly endangers other creditors including Claimants. Other creditors will be impacted and prejudiced by the payment of the Initial Distribution because the Receivership will likely not retain sufficient cash reserves to address their claims at later dates.

12. Claimants are aware that due to the significant discrepancy between the stated value of assets held by the Defendants and their true value all claimants cannot be made whole from available assets, however, the proposed method of distribution does not provide for the greatest equity.

13. The Receiver should reserve sufficient cash available for distributions in the future and either create a special class of other claimants and/or lower the percentage of cash reserves available for future disbursements.

Conclusion

For the reasons set forth in this Objection, the Claimants request that the Court enter an order finding that the proposed Distribution Plan is not a fair and reasonable plan of distributing the Receivership Entities' funds and deny the Receiver's Motion.

Dated: April 29, 2022

Respectfully Submitted,

By: /s/ Evan B. Berger

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***Attorneys for Paycation Travel, Inc., Xstream
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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022 a true and correct copy of the foregoing was served by the Court's CM/ECF system and by email to the Receiver via email at emcintosh@gjb-law.com.

By: /s/ Evan B. Berger

Evan B. Berger, Esq.