

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:20-CV-21887-DPG

COMMODITIES FUTURES TRADING
COMMISSION,

Plaintiff,

v.

DANIEL FINGERHUT,
DIGITAL PLATINUM, INC., DIGITAL
PLATINUM, LTD., HUF MEDIYA
(A/K/A HOOFF MEDIA), TAL VALARIOLA,
and ITAY BARAK

Defendants,

AICEL CARBONERO,

Relief Defendant.

_____ /

RECEIVER'S THIRD STATUS REPORT

Melanie E. Damian, the court-appointed Receiver (the "Receiver") in the above-captioned enforcement action ("CFTC Enforcement Action"), submits her third status report concerning the status of the Receivership, established pursuant to the Court's Order Appointing Temporary Receiver [ECF No. 33] (the "Appointment Order"). This interim report sets forth the Receiver's activities and efforts to fulfill her duties under the Appointment Order for the period from November 1, 2020 through March 31, 2021 (the "Reporting Period").

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I. INTRODUCTION

Since her appointment on May 8, 2020, the Receiver, with the assistance of her retained professionals, including her lead counsel, forensic IT professionals, and financial advisor and forensic accountant, has worked diligently to continue to fulfill her duties and obligations as set forth in the Appointment Order, to preserve the assets and records of the Receivership Estate (“Receivership Estate” or “Estate”) and to further identify and marshal all known assets and records of the Defendants not previously secured, including without limitation corporate books and records, email accounts, and bank funds and records.

The Receiver’s forensic accountants also continued to analyze the records recovered from the Defendants and from financial institutions in response to the Receiver’s requests and subpoenas to analyze transfers of assets and complete bank account reconstructions to aid the Receiver in her analysis of the Defendants’ business operations and the transfers to and from the Defendants and third parties.

Additionally, the Receiver analyzed the reports regarding the revenues and expenses of Defendant Digital Platinum, Ltd. (“DPL”) prepared by the forensic accountant engaged in Israel, with consent of the Receiver, for the purpose of determining an appropriate disgorgement amount in connection with settlement discussions between Plaintiff, the Commodity Futures Trading Commission (the “CFTC”) and Defendants Itay Barak, Tal Valariola, and DPL (collectively, the “Israeli Defendants”). And, the Receiver attended the settlement conferences held by Magistrate Judge McAlily to attempt to facilitate a resolution of the claims Plaintiff, the Commodity Futures Trading Commission (the “CFTC”), asserted against Defendants.

Finally, the Receiver, with the assistance of her professionals, began the process of identifying and formulating claims against third parties, affiliates and insiders of the Defendants who improperly received significant recoverable transfers from the Defendants.

II. PROCEDURAL BACKGROUND AND THE APPOINTMENT AND DUTIES OF RECEIVER

A. The Appointment Order and Receiver's Periodic Status Reports

On May 5, 2020, the CFTC filed a Complaint for injunctive relief and for restitution against Daniel Fingerhut ("Fingerhut"), Digital Platinum, Inc. ("DPI"), Digital Platinum, LTD ("DPL"), Huf Mediya, LTD (a/k/a Hoof Media, LTD) ("Huf"), Tal Valariola ("Valariola"), and Itay Barak ("Barak") (collectively, the "Receivership Defendants" or "Defendants"), naming Aicel Carbonero as a relief defendant, commencing the above-captioned CFTC Enforcement Action. *See* ECF No. 1.¹ On May 6, 2020, the CFTC also filed an Expedited Motion for Preliminary Injunction [ECF No. 11] and an Expedited Motion for Appointment of Temporary Receiver [ECF No. 12] (the "Appointment Order") to preserve the status quo during the pendency of litigation in the CFTC Enforcement Action and to secure the assets and documents of the Defendants. *See* ECF No. 12. On May 8, 2020, the Court entered the Appointment Order appointing Melanie E. Damian, Esq. as temporary Receiver of the Receivership Defendants named in the CFTC's Complaint and of all the funds, properties, premises, accounts, income, now or hereafter due or owing to the Receivership Defendants, and other assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants. *See* ECF No. 33.

The Appointment Order requires the Receiver to periodically file with the Court and serve on all parties periodic reports, the first of which was due sixty (60) days following entry of the

¹ On June 12, 2020, the CFTC filed its first Amended Complaint. *See* ECF No. 101.

Appointment Order, summarizing efforts to marshal and collect assets, administer the Receivership Estate, and otherwise perform the duties mandated by the Appointment Order. *See* ECF No. 33 at p. 4. On July 7, 2020, the Receiver filed her Initial Status Report (“Initial Report”) which described, among other things, the Receiver’s initial efforts to carry out her duties and obligations as set forth in the Appointment Order as well as the status of the Receivership Estate. *See* ECF No. 125. The Initial Report further detailed the Receiver’s efforts to marshal and secure assets, steps the Receiver intended to take in the future to protect Receivership Estate assets, and recommendations as to the continuation of the Receivership. *See id.*

On November 24, 2020, the Receiver filed her second status report which covered the period from July 1, 2020 through October 31, 2020. *See* ECF No. 192. The Receiver’s second status report detailed the Receiver’s continued efforts to carry out her duties and obligations as set forth in the Appointment Order as set forth in that report. *See id.*

B. Entry of Preliminary Injunction Order and Continuation of Receivership

During the previous reporting periods [*see* ECF Nos. 125, 192], the Court held numerous hearings and heard arguments from the parties regarding the CFTC’s motion for preliminary injunction (“CFTC’s Motion”) [ECF No. 11]. On September 17, 2020, at the final hearing on the CFTC’s Motion, the Court entered an order requiring the parties to file their proposed detailed findings of fact and conclusions of law that the Court would consider for purposes of issuing a ruling on the CFTC’s Motion.² *See* ECF No. 178. On January 7, 2021, the Court granted the CFTC’s Motion and entered a Preliminary Injunction Order (“Preliminary Injunction”) as to all

² The Court extended the deadline for the parties to submit their filings due to the volume of exhibits and extensive record. *See* ECF Nos. 190, 195. The Court also extended the Temporary Statutory Restraining Order as part of these extensions. *See id.*

Defendants that, among other things, found good cause to continue the appointment of the Receiver as a permanent Receiver for the duration of the case. *See* ECF No. 199. The Court's Preliminary Injunction further held that, "[d]uring the pendency of this action or until further ordered by this Court, Melanie Damian shall continue as the Receiver and shall execute the powers vested within the Order Appointing Temporary Receiver. [ECF No. 33]." *Id.* at p. 34.

C. Settlement with Israeli Defendants and Trial Order

On January 8, 2021, following entry of the Preliminary Injunction, the Court entered a separate order referring the parties to a settlement conference before Magistrate Judge McAlily. *See* ECF No. 202. On February 16, 2021 [ECF No. 230] and February 19, 2021 [ECF No. 232], the CFTC, the Israeli Defendants and the Receiver took part in a settlement conference that resulted in a settlement in principle of the CFTC's claims against the Israeli Defendants.³ *See* ECF No. 232. The settlement conference with Defendant Fingerhut and Relief Defendant Carbonero ended in impasse. *See id.*

On March 9, 2021, the Court entered its Scheduling Order setting the CFTC Enforcement Action for trial to commence on October 11, 2021. *See* ECF No. 235.

**III. STATUS AND ACTIVITIES OF THE RECEIVERSHIP
(NOVEMBER 1, 2020 THROUGH MARCH 31, 2021)**

The Receiver provides herein a detailed description of the status of the operations and assets of the Receivership Estate and her efforts and accomplishments with respect to her duties under the Court's Orders during the current Reporting Period.

³ The parties are finalizing the settlement agreement.

A. Receivership Receipts, Disbursements, and Assets

As of March 31, 2021, the Receiver held funds totaling \$1,361,329.09⁴ in her fiduciary account for the Receivership Estate at City National Bank in Miami, Florida. *See* Receivership Receipts and Disbursements attached hereto as **Exhibit A**. In addition to this cash on hand, the Estate includes the following assets:

- \$1,602.90, €15,945.17, and €51,372.90 in cash, frozen in accounts of DPL⁵ and \$6,292.55 in securities frozen in an investment account of Defendant Fingerhut;
- Assets of Defendants Valariola and Barak in Israel, where they reside (value of assets have not yet been fully disclosed or determined);
- Condominium unit located at 7276 Gary Avenue, Miami Beach, Florida 33141 (the “Residence”) (value has not yet been determined⁶), and personal property therein including, but not limited to furniture and electronics (value has not yet been determined but is not estimated to be significant);⁷
- Personal motorboat (value has not yet been determined);⁸
- Businesses owned by Defendants Fingerhut, DPI, DPL, Huf, Valariola, and Barak (nature, location and value have not yet been determined).

⁴ Of this amount, \$1,180,653.82 was transferred from an account of DPL at Safra Bank to the Receiver’s fiduciary account on September 4, 2020. *See* Exhibit A.

⁵ Following entry of the Preliminary Injunction, the Receiver sent correspondence to each of the financial institutions at which DPL has accounts and demanded that the funds be turned over to the Receiver.

⁶ While the Residence’s exact current market value is unknown at this time, the Receiver obtained a detailed report dated May 12, 2020 from Miami-Dade County’s Office of the Property Appraiser which lists the Residence’s 2019 assessed value as \$445,400.00. *See* Detailed Report of Office of the Property Appraiser which was attached to the Receiver’s Initial Report as Exhibit B [ECF No. 125].

⁷ An inventory of the Residence was attached to the Receiver’s Initial Report as Exhibit C [ECF No. 125].

⁸ The current resale value of the motorboat is less than the amount remaining on the personal loan utilized to purchase the vessel.

B. Receiver's Continued Efforts to Locate and Marshal Assets of the Defendants and Defendants' Compliance with the Appointment Order

During the Reporting Period the Receiver continued to fulfill her duties and obligations under the Appointment Order to locate and marshal assets and records of the Receivership Defendants while investigating the Defendants' business that is the subject of the CFTC's Complaint.

1. Defendants' Compliance with the Appointment Order

Since her appointment, the Receiver has worked to secure the Defendants' compliance with the mandates of the Appointment Order including, but not limited to, the Defendants' duty to cooperate with the Receiver, to provide a full detailed accounting of all of their assets, and to transfer and deliver to the possession, custody, and control of the Receiver all of their records and assets, including without limitation the funds in their accounts. *See* ECF No. 33 at pp. 5-7.

a. Defendants DPL, Valariola and Barak

As previously reported, the Receiver worked with counsel for the CFTC and counsel for the Israeli Defendants to obtain the Israeli Defendants' compliance with the mandates of the Appointment Order. Counsel for the Israeli Defendants previously provided an informal proffer of information to the Receiver regarding the business activities and the location and extent of their records and assets, including approximately USD \$1.3 million held by DPL in various accounts located in Israel, Spain, and Bulgaria. Subsequently, counsel for the Israeli Defendants provided the Receiver with additional information related to the funds in DPL's accounts in Bulgaria and Spain and the contact information for each bank. The Receiver sent correspondence to those banks demanding turnover of the account balances to the Receivership Estate. Further, the Israeli Defendants' counsel agreed to provide copies of DPL's business records as well as bank records,

invoices, accountant audits and company ledgers that were provided to forensic accountant in Israel, Grant Thornton, which performed the investigation and analysis of DPL's revenues and expenses. However, DPL has not provided the Receiver with access to its email and other cloud-based accounts, or information regarding those accounts, including usernames and passwords. However, with the parties finalizing the settlement of the CFTC's claims against the Israeli Defendants, the Receiver expects to receive such access necessary to affect the settlement, pursue third-parties, and collect the agreed upon disgorgement amounts.

2. Records from Financial Institutions

During the Reporting Period, financial institutions continued to respond to the Receiver's correspondence and subpoenas and provide copies of the records requested by the Receiver. Additionally, the Receiver sent supplemental subpoenas to several financial institutions to request records associated with newly discovered accounts associated with the Defendants as well as additional records covering a larger time period for the Defendants' previously identified accounts. The Receiver and her counsel continued to work with the responding financial institutions to ensure full compliance with the Receiver's subpoenas. The Receiver has provided and will continue to provide copies of all records to her forensic accounting professionals to analyze and incorporate in their bank reconstruction and tracing of funds for purposes of identifying assets of the Estate, potential sources of recovery, Defendants' customers and creditors, and information regarding Defendants' business operations. Further, while working to obtain from the Defendants full compliance with the mandates of the Appointment Order, the Receiver uncovered additional previously unidentified accounts of certain Defendants at other financial institutions to which the Receiver has issued subpoenas requesting copies of all account records.

C. Analysis of Defendants' Accounts and Transfers of Funds/Assets

As detailed in her previous status reports and mentioned above, the Receiver's forensic accountants are in the process of preparing a reconstruction of the activity in each of the Receivership Defendants' accounts at financial institutions ("Account Reconstructions"). The Receiver continues to work with her forensic accountants to obtain the remaining records for each bank account that is needed to complete the forensic analysis and Account Reconstruction. The Receiver, her counsel and her forensic accountants will utilize the data obtained from the Account Reconstructions to trace funds to and from the Receivership Defendants and their affiliated business entities for purposes of identifying potential assets of the Estate, customers and creditors of the Defendants, and individuals and entities that may have received improper and avoidable transfers from Defendants. As additional records are identified and received from financial institutions and Defendants, the Receiver will provide copies to her forensic accountants so they may complete their analyses of account activity and the Account Reconstructions.

In addition to the above, during the current Reporting Period the Receiver's forensic accountants gathered information for and, with the assistance of tax professionals, prepared the 1096 and 1099 forms for 2020.

1. Israeli Forensic Accountant's Analysis of DPL's Transactions and Determination of Net Profits Related to CFTC's Claims

As previously reported, the Receiver, the CFTC and DPL agreed to have an independent forensic accountant at Grant Thornton in Israeli analyze the accounts and business transactions of DPL to determine DPL's net profits related to the business activities that were the subject of the CFTC's Complaint for the ultimate purpose of attempting to agree upon an amount that DPL would pay to the Estate in connection with a possible settlement of the CFTC's claims. The Israeli forensic accountant completed its initial analysis and prepared and delivered to the parties a Report

of its analysis and determinations regarding the net profits of DPL. During the current Reporting Period, the parties considered the Israeli forensic accountant's reports and utilized the findings detailed therein to reach an agreement regarding the net profits that served as a basis for a settlement of the CFTC's claims against the Israeli Defendants.

D. Securing Real and Personal Property and Other Assets of the Defendants

As detailed in the Receiver's prior status reports, the Receiver inventoried and secured Relief Defendant Carbonero's Residence located in Miami Beach in which Defendant Fingerhut also resided. In his financial disclosure, Defendant Fingerhut identified assets in an investment account in the amount of \$6,292.55⁹, a small personal motorboat, and an automobile. Through analysis of Fingerhut's financial disclosure, the Receiver identified additional accounts of Fingerhut at financial institutions. Accordingly, during the current Reporting Period, the Receiver sent subpoenas to these financial institutions to obtain records reflecting the histories and transactions of these accounts and an accounting of any assets held therein. The Receiver also continued to work with her forensic IT professional to finalize forensic imaging of Fingerhut's devices not already imaged and preserved.

During the last reporting period, Defendant DPL, through counsel, proffered that DPL has no personal or real property other than the assets held in three bank accounts, and, as explained above, the majority of those assets, held at a Safra Bank account in Israel, were transferred to the Receiver's fiduciary account. DPL's counsel assured the Receiver that the funds remaining in DPL's accounts in Spain and Bulgaria were frozen and, as explained above, is assisting the Receiver in having them transferred to the Receiver's fiduciary account. As of the filing of this

⁹ These funds and this investment account are frozen.

Report, the banks in Spain and Bulgaria had not transferred the funds to the Estate. The Receiver will follow up with the two banks, continue to search for other assets of the Defendants, and take possession of any assets she may discover.

E. The Estate's Potential Claims Against Third Parties, Affiliates, Insiders and Relatives

During the current Reporting Period, the Receiver and her professionals continued to work to identify all potential sources from which the Receivership Estate could recover funds and other assets belonging to, or improperly transferred from, the Defendants, including their affiliates, insiders, relatives and third parties who received funds or other assets traceable to the Defendants' businesses and/or customers that are the subject of the CFTC's Complaint. With the Preliminary Injunction entered and the Receiver's appointment made permanent for the pendency of the CFTC Enforcement Action, the Receiver is working to complete her investigation of those claims, including investigating additional financial institutions identified in the analysis provided by the Receiver's forensic accountant as well as the materials provided by the Israeli Defendants. The Receiver will consult with the CFTC and pursue those claims she believes are meritorious and likely to result in a significant recovery for the Receivership Estate.

IV. EXPENSES AND DISBURSEMENTS OF THE ESTATE

During the Reporting Period, the Receiver made disbursements from the Estate's fiduciary account in the amount of \$89,828.42 to pay professional fees and costs as authorized by this Court [ECF No. 196] and minimal bank fees for the Receiver's fiduciary account. *See* Exhibit A.

V. RECEIVER'S RECOMMENDATIONS AND CONCLUSION

In light of her ongoing efforts to fulfill her duties under the Appointment Order and Preliminary Injunction, the Receiver recommends that the Receivership continue until the Receiver is able to fully satisfy her duties.

The Receiver will continue to work with her team of professionals to locate, marshal and preserve all known and potential assets of the Estate. Further, as authorized by the Appointment Order, the Receiver will continue to investigate the Defendants' former business operations, identify their customers and creditors, and, at the appropriate time after consultation with the CFTC, pursue any and all potential claims against third parties, affiliates, insiders, relatives and other sources that are likely to result in significant recoveries for the Estate. With respect to the Israeli Defendants, a forthcoming settlement will assist the Receiver in working with their counsel and counsel for the CFTC to seek to enforce this Court's Orders in Israel and other countries in which such Defendants maintain assets in accordance with applicable international law. The Receiver will also continue to investigate and gather information regarding all Defendants' assets through cooperation, subpoenas, depositions, and other inquiries to financial institutions, and other entities and persons with any connection to the Defendants, to discover potential claims and sources of recovery. When appropriate the Receiver will propose a claims administration process consistent with the process approved by the Court in the companion case, *CFTC v. Atkinson, et al.*, Case No. 1:18-cv-23992-JEM. Finally, the Receiver will continue to perform all other duties as mandated by the Appointment Order and will update the Court on a regular basis as to the status of the Receivership.

Respectfully submitted this 1st day of April 2021.

Respectfully submitted,

/s/Kenneth Dante Murena

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Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission via this Court's CM/ECF filing system on April 1, 2021 on all counsel or parties who have appeared in the above-styled action.

/s/Kenneth Dante Murena

Kenneth Dante Murena,

Counsel for Melanie E. Damian,

Court-Appointed Receiver