

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

**REX VENTURE GROUP, LLC
d/b/a ZEEKREWARDS.COM, and
PAUL BURKS,**

Defendants.

No. 3:12-CV-519

RECEIVER’S STATUS REPORT FOR THE THIRD QUARTER OF 2015

I. INTRODUCTION

Kenneth D. Bell, Esq., the Court-appointed Temporary Receiver (the “Receiver”) for and over the estate of Rex Venture Group, LLC d/b/a ZeekRewards.com, submits this Quarterly Status Report (the “Report”) in accordance with the Order of this Court entered on August 17, 2012, for the purpose of providing a status report on the work and findings to date (the “Investigation”) of the Receiver, his counsel, agents, consultants, and advisors (the “Receiver Team”).

II. SUMMARY OF ACTIVITIES OF THE RECEIVER BETWEEN JULY 1, 2015 AND SEPTEMBER 30, 2015

A. Operations of the Receiver

1. Investigating the Receivership Defendant’s Financial Information

During the third quarter, the Receiver Team continued to work with FTI and various government agencies to collect and analyze documents and information to support its recovery of Receivership Assets. Recent efforts have focused in particular on those matters and related

discovery pending in federal court. The Receiver Team continues to assist government agencies in their own investigations concerning the Receivership Defendant, principals, affiliates, and the entities and financial institutions that provided services to or transacted with them.

2. Marshaling and Preserving Receivership Assets

a. Accounts for Holding Receivership Assets

The Receiver currently maintains five¹ bank accounts on behalf of the Receivership Estate for holding Receivership Assets: the “Affiliate Payments Account,” the “Seized Asset Account,” the “Pre-Filing Account,” the “Settlement Account,” and the “Holdback Account.”

Excluding earned interest and transfers between accounts, during the third quarter of 2015, the Receiver deposited a total of \$118,778.04 into the Settlement Account from settlements with third parties who were holding Receivership Assets or against whom the Receiver had asserted claims.

As of September 30, 2015, the Receivership Estate held approximately \$81.3 million in the Affiliate Payments Account, approximately \$2.5 million in the Seized Asset Account, approximately \$290,000 in the Pre-Filing Account, approximately \$8.7 million in the Settlement Account, and approximately \$1.5 million in the Holdback Account.

b. Outstanding and Dishonored Negotiable Instruments

In the quarter ending September 30, 2015, the Receiver’s conflicts counsel, Erwin, Bishop, Capitano & Moss, P.A. (“EBCM”) continued work to resolve claims arising from outstanding and dishonored cashier’s checks, teller’s checks, official checks, and bank money orders. EBCM filed eighteen turnover/contempt motions against banks and credit unions. Eight claims were resolved, resulting in payments of \$96,496.77 to the Receivership Estate during the

¹ The Receiver opened a sixth account during the second quarter of 2015 for the purpose of escrowing funds that had been held by NxSystems, Inc. pursuant to the Court’s June 1, 2015 order. The escrowed funds will be frozen in this account pending final resolution by the Court of whether the funds are Receivership Assets.

quarter.² As of September 30, six additional claims had been resolved subject to receipt of payment and/or completion of documentation that should result in a recovery of an additional \$41,396.00 during the fourth quarter. At the end of the third quarter, EBCM was pursuing eight active claims on which contempt motions have been filed. EBCM anticipates that its work on claims relating to outstanding and dishonored negotiable instruments should be completed in the fourth quarter of 2015.

c. Funds Held by E-Wallets

The Receiver continues to litigate the Motion for an Order Directing NxSystems, Inc. to Turn over Receivership Assets and/or Find it in Contempt of the Court's Agreed Order, including addressing discovery matters pursuant to the Court's July 9, 2015 Order.

d. Additional Asset Recovery

The Receiver Team continues to litigate the matter involving the recovery of assets from Preferred Merchants and its affiliates.

e. Foreign Accounts

The Receiver Team continues to investigate and pursue outstanding funds from Payza, Payment World, Solid Trust Pay, and Cyberprofit and is working with various government agencies and McGuireWoods Consulting in pursuit of these assets.

3. Analyzing the Operations of the Receivership Entity

a. Investigating and Validating the Receivership Defendant's Electronic and Financial Data

The Receiver did not obtain additional information affecting the validation of the Receivership Defendant's Electronic and Financial Data during the third quarter of 2015. As a

² These payments were received on September 30, 2015 but were not deposited until early October, so the third quarter ending account balances in subsection (a) above do not include these payments.

result, the Receiver Team did not further investigate the Receivership Defendant's electronic and financial data for validation purposes.

b. Investigating the Receivership Defendant's Operations

During the second quarter, the Receiver's investigation of RVG's operations included the continued analysis of correspondence and transactions among RVG and certain vendors and third-party advisors. This analysis was performed for various purposes, including the pursuit of Receivership Assets from financial institutions, support for the Receiver's ongoing fraudulent transfer lawsuits, and analysis of current and potential claims against third parties.

4. Communicating with Affiliates and Creditors

The Receiver Team continued to communicate with Affiliates on a daily basis throughout the third quarter of 2015. These communications were largely in regard to the distribution that was made on July 31, 2015, the allowance (or disallowance) of claims, and the net-winner litigation. The majority of the individual Affiliate communications related to the amount of the distribution an individual Affiliate was entitled to receive. Additionally, the Receivership Team spent significant time answering the requests of Affiliates who had failed to provide the required release, failed to provide an OFAC certification, or failed to file timely claims.

5. Issues Concerning Federal Taxes

During the third quarter, FTI tracked and reviewed 1099-related correspondence from Affiliates. This work included responding to various Affiliate questions and comments and reviewing transaction data for each Affiliate who inquired about a 1099 received from the Receiver. Additional work included performing analyses and research to respond to various requests from the Receiver and claimants and in some cases working with National Law Forms to generate amended 1099s.

6. **Litigation in the SEC Enforcement Action³**

The Receiver Team litigated the following matters in the SEC Action:

- The Receiver continued litigating the Receiver's Motion for an Order Directing NxSystems, Inc. to Turn over Receivership Assets and/or Find it in Contempt of the Court's Agreed Order.
- The Receiver litigated multiple claims for the return of Receivership assets from financial institutions. This litigation involves wrongfully dishonored negotiable instruments and is detailed above in Section II.A.2.b.
- The Receiver obtained an Order Requiring Return of Receivership Property, Deposition, and Production of Financial Records from Darryle Douglas and is currently pursuing compliance with this Order by Mr. Douglas.
- The Receiver moved to stay a civil proceeding in Arkansas state court where a third party contractor has placed a lien on Receivership property formerly owned by Dawn Wright-Olivares. The Court subsequently ordered that the real property at issue in the litigation is Receivership property and enjoined any further attempts to enforce or allow enforcement of the lien, or to pursue or allow pursuit of counterclaims related to the lien or counterclaims affecting the value of the property.

B. The Receiver's Fund Accounting

The Receiver's Standardized Fund Accounting Report ("SFAR") is attached hereto as Exhibit A.

³ The Receiver's efforts related to the recovery of fraudulently transferred funds and other damages incurred by RVG are discussed later in this Report.

C. The Receiver's Receipts and Disbursements

The Receiver's Schedule of Receipts and Disbursements ("Schedule") from July 1, 2015 through September 30, 2015, is attached hereto as Exhibit B. The Schedule sets forth the following receipts and disbursements:

1. Received funds of \$118,778.04 from third-party litigation settlements;⁴
2. Received interest income of \$27,255.61;
3. Disbursed funds from the Receiver's accounts of \$80,999,567.33 to Affiliate-investors;
4. Disbursed additional funds from the Receiver's accounts of \$1,221,099.53. These disbursements include claims process expenses; fees previously approved for payment of FTI and MW; RVG website and database hosting; professional services expenses; bank fees related to management of the Receiver's accounts; other legal services; and utility payments.⁵

Between July 1, 2015 and September 30, 2015, the Receivership Estate deposited \$146,033.65 and disbursed \$82,220,666.86. The Receiver has marshaled total assets of approximately \$348.3 million during the period between August 17, 2012 and September 30, 2015, while disbursing approximately \$253.6 million during the same period.⁶

⁴ As of the end of the third quarter, the Receiver has agreed to approximately \$3 million in settlements with net-winner Affiliates. The Receiver has collected over \$8.7 million in total litigation-related settlements since the inception of the Receivership.

⁵ See attached Exhibit B for further detail regarding disbursements and receipts.

⁶ A significant amount of the available funds on hand are being reserved in light of the more than 42,400 claimants who have been deemed to have accepted their claims but have yet to complete the required Release and OFAC certification.

D. Description of All Known Non-Cash Receivership Property

In the second quarter, the Receiver team worked to secure and prepare for sale a residential home in Clarksville, Arkansas, that was surrendered to the Receiver as part of a settlement with Defendant Dawn Wright-Oliveras. The Receiver retained local contractors to perform cleaning and grounds-keeping work and otherwise prepare the home for sale.

E. Description of Claims Held by the Receivership Estate

1. Identifying and Pursuing Fraudulently Transferred Funds Held by Net-Winner Affiliate-Investors

a. U.S. Net Winner Lawsuit

During the third quarter, the Receiver team coordinated with Berkeley Research Group (“BRG”) to provide it all requested information to allow for BRG’s review of records and preparation of Defendants’ expert report.

The Receiver filed a proposed Consent Order asking the Court to appoint attorney Kevin Edmundson as Class Counsel for the Net Winner Class. The Court entered an Order appointing Mr. Edmundson as Class Counsel and noted that the common questions related to the Net Winner Class are (1) whether ZeekRewards operated as a Ponzi and/or pyramid scheme and (2) whether net winnings received by the Defendants should be returned to the Receiver. The Court recognized its prior holding that that the details of each class member’s participation in ZeekRewards do not need to be addressed in answering these common and controlling questions.

Regarding collection efforts in the U.S. net winner lawsuit, the Receiver pursued collection efforts with the aid of local counsel against judgment debtors Michael Van Leeuwen, Todd Disner, Trudy Gilmond, and David Sorrells.

b. Claims Against Foreign Net Winners

The Receiver Team continued its significant efforts in pursuing fraudulently transferred assets from net winners residing in foreign countries. These efforts involved extensive research into various countries' unique interpretations of effective service of process pursuant to the Hague Convention; working with foreign counsel in seeking pre-filing freezes of defendants' assets; arranging for service of process with foreign authorities; drafting and filing of motions for entry of default and default judgment against defendants who failed to answer within the timeframe allowed by the Federal Rules; and collection efforts regarding foreign defendants against whom the Receiver has obtained default judgments.

2. Investigating Claims against Receivership Defendant Insiders

The Receiver has settled with each of the defendants named in the lawsuit against insiders of the ZeekRewards scheme other than Darryle Douglas, against whom the Receiver has obtained a default judgment. The Court has approved each of these settlements, and the case currently remains open on the Court's docket pending satisfaction of the terms of the various settlement agreements.

3. Investigating Claims against the Receivership Defendant's Third-Party Advisors and Others

a. *Bell v. Gerald Nehra et. al*

During the third quarter, the Receiver filed a lawsuit against attorneys Gerald Nehra and Richard Waak and their respective legal entities under which they practice law. *See Bell v. Nehra et. al*, No. 3:15cv437 (W.D.N.C. filed Sept. 21, 2015). Nehra and Waak improperly advised RVG in numerous ways. As the Complaint alleges, among other failures, Nehra and Waak informed the RVG Insiders that the Retail Profit Pool, an unregistered security, was "legally defensible"; generally promoted the scheme; and allowed their names to be used to prop

up ZeekRewards as a supposedly legitimate enterprise, all which breached their duties to RVG. The Complaint also alleges that their knowing and substantial assistance to the RVG Insiders' breaches of their fiduciary duties to RVG caused substantial harm to RVG, including, but not limited to, the financial claims of the victims of the Zeek Ponzi and/or pyramid scheme against RVG. For these and other wrongful actions, the Receiver has alleged claims of negligence / legal malpractice, aiding and abetting breach of fiduciary duty, and unjust enrichment, and seeks the imposition of a constructive trust.

b. *Bell v. Peak USA, LLC, et al.*

In the lawsuit against Gary Bessoni and the entities he used to provide "leads" to RVG and Affiliates, the parties conducted an initial attorney conference, and the Court issued a Pretrial Order and Case Management Plan setting the end of discovery for May 2, 2016 and the trial date for October 11, 2016. *See Bell v. Peak USA, LLC, et al.*, No. 3:15cv233 (Doc. No. 11). Since the Order issued, the Receiver has worked to prepare the Receiver's initial disclosures pursuant to Rule 26(a).

c. Investigation of Claims against Financial Institution

The Receiver's conflicts counsel worked with the Receiver to review documents and analyze claims against a bank that provided services to Rex Venture Group. As of the end of the third quarter, discovery related to these potential claims was ongoing. The Receiver anticipates the matter will be resolved or that litigation will commence during the fourth quarter.

F. Potential Creditors of the Receivership Estate

The proceedings against NxPay, Preferred Merchants, and their principals and affiliates are still pending. As the Receiver reported previously, the Receiver Team is defending against any claim that these entities or individuals are entitled to the improperly held or transferred funds either outright or as a set off against amounts owed to the Receivership Estate.

G. Status of Creditor Claims Proceedings, After Such Proceedings Have Been Commenced

On July 31, 2015, the Receiver issued checks to approximately 112,400 Affiliate claimants as part of the second partial interim distribution. The aggregate amount of this distribution was \$89,200,000. This distribution was calculated using the rising tide method that was previously approved by the Court and set the rising tide amount as 60% of the Affiliate's allowed claim amount. On September 25, 2015, the Receiver reissued checks to approximately 3,300 Affiliate claimants. These checks were reissued to claimants that had either requested one of their prior distribution checks be reissued or a prior check distribution had been returned to the Receivership with a forwarding address provided.

Despite the issuance of approximately 175,000 claim determinations, approximately 42,400 Affiliates that hold an allowable claim have either failed to respond to their claim determination or failed to provide all necessary documentation to be eligible for a distribution. By Order of this Court, an Affiliate who does not provide the required Release and the OFAC Statement is not eligible to receive a distribution. These Affiliates will remain ineligible to receive a distribution until they have completed the claim determination process. However, the Receivership Team has maintained adequate reserves to pay all Affiliates whose claims are allowed in the amounts in which such Affiliate submitted a claim. The Receiver reserves the right to release these funds in the future.

Approximately 2,000 Affiliates have objected to the claim determination issued by the Receiver Team. The Receiver Team is continuing to address these objections in an effort to resolve such objections before intervention from the Special Master or the Court would be needed. The Receiver Team has been successful in resolving the vast majority of these objections to date.

During the third quarter, all remaining subrogation claims made by financial institutions against the Receivership Estate were processed and issued claim determinations.

III. CONCLUSION

At this time, the Receiver recommends the continuation of the Receivership for the following reasons:

1. To continue the Receiver's efforts to investigate and marshal assets of the Receivership Estate;
2. To continue the Receiver's efforts to implement the claims and distribution processes in order to distribute proceeds to injured claimants;
3. To continue the Receiver's efforts to liquidate various assets of the Receivership Estate; and
4. To carry out any other legal or appointed duties of the Receiver identified in the Receiver Orders or as the Court deems necessary.

Dated: October 30, 2015

By: /s/ Kenneth D. Bell
Kenneth D. Bell, Esq., Receiver

and

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have electronically filed the foregoing **RECEIVER'S STATUS REPORT FOR THE THIRD QUARTER OF 2015** with the Clerk of Court using the CM/ECF system, which will send electronic copies to counsel of record registered to receive electronic service.

Dated: October 30, 2015

/s/ Kenneth D. Bell
Kenneth D. Bell, Esq., Receiver