

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CV-81205-RAR**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

**RECEIVER’S RESPONSE TO DEFENDANT DEAN J. VAGNOZZI’S EXPEDITED
MOTION TO APPROVE PAYMENT OF INSURANCE PREMIUMS**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (“Receiver”) of the Receivership Entities,¹ pursuant to the Court’s Order dated August 29, 2020 (ECF No. 207), respectfully submits this Response to Defendant Dean J. Vagnozzi’s Expedited Motion to Approve Payment of Insurance Premiums (the “Motion”) (ECF No. 203).

I. Representations made by Mr. Vagnozzi

Mr. Vagnozzi states that the payments he intends to make do “not use ABFP money, or money of any Receivership entity.” (*See* ECF No. 205 at 3.) The Receiver’s counsel conferred with counsel for Mr. Vagnozzi before Mr. Vagnozzi filed the Motion and reviewed financial records and other documents that appeared to confirm this representation. But the Receiver now

¹ The “Receivership Entities” are Complete Business Solutions Group, Inc. d/b/a Par Funding; Full Spectrum Processing, Inc.; ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan; ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; United Fidelis Group Corp.; Fidelis Financial Planning LLC; Retirement Evolution Group, LLC; RE Income Fund LLC; and RE Income Fund 2 LLC.

has substantial concerns about the veracity of other representations made by Mr. Vagnozzi in his Motion and Reply, which now cause the Receiver to question whether the information Mr. Vagnozzi initially provided to the Receiver are sufficient to fully evaluate the veracity of this representation. Specifically, Mr. Vagnozzi makes several representations regarding his recently-settled litigation with an ABFP Income Fund, L.P. noteholder, Mr. David Jancarski, that are directly undermined by materials recently received by the Receiver:

- (1) The Reply states, “*the settlement payment to the noteholder was made on July 23, 2020*—before this lawsuit was even filed. That hardly could be a violation of a Court order in a case that did not even exist yet.” (ECF No. 205 at 5 (emphasis modified).)

The law firm of Eckert Seamans represented Mr. Vagnozzi and ABFP Income Fund, L.P. in that litigation and the negotiation of this settlement with the noteholder. Last week, the Receiver received correspondence from Katie Recker of Walsh & Recker, P.C., the attorneys that are now representing Eckert Seamans in connection with claims being made against that firm and one of its lawyers (as well as Mr. Vagnozzi and various ABFP entries) as a result of work the firm performed involving investments in Par Funding. Ms. Recker provided the Receiver with copies of e-mails showing that the settlement consideration referenced above was being held in an attorney trust account until at least August 12, 2020, and that Mr. Vagnozzi did not execute any written settlement agreement with Mr. Jancarski before that date. In the e-mails, Mr. Jancarski's attorney writes on August 7, 2020, to counsel for Mr. Vagnozzi, “I would like to get the funds to Mr. Jancarski as soon as possible.” (Correspondence attached as **Exhibit 1**.) Mr. Jancarski himself writes, “I'm still ‘Holding My Breath’ on getting my funds,” on August 10, and that e-mail is subsequently forwarded to Mr. Vagnozzi's attorney, who states that the settlement agreement has not been signed by Mr. Vagnozzi. (*Id.*) Although the settlement agreement shows a backdated

effective date of July 29, 2020 (*see* ECF No. 204-3 at p. 5), the parties' correspondence shows that no settlement agreement was signed until August 12, 2020, at the earliest. (*See* Exhibit 1.)

The settlement was publicly disclosed when Mr. Jancarski filed a Praecipe to Settle Discontinue and End in Pennsylvania's Court of Common Pleas on Friday, August 21, 2020. (ECF No. 204-5.) Counsel for the Eckert Seamans law firm sent the Receiver the correspondence discussed above the following Monday, August 24, 2020. None of this information was disclosed contemporaneously to the Receiver.

- (2) The Reply states, "Mr. Vagnozzi has since gone out of his way voluntarily not to transfer any monies –including from non-Receivership entities, without first consulting with the Receiver." (ECF No. 205 at 5.)

The Receivership disagrees with Mr. Vagnozzi's characterization of his "consult[ation] with the Receiver." Mr. Vagnozzi appears to have entered into a written settlement agreement with Mr. Jancarski, an ABFP Income Fund, L.P. noteholder, on or about August 12, 2020, after the Court appointed a Receiver over the Receivership Entities, after the Court entered an Order freezing assets of the Receivership Entities, and after the Court entered a Litigation Injunction. The correspondence from Mr. Jancarski and his counsel make clear that, at the time these Orders were entered, no written agreement had been executed and the monies relating to the settlement agreement were being held in trust. In light of these facts, Mr. Vagnozzi's failure to inform the Receiver of his intent to sign a settlement agreement that would effectuate the transfer of monies to a noteholder is contrary to the Court's initial Receivership Order, which provides that the "Receivership Entities and all persons receiving notice of this Order shall not hinder or interfere with the Receiver's effort to take control or possession of the Receivership Entities' property interests identified above, or hinder his efforts to preserve them." (ECF No. 36.)

Mr. Vagnozzi has repeatedly reminded the Court that, during this time, he did “not consent to the imposition of a receivership.” (ECF No. 82 at ¶ 11; *see also* ECF No 109 at ¶ 3 (“Mr. Vagnozzi reserves his general objection to a Receivership and the scope of the Receivership”).) Mr. Vagnozzi in his Reply brief again states his position that the initial Receivership Order was a “limited” Order. (ECF No. 205 at 6.) Mr. Vagnozzi, based on these objections, appears to have taken the view that he could execute agreements transferring monies on behalf of various ABFP entities until the Court entered its Amended Receivership Order. Notwithstanding his objections to the scope of the receivership, Mr. Vagnozzi chose not to disclose to the Receiver a material settlement agreement with a noteholder executed three weeks ago. His representation to the Court that this settlement payment was “made on July 23, 2020” (ECF No. 205 at 5), in light of the correspondence above, leaves the Receiver greatly concerned about his separate assertion here that the payments he now intends to make have nothing to do with the Receivership Entities.

- (3) Mr. Vagnozzi states, “[a]s soon as undersigned counsel learned of the situation with the noteholder settlement this week, the Receiver was notified of the situation. In other words, Mr. Vagnozzi brought this to the Receiver's attention – not the other way around.” (*Id.* at 5.)

This is false. The Receiver was made aware of this situation through a voluntary production by counsel for the Eckert Seamans law firm. It was only after the Receiver followed up and requested additional information about certain details concerning the settlement that were missing from this production, and through a review of court filings, that the Receiver learned what had actually occurred. (*See* ECF No. 204 at 2-3 (outlining timing of settlement).)

II. Relief sought by Mr. Vagnozzi

Mr. Vagnozzi seeks to have certain life insurance payment premiums paid, commencing on September 2, 2020. (ECF No. 203 at ¶ 7.) The Receiver agrees that these payments should be paid. But Mr. Vagnozzi's representation that these payments will not use the “money of any

Receivership entity” (ECF No. 205 at 3), in light of the Receiver’s investigation of similar representations as outlined above, demands further confirmation.²

Accordingly, the Receiver respectfully requests the Court to require Mr. Vagnozzi to serve on the Receiver and the Securities and Exchange Commission, on or before 11:00 a.m. on September 1, 2020, an affidavit containing the following information:

(1) With respect to the “Pillar Entities” (defined in ECF No. 203 at ¶ 2):

- a. any Pillar Entity that has any beneficial or legal interest in any Receivership Entity or any asset of any Receivership Entity, and a description of any such interest;
- b. any Pillar Entity that has a contract, security interest, pledge, lien, or encumbrance relating to any Receivership Entity or any asset of any Receivership Entity, and a description of any such contract, security interest, pledge, lien, or encumbrance;
- c. for any payment that Mr. Vagnozzi intends to make from any Pillar Entity account, banking and accounting records sufficient to identify the source of the funds being used for such payment.

(2) With respect to the “Multi-Strategy Entities” (defined in ECF No. 203 at ¶ 2):

- a. any Multi-Strategy Entity that has any beneficial or legal interest in any Receivership Entity or any asset of any Receivership Entity, and a description of any such interest;
- b. any Multi-Strategy Entity that has a contract, security interest, pledge, lien, or encumbrance relating to any Receivership Entity or any asset of any Receivership Entity, and a description of any such contract, security interest, pledge, lien, or encumbrance;
- c. for any payment that Mr. Vagnozzi intends to make from any Multi-Strategy Entity account, banking and accounting records sufficient to identify the source of the funds being used for such payment.

(3) With respect to Mr. Vagnozzi’s settlement with Mr. Jancarski:

- a. a description of when any purported oral or written settlement agreements were executed;

² Although Mr. Vagnozzi also states in his Reply that his Court-Ordered accounting is complete (ECF No. 205), the Receiver does not believe that any of the ABFP entities have submitted any accounting to the SEC or Receiver.

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- b. a description of when settlement consideration was paid by Mr. Vagnozzi, including the bank records or check receipt showing any such payment;
- c. a description of why any settlement consideration was transferred to counsel for Mr. Jancarski before the parties entered into a fully-executed settlement agreement;
- d. any bank records or other documents identifying the source of funds used in any settlement agreement;
- e. any facts known by Mr. Vagnozzi relating to when the settlement consideration was released to the noteholder.

The Receiver is committed to advising the Court immediately, upon the receipt and review of such information, of any additional facts relevant to Mr. Vagnozzi's Motion.

Dated: August 31, 2020

Respectfully Submitted,

**STUMPHAUZER FOSLID SLOMAN
ROSS & KOLAYA, PLLC**
Two South Biscayne Blvd., Suite 1600
Miami, FL 33131
Telephone: (305) 614-1400
Facsimile: (305) 614-1425

By: /s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA
Florida Bar No. 056140
tkolaya@sfslaw.com

Co-Counsel for Receiver

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**PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP**
1818 Market Street, Suite 3402
Philadelphia, PA 19103
Telephone: (215) 320-6200
Facsimile: (215) 981-0082

By: /s/ Gaetan J. Alfano
GAETAN J. ALFANO
Pennsylvania Bar No. 32971
(Admitted Pro Hac Vice)
GJA@Pietragallo.com
DOUGLAS K. ROSENBLUM
Pennsylvania Bar No. 90989
(Admitted Pro Hac Vice)
DKR@Pietragallo.com

Co-Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 31, 2020, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya
Timothy A. Kolaya

Exhibit “1”

From: Gaetan J. Alfano
Sent: Thursday, August 27, 2020 5:14 PM
To: Gerald Berkowitz <gbsb@berklein.com>
Cc: CMRecker@welshrecker.com; brian.miller@akerman.com
Subject: FW: [External] Fwd: Re: Settlement Agreement

Mr. Berkowitz,

I came across this email exchange between you and counsel for Mr. Vagnozzi. According to this document, the Agreement was not signed as of August 10, 2020. It completely contradicts the narrative that you provided yesterday.

I am very concerned that you and your client may have known that a Receiver had been appointed, - hence the delay that your client references below – that you knew that Mr. Vagnozzi had no authority to act, and that, nevertheless, you provided the check to your client.

This is very troubling. Please urge your client to return these funds to the Receiver before the Receiver is compelled to take appropriate action.

Thank you.

Gaetan Alfano

Gaetan J. Alfano, Esquire
Pietragallo Gordon Alfano Bosick & Raspanti, LLP
1818 Market Street, Suite 3402
Philadelphia, PA 19103
Office: (215) 988-1441 | Fax: (215) 754-5181
GJA@Pietragallo.com | [BIO](#) | [vCard](#)



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From: Frank Emmerich Jr. <femmerich@eckertseamans.com>
Sent: Tuesday, August 11, 2020 1:12 PM
To: gsb <gbsb@berklein.com>
Subject: RE: [External] Fwd: Re: Settlement Agreement

Jerry, an hour ago I got an update which has not changed. Frank



Frank Emmerich Jr., Member
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Two Liberty Place, 22nd Floor, 50 South 16th Street | Philadelphia, PA 19102

T: 215-851-8409 C: 267-251-0711 F: 215-851-8383

-----Original Message-----

From: gsb <gsb@berklein.com>
Sent: Tuesday, August 11, 2020 1:07 PM
To: Frank Emmerich Jr. <femmerich@eckertseamans.com>
Subject: [External] Fwd: Re: Settlement Agreement

> ----- Original Message -----

> From: David Jancarski <djancarski@icloud.com>
> To: gsb <gsb@berklein.com>
> Date: August 11, 2020 10:09 AM
> Subject: Re: Settlement Agreement

>
>

> Jerry, Good Morning! Left you a message on your cell. Jerry, I'm not sure what else I can say to put a fire under you & Frank to finish this whole debacle with Dean & his signature. Give me Frank's number & I'll call/visit him today. I'm tired of you just accepting Frank's string us a long plan! Your friendship has "clouded" your vision. Do you want me to get a new lawyer? Do what I'm paying you for, & FINISH THIS UP!!!! Call me!

>

> Sent from my iPhone

>

>> On Aug 10, 2020, at 2:40 PM, David Jancarski <djancarski@icloud.com> wrote:

>>

>> Tell your buddy Frank he has to do better!! Trying to get this doc signed is not getting it signed!!! Get it signed any way you can. Just get it done Jerry!!

>>

>> Sent from my iPhone

>>

>>> On Aug 10, 2020, at 2:29 PM, gsb <gsb@berklein.com> wrote:

>>>

>>> I have been in touch with Frank several times and he is trying to get the agreement signed.

>>>> On August 10, 2020 12:46 PM David Jancarski <djancarski@icloud.com> wrote:

>>>>

>>>>

>>>> I'm sorry to bother you on vacation; BUT this is extremely important to me, my Family & the amount of money I have to live on in Retirement!!! Do NOT Frank drag this on all week. It is simple, get him to deliver the docs to Dean, SIGN THEM in front of him; & get this matter taken care of! To be honest, YOU should have had all these docs signed by everyone involved that day in your office when we

all agreed! Now here it is 3 weeks later & I'm still "Holding My Breath" on getting my funds. Put some pressure on your "Friend" & let's get this settled this week. Sincerely, <Dave Jancarski>

> >>> PS: You should have told me you were going on vacation. Is Robert handling your cases while your away?

> >>>

> >>> Sent from my iPhone

> >>>

> >>>> On Aug 10, 2020, at 11:55 AM, gsb <gsb@berklein.com> wrote:

> >>>>

> >>>> I'm not avoiding your calls, I'm at the beach on vacation. I'll call Frank.

> >>>>

> >>>> Jerry

> >>>>> On August 10, 2020 10:38 AM David Jancarski <djancarski@icloud.com> wrote:

> >>>>>

> >>>>>

> >>>>> Jerry, I left you another message from Friday! It's been almost 3 weeks since the funds cleared. What are you going to do to get this signed THIS WEEK!!! Deliver the docs personally if you have to get it signed. DO NOT let your buddy Frank keep stringing you along. Is 3 weeks going to turn into 3 months or 3 years?? We left your office thinking this was a DONE DEAL; & now we are in limbo AGAIN. The money needs to be reinvested ASAP. I feel like since this deal hasn't be locked up yet, you are avoiding my phone calls or e-mails. Dave J

> >>>>>

> >>>>> Sent from my iPhone

> >>>>>

> >>>>>> On Aug 7, 2020, at 2:20 PM, gsb <gsb@berklein.com> wrote:

> >>>>>>

> >>>>>>

> >>>>>> Frank,

> >>>>>>

> >>>>>>> Whats the status of the settlement agreement? I would like to get the funds to Mr. Jancarski as soon as possible.

> >>>>>>>

> >>>>>>> Jerry