

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-CV-61937 WPD

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

STUDENT DEBT DOCTOR LLC, a Florida
limited liability company,

and

GARY BRENT WHITE, JR., individually and
as an officer of Defendant Student Debt Doctor LLC,

Defendants.

**RECEIVER'S UNOPPOSED MOTION FOR AUTHORITY TO UNFREEZE AND
TRANSFER FUNDS PREVIOUSLY FROZEN BY RELIANT ACCOUNT
MANAGEMENT, WITH SUPPORTING MEMORANDUM OF LAW**

Robert Carey, not individually, but solely in his capacity as the Court-appointed receiver (the "Receiver") for Student Debt Doctor LLC ("SDD"), Fidelity Debt Reserve LLC ("Fidelity Debt"), Fidelity Credit Repair LLC ("Fidelity Credit"), Fidelity Reserve Loans LLC ("Fidelity Reserve"), G White Enterprises LLC ("G White"), and Fidelity Asset Holdings Limited Partnership ("Fidelity Asset Holdings"), moves, on an unopposed basis, for authority to unfreeze and transfer funds previously frozen by nonparty Reliant Account Management ("RAM"). The majority of the frozen funds in the amount of approximately \$156,000 are owned by customers of Receivership Entity Fidelity Debt, who are also customers of RAM. These same customers previously contracted with RAM to provide payment and data processing services, including

payment of fees associated with pre-receivership debt relief services purportedly provided by Fidelity Debt.

Undersigned counsel hereby certifies that he has conferred with counsel for both Plaintiff Federal Trade Commission (the “FTC”) and Mr. White. The FTC and Mr. White have no objection to this Motion.

INTRODUCTION

RAM processed payments to/from customer accounts, made disbursements as directed, and provided online transactions and accounting information for debt settlement companies, such as Fidelity Debt. Shortly after his appointment, the Receiver served the TRO [DE 9] on RAM, which he understood had an account relationship with SDD or its related entities. RAM complied with the TRO, confirmed that it only had a relationship with related entity Fidelity Debt in which student debt relief transactions and various fees were processed, stopped all future customer drafts, and froze several categories of funds, including funds owed to, among others, Fidelity Debt and purportedly owed to Fidelity Debt/RAM customers.

The Receiver then spent several months evaluating what additional entities were subject to the receivership and thus expanded the receivership. Specifically, the Receiver ultimately moved, on an unopposed basis, to expand the receivership over five entities related to SDD – *i.e.*, (1) Fidelity Debt; (2) Fidelity Credit; (3) Fidelity Reserve; (4) G White; and (5) Fidelity Asset Holdings – for the various reasons discussed in the Receiver’s Unopposed Motion to Expand Receivership to Include Additional Entities as Receivership Entities [DE 61]. This Court immediately granted the Receiver’s Motion for the benefit of the Receivership Estate [DE 62].

Fidelity Debt was part of “The Fidelity Group” with SDD. Mr. White owned and controlled Fidelity Debt. In addition, Fidelity Debt provided debt settlement, debt validation and credit repair services, and also operated out of the SDD premises. In addition, SDD paid for

Fidelity Debt's debts, such as credit card payments, and employees' payroll through ADP. Fidelity Debt consequently participated in the transfer or receipt of assets stemming from the business activities that are the subject of the Complaint in this matter. Therefore, the Receiver determined that Fidelity Debt was properly covered as a "Receivership Entity" under the terms of the PI.

After Fidelity Debt was formally a Receivership Entity, the Receiver requested that RAM produce an accounting of all customer transactions and frozen funds, including funds owned by Fidelity Debt and purportedly owned by customers. In addition, the Receiver requested that RAM produce all contracts with customers and with Fidelity Debt for the Receiver to confirm what funds, if any, were truly owned by customers, as opposed to Fidelity Debt. RAM complied with the Receiver's requests, including a subpoena and follow-up email requests for documents and information.

According to RAM's most recent production to the Receiver as of March 8, 2018, \$2,465.80 was frozen and payable to Fidelity Debt; \$63.75 was frozen and payable to RAM; \$115.00 was frozen and payable to a third-party vendor Veritas Legal; and \$156,330.92 was frozen and owned by Fidelity Debt/RAM customers.¹ The Receiver also reviewed the produced contracts to confirm that the frozen customer funds are truly owned by the subject Fidelity Debt/RAM customers, as opposed to Receivership Entity Fidelity Debt.

The Receiver has confirmed that the \$156,330.92 is, indeed, owned by the customers in "trust" accounts in their name. However, for purposes of full transparency, and to ensure the record is clear on this issue, the Receiver is filing this Motion and requests that this Court issue the proposed Order attached as Exhibit A.

¹ There were approximately 50 Fidelity Debt/RAM customers at the time of the receivership's commencement.

PROCEDURAL BACKGROUND

On October 2, 2017, the FTC filed a Complaint for Permanent Injunction and Other Equitable Relief alleging that Defendants were violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, in connection with Defendants' marketing and sale of student loan debt relief services. The FTC also sought the TRO.

On the following day (*i.e.*, October 3, 2017), this Court granted the relief sought by the FTC and issued the TRO, in which this Court appointed the Receiver for SDD and the other Receivership Entities. In part, this means that this Court ordered the Receiver to assume full control of the Receivership Entities and to secure, conserve, hold, manage, and prevent the loss of the Receivership Entities' assets. Shortly thereafter, Defendants stipulated to the PI [DE 24], which essentially incorporated the terms of the TRO, as well as other relevant terms.

Since his appointment, the Receiver and his professionals have been working tirelessly, yet efficiently, to effectuate his obligations under the TRO (and now the PI). As further discussed below, this work has involved identifying and freezing significant accounts and assets of the Receivership Entities and Mr. White himself, as well as securing three business suites in which the Receivership Entities operated and preserving all relevant books and records (both hard copy and voluminous electronically-stored information ("ESI")).

In addition, the Receiver has served multiple subpoenas on financial institutions to forensically investigate where company funds were spent and/or transferred, as well as several subpoenas on pre-receivership legal counsel and accountants to obtain their files, billing records, any remaining retainer amounts, documents/information regarding assets, and any other related receivership documents. The subpoena productions, which have begun and will continue, will assist the Receiver in, among other things, tracing of funds and analyzing potential third-party claims to file, namely fraudulent transfer claims, for recovery-based ancillary litigation.

As more fully discussed in the First, Second and Third Receiver's Reports [DE 25-1, DE 52-1, and DE 70-1], the Receiver has accomplished much for the benefit of the Receivership Estate and consumers since his appointment. Such accomplishments have been listed in recent filings (and therefore need not be repeated herein).

MEMORANDUM OF LAW

A. The Court's Broad Equitable Receivership Powers

The Court's power to supervise an equity receivership and determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court's wide discretion derives from the inherent powers of an equity court to fashion appropriate relief. *Elliott*, 953 F.2d at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)). Equity naturally dictates that only funds owed to and/or owned by the Receivership Entities be subject to, and thus part of, the receivership.

In addition, the issue of what is subject to the receivership includes the definition of "Receivership Entity(ies)" in Section II.J of the PI, which is defined to include SDD but also "any other entity that the Receiver determines is controlled or owned by any Defendant and (1) conducted any business related to Defendants' marketing of debt relief services, (2) commingled or pooled assets with any Defendant, or (3) otherwise participated in the transfer or receipt of assets stemming from any business activity that is the subject of the Complaint in this matter."

B. The Receiver Has Confirmed That the Frozen Funds of \$156,330.92 Are Customer, Not Receivership, Funds

As stated above, the Receiver has obtained and reviewed productions of documents and information from RAM. The Receiver has confirmed that the frozen \$156,330.92 is owned by the Fidelity Debt/RAM customers, not Receivership Entity Fidelity Debt, in segregated "trust" accounts in each Fidelity Debt/RAM customer's name. Therefore, the Receiver has determined

that such funds of \$156,330.92 are not captured under the express terms of the PI, do not constitute receivership funds/property, and should be returned to the appropriate customers.

CONCLUSION

Based on the above, this Court should authorize that the previously frozen amount of \$156,330.92 be unfrozen by RAM and released to its customers in the specific amount owed to each customer. In addition, the \$2,465.80 previously frozen and payable to Fidelity Debt should be unfrozen and transferred to the Receiver (on behalf of Fidelity Debt); the \$63.75 previously frozen and payable to RAM should be unfrozen and transferred to RAM; and the \$115.00 previously frozen and payable to third-party vendor Veritas Legal should be unfrozen and transferred to Veritas Legal.²

CERTIFICATION

Pursuant to Local Rule 7.1.A.3, undersigned counsel hereby certifies that he has conferred with counsel for the FTC and Mr. White, who have no objection to this Motion.

As also stated above, a proposed Order granting this Motion is attached as Exhibit A.

WHEREFORE, the Receiver respectfully requests that this Court enter the proposed Order, attached as Exhibit A, authorizing and approving the release of funds by RAM as discussed above.

² The Receiver typically does not permit vendors to receive payment post-receivership, but the amounts here are so minimal that it would be cost-prohibitive to contest, let alone even address, the issue with them.

Dated: May 30, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2018, 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 all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s:/Patrick J. Rengstl
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