

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

Case No. : 6:16-CV-02123-Orl-31DCI

v.

J. WILLIAM ENTERPRISES, LLC, a Florida
limited liability company, also d/b/a PRO
TIMESHARE RESALES;

PRO TIMESHARE RESALES OF FLAGLER
BEACH, LLC, Florida limited liability company;

JESS KINMONT, individually and as an officer
of J. WILLIAM ENTERPRISES, LLC and PRO
TIMESHARE RESALES, LLC;

and

JOHN P. WENZ, JR., individually and as an
officer of PRO TIMESHARE RESALES OF
FLAGLER BEACH, LLC,

Defendants.

RECEIVER'S MOTION FOR DISCHARGE AND CANCELLATION OF BOND

Brian A. McDowell, the Court appointed Receiver (“Receiver”) for J. William Enterprises, LLC, d/b/a Pro Timeshares Resales and Pro Timeshare Resales of Flagler Beach, LLC, by and through his undersigned counsel, files this Motion for an order discharging the Receiver and cancelling bond now that all receivership funds in the hands of the Receiver have been transferred to the Federal Trade Commission, and states:

1. On December 12, 2016, the Federal Trade Commission (“FTC”) filed its Complaint for Injunctive Relief and Other Equitable Relief (Doc. No. 2) against defendants J. William

Enterprises, LLC (“JWE”), Pro Timeshare Resales of Flagler Beach, LLC (“Flagler”) (JWE and Flagler are collectively referred to as the “Receivership Defendants”), Jess Kinmont (“Kinmont”), and John P. Wenz, Jr. (“Wenz”) (Receivership Defendants, Kinmont, and Wenz are collectively referred to as “Defendants”). In its Complaint, the FTC alleges that the Defendants, through a common enterprise, engaged in a plan, program, or campaign to deceptively advertise, market, promote, offer for sale, or sell timeshare resale or rental services.

2. On December 13, 2016, the Court entered its *Ex Parte* Temporary Restraining Order (“TRO”) (Doc. No. 11) appointing Brian A. McDowell as temporary receiver over the Receivership Defendants.

3. The TRO required the Receiver to post a \$10,000.00 surety bond.

4. Receiver posted the bond on December 20, 2016 and filed a Notice of Filing Receiver’s Bond on January 17, 2017 (Doc. No. 66).

5. On December 27, 2016, the Court entered its Stipulated Preliminary Injunction Order with Asset Freeze, Appointment of a Permanent Receiver, and Other Equitable Relief (“Injunction”) (Doc. No. 55) appointing Brian A. McDowell as the Permanent Receiver over the Receivership Defendants.

6. The Injunction required Receiver to continue the \$10,000.00 surety bond.

7. On April 30, 2018, the Court entered its Stipulated Final Judgment and Order (“Final Judgment”) (Doc. No. 214), requiring the Receiver to immediately wind down the affairs and liquidate the assets of the Receivership Defendants, as well as certain assets of Wenz and Kinmont, and transfer to Plaintiff any amounts over and above those necessary to manage the assets, employ agents, or pay his or his counsel’s court-approved fees and expenses.

8. The Final Judgment also provided that upon approval of the Receiver's final report and request for payment, and final transfer of all remaining funds to Plaintiff, the receivership will be terminated.

9. On December 14, 2018, the Receiver filed his Motion for Entry of Order Discharging Receiver and Releasing or Cancelling Bond Upon Transfer of Remaining Funds to Plaintiff ("Discharge Motion").

10. In the Discharge Motion, the Receiver stated that he was "coordinating with the Plaintiff to transfer \$2,300,000.00 to Plaintiff," awaiting one utility deposit refund, and awaiting two outstanding Receivership checks¹ to be cashed before transferring to Plaintiff all remaining funds in the Receivership checking accounts. Discharge Motion at 3.

11. Further, the Receiver requested that the Court enter "an Order discharging Receiver and releasing or cancelling the Bond upon the Receiver filing a notice with this Court, in no event later than January 25, 2019,² that all funds in the Receivership accounts have been transferred to Plaintiff." Discharge Motion at 4.

12. On December 18, 2018, the Court entered its Order directing the Receiver to "finalize and terminate the Receivership by January 25, 2019, as provided by paragraphs 11-12 of the [Discharge] Motion" Order at 1. The Order further stated that "[u]pon receipt of notice by the Receiver that all funds have been transferred to Plaintiff, the Court will discharge and release

¹ Check No. 285, issued on November 27, 2018, was made payable to Hostek.com in the amount of \$72.00 for e-mail storage services. Check No. 287, issued on November 28, 2018, was made payable to Department of Legal Affairs, Escrow Account (Office of the Florida Attorney General) ("Office") in the amount of \$3,800.00, such amount representing proceeds to the Office from the sale of one piano and two statues at the Auction pursuant to an agreement between the Receiver and the Office.

² The Final Judgment states that "[u]pon approval of the Receiver's final report and request for payment, *but no later than 270 days after entry of this Final Judgment and Order*, the receivership will be terminated" See Final Judgment at 19. The day that is 270 days after entry of the Final Judgment is January 25, 2019.

Receiver from the \$10,000 security bond posted in this case.” Order at 2.³

13. The Receiver wired \$2,300,000.00 to Plaintiff on December 18, 2018.

14. As reflected in the updated accounting attached hereto as Exhibit “A,” the Receiver wired the remaining funds, totaling \$72,182.34, to Plaintiff on February 6, 2019.

15. Accordingly, all receivership funds in the hands of the Receiver have been transferred to Plaintiff.

WHEREFORE, the Receiver requests that this Court enter an Order (i) discharging Receiver, (ii) releasing or cancelling the Bond, and (iii) granting such additional relief as this Court deems necessary and appropriate.

Dated this 7th day of February, 2019.

Respectfully submitted,

/s/ Robert W. Davis, Jr.
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³ Due to the partial government shutdown (“Shutdown”), the Receiver was unable to wire all receivership funds to Plaintiff by January 25, 2019. On January 23, 2019, the Court entered an Endorsed Order (Doc. No. 241) authorizing the Receiver to transfer such funds and file this paper on or before the fourteenth calendar day after the Shutdown ended.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF System, which will send electronic filing to all counsel of record.

/s/ Robert W. Davis, Jr.
Robert W. Davis, Jr., Esq.
Florida Bar No. 84953
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JWE Account History				
DATE HONORED	DESCRIPTION	DEPOSITS	WITHDRAWALS	BALANCE
	Beginning Balance as of January 18, 2019			\$64,985.79
1/31/2019	Interest Credit	\$42.48		\$65,028.27
2/5/2019	Deposit (from Pro Timeshares Flagler Account)	\$7,147.42		\$72,175.69
2/6/2019	Interest Credit	\$6.65		\$72,182.34
2/6/2019	Wire to Plaintiff		\$72,182.34	\$0.00
Pro Timeshares Flagler Account History				
DATE HONORED	DESCRIPTION	DEPOSITS	WITHDRAWALS	BALANCE
	Beginning Balance as of January 18, 2019			\$7,147.42
2/5/2019	Withdrawal (to JWE Account)		\$7,147.42	\$0.00
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