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AEQUITAS MANAGEMENT, LLC; AEQUITAS HOLDINGS, LLC;
AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS
CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT
MANAGEMENT, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;
AEQUITAS COMMERCIAL FINANCE,
LLC; AEQUITAS CAPITAL
MANAGEMENT, INC.; AEQUITAS
INVESTMENT MANAGEMENT, LLC;
ROBERT J. JESENİK, BRIAN A. OLIVER;
and N. SCOTT GILLIS,

Defendants.

No. 3:16-cv-00438-JR

RECEIVER’S REPLY IN SUPPORT OF
MOTION FOR ORDER (1)
APPROVING COMPROMISES OF
CLAIMS, (2) AUTHORIZING
PERFORMANCE OF SETTLEMENT
AGREEMENTS, AND (3) AUTHORIZING
DISBURSEMENT OF FUNDS HELD IN A
SEGREGATED ACCOUNT (DKT. NO. 980)



Local Rule 7-1 Certificate

Prior to filing the Receiver's Motion for Order (1) Approving Compromises of Claims, (2) Authorizing Performance of Settlement Agreements, and (3) Authorizing Disbursement of Funds Held In a Segregated Account (Dkt. No. 980 - "Motion"), counsel for the Receiver advised counsel for TRD Consulting, LLC ("TRD") of the relevant circumstances underlying the Motion and provided service copies of the filed pleadings.

In its Limited Objection, TRD raised the issue of the Court possibly requiring that the \$800,000 settlement proceeds be jointly payable to the Liquidating Trust and TRD, relief not sought by way of the Receiver's Motion. After the Limited Objection was filed, counsel for the Receiver and counsel for TRD conferred and did not reach a resolution of the remaining issues.

Remaining Issues

The Receiver is seeking approval of nine settlements. The only objection relates to the settlement reached with the Liquidating Trustee. In short, through an entity that he did not put in bankruptcy, Timothy Duoos seeks a portion of the \$800,000 settlement proceeds. In an effort to leverage that result, Mr. Duoos objects to the Court disbursing the remaining funds held in a segregated account that he, as the President of Tango Delta Financial, Inc., declared under penalty of perjury to be an asset or "interest" of the bankruptcy estate.¹ Those remaining funds are property of the Receivership Estate and should be distributed to the Defrauded Investors. Mr. Duoos could certainly petition the Florida bankruptcy court for a portion of the settlement proceeds, in the event he and/or any of his companies had a legitimate claim. As addressed

¹ American Student Financial Group, Inc. changed its name to Tango Delta Financial, Inc. prior to filing bankruptcy in May of 2020. Notwithstanding the name change, the Receiver refers to American Student Financial Group, Inc. as "ASFG" herein.

below, they do not. Regardless, this is not the forum and the Aequitas Defrauded Investors should not be further adversely affected by Mr. Duoos.

1. Duoos and his companies utilized a financing program designed to defraud the U.S. Department of Education by evading the 90/10 financing rule.

At all relevant times, Mr. Duoos was the President of ASFG, which was wholly-owned by Express Aviation Acquisition Corporation, which in turn was wholly-owned by Mr. Duoos or a Duoos family trust. (Greenfield Declaration, p. 2, Ex. 1). Additionally, Mr. Duoos controls the lone objecting party, TRD, which is now owned by a Duoos family trust and immediate family members.² On June 29, 2011, the date the Consulting Services Agreement was entered, Mr. Duoos was the “Sole Member” of TRD. (Dkt. No. 924, p. 296).

On May 11, 2020, with Mr. Duoos at the helm, ASFG filed a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Middle District of Florida. *In re Tango Delta Financial, Inc.*, Bankr. M.D. Fl. Case No. 8:20-bk-03672 (the “Florida Bankruptcy”). (Greenspan Decl., ¶ DD, Ex. 3).

ASFG’s bankruptcy petition was filed shortly after Chief Bankruptcy Judge Ronald B. King, for the U.S. Bankruptcy Court for the Western District of Texas, orally issued findings of fact and conclusions of law, finding that ASFG was the recipient of fraudulent transfers and that its entire financing program (which is strikingly similar to the one it utilized with respect to Aequitas) was designed to defraud the U.S. Department of Education by evading the 90/10 financing rule contained in Code of Federal Regulations. The findings of fact and conclusions of

² Based on information and belief, at present, a Duoos family trust, with Mr. Duoos and his wife as the named trustees, holds 60% of the TRD membership interests and the remaining 40% membership interest is split evenly between the couple’s two children. (Greenfield Decl., p. 2, Ex. 2).

law were in relation to the twenty-nine causes of action brought against ASFG and certain related entities in October, 2018 by the Chapter 7 Trustee of Dickenson of San Antonio, Inc. d/b/a Career Point College. (Greenspan Decl., ¶¶ EE and FF, Ex. 3).

As set forth in the Complaint filed by the Securities and Exchange Commission initiating this enforcement action, Aequitas raised funds primarily by issuing promissory notes through Aequitas Commercial Finance, LLC (“ACF”). (Dkt. No. 1, ¶ 2, p. 2). In May 2014, Corinthian Colleges (“Corinthian”), a for-profit education provider, whose receivables made up 75% of the receivables owned by ACF, defaulted on its obligations to ACF. (Dkt. No. 1, ¶ 3, p. 2). As noted by the Receiver following his forensic investigation, the Aequitas Enterprise’s largest external investment was Corinthian student loan receivables, with a face value of \$241 million as of July 1, 2014. (Dkt. No. 787, p. 38). From at least as early as July 3, 2014, with the Aequitas business model dependent upon the performance of the \$241 million of increasingly delinquent Corinthian student debt, Aequitas was “intractably insolvent.” (Dkt. No. 787, p. 39). Stated as simply as possible, the Corinthian student loan portfolio, brought to Aequitas by Mr. Duoos, was a material contributing factor in the insolvency of Aequitas and, ultimately, the substantial losses sustained by the Defrauded Investors. In fact, this Court concluded that Aequitas was operated as a Ponzi scheme beginning at least early as July 1, 2014. (Dkt. No. 813, p. 12).

In 2011, Mr. Duoos, through his two companies – ASFG and TRD, presented Aequitas with what they proudly refer to as “the Corinthian Loan purchase opportunities.” (Third Amended Complaint, ¶ 30, p. 10, *American Student Financial Group, Inc., et al. v. Aequitas Capital Management, Inc., et al.*, United States District Court for the Southern District of California, Case No.: 12-cv-02446-CAB-JMA). In the same pleading, they proclaim that they

developed proprietary tuition financing programs for post-secondary institutions that resulted in loan portfolios that they held for “investment purposes.” (*Id.*, ¶ 13, p. 4).

As set forth above, the U.S. Bankruptcy Court for the Western District of Texas concluded that the purportedly proprietary tuition financing programs developed by Mr. Duoos were designed to defraud the U.S. Department of Education by evading the 90/10 financing rule contained in Code of Federal Regulations. The Consumer Financial Protection Bureau reached the same conclusion, ultimately securing a judgment against a number of Aequitas entities based on the tuition financing programs developed by Mr. Duoos and delivered to Aequitas in 2011. The Receiver settled the claims of the Consumer Financial Protection Bureau and fourteen state Attorneys General including modification or cancellation of each of the approximately 47 thousand loans, and appropriate notification to each of the borrowers. (Dkt. No. 979, p. 9). The settlements cost the Receivership over \$183 million in principal and accrued and unpaid interest and fees. This figure does not include future interest associated with the cancelled principal amount.

Mr. Duoos certainly monetized bringing the “Corinthian Loan purchase opportunities” to Aequitas. Between July 2011 and May 2014, Aequitas transferred \$14,885,844.75 to ASFG and TRD. Based on the books and records of the Receivership, TRD received the vast majority of those funds - \$10,764,454.27. (Greenfield Decl., p. 2).

2. Through ASFG and TRD, Duoos submitted a proof of claim in the amount of \$27,381,251.

Despite receiving nearly \$15 million for bringing the loss-ridden Corinthian student loan portfolio to Aequitas, on July 30, 2019, ASFG and TRD filed a proof of claim (“Proof of Claim”) in the Receivership Case. The filing was shocking for the simple fact that the tuition

financing programs developed by Mr. Duoos and employed in the context of the Corinthian student loan portfolio materially contributed to the insolvency of Aequitas and, ultimately, the substantial losses sustained by the Defrauded Investors. Those losses included over \$183 million resulting from the settlements with the CFPB and state Attorneys General.

In the Proof of Claim, ASFG and TRD assert that “[ASFG] is entitled to an immediate release of [the \$2,483,403.38] plus the accrued interest as part of its \$27,281.251.00 claim which, if paid, would be a credit against that amount.” (*Id.*) (*emphasis added*). While the current assertion that TRD is entitled to some portion of the segregated funds is erroneous, it is very telling to note that the Proof of Claim, presumably filed at the direction of Mr. Duoos, asserted that only ASFG was entitled to the segregated funds. As addressed immediately below, that assertion is absolutely consistent with the sworn declaration of Mr. Duoos that claim to the segregated funds was solely an asset of ASFG.

3. Duoos declared under penalty of perjury that the segregated funds were a purported asset of the bankruptcy debtor, ASFG.

ASFG’s bankruptcy schedules include, as one of its assets, a “Cause of Action” against Aequitas Management, LLC, with a stated value of \$2,483,403.38, exactly matching the amount of the funds the Receiver placed in the segregated account. (Greenfield Decl., p. 2, Ex. 3). ASFG’s bankruptcy schedules were executed on June 3, 2020, by the entity’s President, Timothy Duoos, under penalty of perjury. (*Id.*) As President of ASFG, Mr. Duoos did not contend that another party, namely TRD, held a purported claim to the funds in the segregated account, as he conveniently does at this time. Mr. Duoos should be bound to his sworn representation of June 3, 2020.

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4. The funds in the segregated account are Receivership Property.

As concluded by the California District Court, the funds held in the segregated account are Receivership Property. The Receiver has a vested right to possession. There is no writ of attachment in effect. Rather, the Receiver, ASFG and TRD stipulated that the Receiver may seek an order of this Court to disburse the funds, as he is doing at this time to allow for the distribution of the remainder of the funds to the Defrauded Investors.

5. The Receivership's settlement with the Liquidating Trust is contingent upon Court approval, including authorizing disbursement of the balance of the segregated account to the Receiver.

As set forth in the recent quarterly reports to the Court, the Receiver and his team are expeditiously working toward the wind-down of the Receivership. (Dkt. No. 979, pp 19-20). The Receiver believes the settlement with the Liquidating Trust is in the best interests of the Receivership Entity. (Greenspan Decl., ¶ 34). In an effort to improperly leverage his way to a portion of the settlement proceeds, Mr. Duoos objects to the Court disbursing the balance of the segregated account that he, as the President of ASFG, declared under penalty of perjury to be an asset or "interest" of the ASFG bankruptcy estate. As set forth above, the toxic tuition financing programs developed by Mr. Duoos and executed through his various companies left a massive trail of losses including those sustained by the Defrauded Investors. TRD, as directed by Mr. Duoos, should not be allowed to further harm the Defrauded Investors by blocking this settlement and, thereby, delaying distribution of the remaining funds held in the segregated account.

6. TRD's Claim has been properly classified as a Creditor Claim under the Court-approved Distribution Plan.

On December 31, 2019, the Receiver filed his Motion to Approve the Receiver's

Distribution Plan and Determination of a Ponzi Scheme (the “Distribution Plan and Ponzi Scheme Motion”). (Dkt. No. 787). Counsel for ASFG and TRD, who submitted the joint Proof of Claim, was provided notice of the Distribution and Ponzi Scheme Motion, notice of the hearing, notice of the objection deadline, and notice of the hearing date for consideration of that motion. (Dkt. Nos. 785, 787, and 790). He was and remains on the electronic conferral list and, therefore, has consistently received and continues to receive all pleadings well before they are filed.

The Receiver’s Distribution and Ponzi Scheme Motion outlined the factual basis upon which the Court determined that Aequitas operated as a Ponzi scheme. The Receiver also detailed his proposal for the classification of claims, the priority of each class, and the distribution of assets. (Dkt. No. 787). On March 31, 2020, the Receiver’s Distribution and Ponzi Scheme Motion was granted by the Receivership Court upon the entry of its Findings of Fact and Conclusions of Law (the “Court-approved Distribution Plan”). (Dkt. No. 813). The Court-approved Distribution Plan includes the following defined terms:

Claim. Any (i) potential or claimed right to payment, whether or not such right is based in equity or by statute, reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) a potential or claimed right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Allowed Claim. A Claim or a portion thereof based on a Proof of Claim, Notice of Receiver’s Initial Determination, or agreement by the Receiver (or Trustee), which by a Final Order of the Court approves (i) the amount, (ii) Classification, and (iii) treatment of such Claim consistent with the Court-approved Distribution Plan * * *

Administrative Claim. A Claim based on: (i) the provision of goods or services for the benefit of the Receivership Estate or the QSF or at the request of the

Receiver or Trustee beginning on or after March 16, 2016, which remain unpaid, (ii) any taxes arising from or attributable to tax periods beginning on or after March 16, 2016, including those that may be asserted by federal, state, local or other governmental entities or authorities, which remain unpaid, (iii) an uncashed check issued on or after March 16, 2016, for refund on account of a healthcare account receivable overpayment, student loan account receivable overpayment, or other overpayment, or (iv) any current, future, or contingent contractual obligations (including indemnification obligations) arising from any contract entered into by or on behalf of the Receivership Estate or the QSF.

Creditor Claim. A Claim against an Aequitas Entity, including but not limited to transactions based on, related to, arising from or in connection with: (i) any contract, lease, or other agreement entered into prior to March 16, 2016, for which payment has not been made in whole or in part or for which payment has or will become due prior to, on, or after March 16, 2016, (ii) goods or services provided prior to March 16, 2016 * * * To the extent that a Claim meets the definition of both a Creditor Claim and some other classification of Claim, each Claim shall be determined and treated based on the portion of the Claim that falls within each classification.” Dkt. 787 at App. A, 5 (definition).

(Dkt. No. 787, Appendix A, pp. 1, 3, 4, and 5).

Neither ASFG nor TRD objected to the manner in which the Receiver proposed that claims would be allowed, classified, and paid from Receivership assets, nor to this Court’s findings of fact and conclusions of law, which were entered prior to the filing of ASFG’s bankruptcy proceeding. Further, neither ASFG nor TRD objected to any of the three classification, distribution, and settlement motions that resulted in the Receivership distributing \$105 million to defrauded investors and other claimants. The March 31, 2020 Order, Findings of Fact and Conclusions of Law establishing the Court-approved Distribution Plan is a final order.

On October 21, 2020, the Receiver’s (Second) Motion To Approve Classification Of Certain Claims (Administrative, Former-Employees, Convenience Class, Defrauded Investors, Creditors, Individual Defendants, And Pass-Through Investors), And Allow And Approve Distributions On Account Of Certain Claims (Dkt. No. 848 – “Second Classification and

Distribution Motion”) was filed for consideration by the Court. As part of the conferral process, counsel for ASFG and TRD was provided a copy of the Second Classification and Distribution Motion, the supporting declaration of Ronald F. Greenspan (with exhibits) and the proposed Order Granting the Motion (Dkt. Nos. 848 - 850). Pursuant to the Court’s Order Approving the Second Classification and Distribution Motion (Dkt. No. 851), the entirety of TRD’s claim was properly classified as a Creditor Claim. The Order Approving the Second Classification and Distribution Motion is a final order. As the Court is aware, there is no prospect of distributions on Creditor Claims, other than on account of Allowed Convenience Class Claims (i.e., an Allowed Creditor Claim equal to or less than \$20,000 or an Allowed Creditor Claim in excess of \$20,000 for which the holder elects to reduce their Allowed Creditor Claim to \$20,000 and waives the balance of their Allowed Creditor Claim) with a maximum distribution of \$4000.

Conclusion

The Receiver and Liquidating Trustee have agreed to mutually release claims including ASFG’s claims as presented in the Proof of Claim. In the event the Court approves the settlement and authorizes disbursement of the balance of funds in the segregated account, TRD will retain its Creditor Claim, which will be treated consistent with the Court-approved Distribution Plan and the Receivership Entity will retain its multi-million dollar claims against TRD including those set forth in the California Federal Court Litigation subsequently transferred to this Court. Given the relative low priority of TRD’s claim under the Court-approved Distribution Plan and assumed difficulty the Receivership would have collecting on a judgment against TRD, there could be no justification for further litigation amongst these parties. As stated at the outset, Mr. Duoos could petition the Florida bankruptcy court for a portion of the

settlement proceeds, in the event he and/or any of his companies had a legitimate claim.
However, as addressed in detail above, they lack any semblance of a legitimate claim.

Dated this 23rd day of June, 2022.

Respectfully submitted,

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