

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DECISION AND ORDER

14-CV-122S

FEDERAL CHECK PROCESSING, INC., et al.

Defendants, and

EMPOWERED RACING LLC,

Relief Defendant.

1. Presently before this Court is the Receiver's Final Report (Docket No. 197), the Receiver's Omnibus Motion for approval of a claims bar date and distribution to creditors, destruction of files and other wind-up activities, continuation of receivership to accomplish the foregoing, and termination of receivership and discharge of the receiver (Docket No. 196), and the Second Interim Motion by counsel for the Receiver and the Receiver for compensation and reimbursement of expenses. (Docket No. 199.) Plaintiff, the Federal Trade Commission ("FTC"), has submitted a response expressing its non-opposition to the Second Motion for Attorneys' Fees. (Docket No. 201).

2. The Receiver presently holds in the account the total sum of Two Hundred Fifty-One Thousand, Seven Hundred and Fifty-Eight and 54/100 Dollars (\$251,758.54). (Docket No. 196-2). The Receiver asks that this Court approve a claims bar date and the distribution to creditors with allowed claims. The Receiver further requests the Court's approval of destruction of files, and other wind up activities; continuation of the receivership to accomplish the foregoing, and termination of the receivership and

discharge of the Receiver. The Receiver and counsel for the Receiver, Phillips Lytle LLP, request in a separate motion Forty-Seven Thousand and ninety-four and 01/100 dollars (\$47,094.01) in compensation. (Docket No. 199.) This Court addresses each request in turn.

3. First, the Receiver requests that this Court approve a claims bar date and allow it to make distribution to creditors with allowed claims in order of legal priority: first, for taxes owing; second, for administrative expenses; third to unsecured creditors with allowed claims, with any balance being remitted to the FTC in accordance with an order of this Court. The Second Circuit having affirmed this Court's decision in this case (Docket No. 195), and this Court being satisfied with the Receiver's attestations regarding how he intends to proceed in this matter (Docket No. 196-2), this Court finds it proper to grant this request.

4. Further, the Receiver requests that this Court authorize it to destroy paper files and recycle computers which are currently in storage. The Receiver also requests a continuation of the Receivership to accomplish the foregoing. For the reasons stated above, this Court finds it proper to grant these requests.

5. Further, the Receiver requests a formal termination of the Receivership and discharge of the Receiver. This Court will grant such relief in a separate order, after receipt of certification of the completion of the foregoing tasks.

6. Further, the Receiver requests the allowance of compensation and reimbursement of expenses to the Receiver and its counsel for services rendered from April 1, 2014, through June 30, 2019, in the total amount of \$47,774.17 (\$47,094.01 for services rendered, plus reimbursement of expenses of \$380.16) to be paid to Phillips

Lytle LLP, where Receiver's functions with regard to the Receivership and counsel's legal services for the Receiver took place. (Docket No. 199 at p. 6.) This amount reflects Phillips Lytle's agreement to discount its hourly rate by 7.5%, and the Receiver's agreement to be paid at an hourly rate of \$250.00 per hour, as a public service discount. (Id.). Plaintiff FTC does not oppose the Receiver's request. Accordingly, and upon review of the Receiver's application, supporting materials, and applicable law, the Court finds that the requested fees are reasonable and will grant the Receiver's request to disburse \$47,474.17 to Phillips Lytle LLP. See S.E.C. v. Byers, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008) (amount of a receiver's compensation is within a court's reasonable discretion)

In light of the foregoing, IT HEREBY IS ORDERED:

1. That the Receiver's [196] and [199] motions are GRANTED;
2. That June 16, 2020, is set as the last day to file pre-Receivership claims and administrative claims against the Receivership Entities ("Bar Date") by filing such claims with the Receiver, and by filing a motion with this Court for the allowance of any administrative claims for professional fees; and
3. That the Receiver shall provide notice of the Bar Date by serving this Order and the Proof of Claim form on all known unpaid pre-Receivership creditors of the Receivership Entities and Mark D. Grossman, Esq., Kevin W. Spitler, Esq., Herbert L. Greenman, Esq., Defendant William Moses, Defendant Mark Briandi, all parties who have filed a Notice of Appearance in this action, and all known pre-Receivership creditors and former employees of the Receivership Entities, within five (5) business days of the entry of this Order;

4. That the Receiver shall pay all allowed pre-receivership creditors who file timely proofs of claim, after payment of tax claims and administrative expenses. If allowed claims exceed funds on hand for any class of creditors, that class shall be paid pro-rata;
5. That the Receiver shall destroy by shredding all remaining paper records of the Receivership Entities and wipe the hard drives of all computers of the Receivership Entities and thereafter dispose of or recycle those computers;
6. That the Receiver shall continue the Receivership to accomplish the foregoing with the Receiver to file a certificate of completion with this Court upon completion of the foregoing tasks;
7. That the Receiver shall disburse \$47,474.17 (\$47,094.01 in compensation and \$380.16 in reimbursement of expenses) to the law firm of Phillips Lytle LLP;

IT FURTHER IS ORDERED, that, upon the receipt of certification of completion of the foregoing, this Court will order that the Receivership be terminated and that the Receiver's bond be discharged.

SO ORDERED.

Dated: April 17, 2020
Buffalo, New York

s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge