

**UNITED STATES DISTRICT COURT
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 REPLY TO MICHAEL TIERNEY’S RESPONSE TO CLAIMS MOTION

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (“Receiver”) of the Receivership Entities, hereby files his reply to the response [ECF No. 1869] that Michael Tierney filed to the Receiver’s Motion (1) to Approve Proposed Treatment of Claims and (2) for Determination of Ponzi Scheme [ECF No. 1843] (the “Claims Motion”), and states:

Michael Tierney is a sales agent that worked under Dean Vagnozzi at A Better Financial Plan. He submitted a claim through which he is seeking to recover commissions he claims to have earned for selling an alternative investment to Vagnozzi’s investors. Specifically, he is claiming \$36,000.00 in commissions for sales he generated for the “Atrium” investment funds, which invested in a litigation funding company.

In addition to whatever involvement Tierney had with the Atrium investment funds, he was also the agent fund manager for Merchant Services Income Fund, LLC (“Merchant Services”), an agent fund that raised approximately \$32,000,000 from retail investors for investment into CBSG. Tierney earned significant profits through Merchant Services. For example, MSIF obtained promissory notes from CBSG at a twenty percent (20%) annual interest rate, but only offered its

investors rates that were as low as eight percent (8%). Tierney would then take the difference between those two rates (his “profit” margin), pay a 25% management fee from that amount to ABFP Management for managing the payments to and from investors, and pocket the difference.

For example, on one note, Merchant Services sent \$136,500 of investor funds to CBSG, and received a one-year promissory note in return that would pay 20 percent (20%) annual interest, or \$27,300:

Amount	CBSG Rate	%		ANNUAL \$			
		Invest or Note Rate	CBSG Pmt	Investor Interest Pmt	Remaining after investor Pmt	ABFP Mgmt Fee	AGENT PROFIT
8,350	20%	8%	1,670.00	668.00	1,002.00	250.50	751.50
25,000	20%	8%	5,000.00	2,000.00	3,000.00	750.00	2,250.00
50,000	20%	8%	10,000.00	4,000.00	6,000.00	1,500.00	4,500.00
16,150	20%	8%	3,230.00	1,292.00	1,938.00	484.50	1,453.50
37,000	20%	8%	7,400.00	2,960.00	4,440.00	1,110.00	3,330.00
\$ 136,500			27,300.00	10,920.00	16,380.00	4,095.00	12,285.00

The five individual investors in that note would only receive \$10,920 of the interest, ABFP Management would receive \$4,095 for its management fee, and Tierney would take home the remaining \$12,285. In other words, Tierney received more profit than the interest he promised his investors on that particular note.

Tierney and his agent fund, together with several other agent funds and managers, have been sued for violating the securities laws in connection with their actions in raising funds for CBSG. *See Securities and Exchange Commission v. Westhead, et al.*, Case No. 1:23-cv-23749-RAR (S.D. Fla). Similar to the allegations against Dean Vagnozzi in this case, the SEC has alleged that Tierney and others “made a series of misrepresentations and omissions to investors, including touting CBSG’s success while omitting to disclose the criminal record of CBSG’s principal, Joseph LaForte, who had two felony convictions, and failing to disclose regulatory actions against CBSG by Pennsylvania,

Texas, and New Jersey state securities regulators.” [See ECF No. 1, Case No. 1:23-cv-23749-RAR].

That case is still pending, and Tierney has not returned any of the “agent profit” he received on the fraudulent offering he operated through Merchant Services.

Courts regularly approve the denial of claims in receiverships that are made by insiders to a fraudulent investment scheme, even if the insider claims not to have known about the underlying fraud. *See, e.g., SEC v. Pension Fund of Am. L.C.*, 377 F. App’x 957, 963 (11th Cir. 2001) (upholding plan that excluded sales agent who received commissions for recruiting investors although he had no knowledge that the investment fund was fraudulent); *SEC v. Merrill Scott & Assocs., Ltd.*, No. 2:02-cv-39, 2006 WL 3813320, at *11 (D. Utah Dec. 26, 2006) (approving exclusion of claimant who claimed to have no knowledge of the fraudulent nature of investment scheme because he was “more intimately involved with [the receivership entity] than the vast majority of clients and his activities extended to marketing and solicitation on [the receivership entities’] behalf”). Here, there is evidence that Tierney was involved in wrongdoing in connection with his actions of raising funds for CBSG. But, even if that were not the case, there would be a sufficient basis for rejecting his claim based on his status as a sales agent and, thus, an insider. Given his involvement in the underlying fraud, Tierney should not be permitted to participate in and further profit through the claims process.

In his notice of determination, the Receiver recommended rejection of Tierney’s claim because the Atrium investments are not part of this receivership, and because the Receiver does not hold any funds attributable to those investments. Tierney filed a three-sentence response to the Receiver’s Claims Motion. Tierney acknowledges that the Atrium investments are not part of this receivership, but he suggests that his claim is against Abetterfinancialplan.com and believes that entity received revenue and commissions owed to him for his work in connection with the Atrium investments. [ECF No. 1869]. This cursory response is insufficient to support Tierney’s objection and opposition to the Claims Motion.

Notwithstanding Tierney's belief, the Receiver has not identified any records within the files of the Receivership Entities reflecting that any of the current funds within the Receivership Estate are attributable to the Atrium investments. In addition, Tierney has not submitted any documentation supporting the \$36,000 in commissions he claims to be owed, much less an any documents from Abetterfinancialplan.com reflecting an agreement to pay him those amounts.

Accordingly, due to Tierney's status as an insider, as well as his failure to produce sufficient information in support of his claim (and his objection to the Receiver's proposed rejection of the claim), the Receiver recommends that this objection be **OVERRULED**.

Dated: May 21, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 21, 2024, 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