

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

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S RESPONSE
PURSUANT TO THE COURT'S OMNIBUS ORDER [ECF NO. 1944]**

Pursuant to the Court's Omnibus Order on Claims Determination Process [ECF No. 1944], Plaintiff Securities and Exchange Commission hereby files a Response to the Receiver's Motion to (1) Approve Proposed Treatment of Claims and (2) for Determination of Ponzi Scheme ("Motion"), specifically addressing the Receiver's determination of a Ponzi scheme in this matter [ECF No. 1843].

In May 2022, during the remedies phase of this civil enforcement action, the Commission argued that Defendants Joseph LaForte and Lisa McElhone operated Complete Business Solutions Group, Inc. ("CBSG") as a Ponzi scheme by paying investors their purported investment returns from earlier investors' funds and therefore legitimate business expenses should not be deducted from the disgorgement amount [ECF No. 1252].¹ The Court ultimately entered a Final Judgment

¹ The Commission's Motion for Final Judgment initially used the phrase "Ponzi scheme" [ECF No. 1214]. However, the Defendants filed a Motion to Strike that phrase from the Commission's Motion [ECF No. 1224]. On May 19, 2022, the Court held a hearing on the Motion to Strike [ECF No. 1249] and thereafter denied the Motion to Strike as moot on grounds the Commission would file an amended Motion for Final Judgment that removed the phrase "Ponzi scheme" and replaced it with the description of the conduct that amounts to a Ponzi scheme [ECF No. 1251 and May 19,

deducting from the disgorgement figure amounts for various legitimate business expenses [ECF Nos. 1432-1435, 1450-1451]. The Commission's position as to whether the Defendants engaged in a Ponzi scheme remains unchanged. *See* ECF No. 1252.

As to what impact a post-Judgment ruling that CBSG operated as a Ponzi scheme would have on the disgorgement amounts set forth in the Final Judgment, such matters are premature as the Final Judgment is currently on appeal before the Eleventh Circuit and the Court lacks jurisdiction while the appeal is pending.

As to the appropriate claim calculation formula if the Court declines to find that the Defendants operated CBSG as a Ponzi scheme, the starting point is the principal each investor invested in a "Non-Matured Note" – meaning a note that is at issue in this case where an investor has not received the interest payments and return of principal on that same note.

As set forth in the Complaint, the fraud and unregistered offering claims in this case concern notes that were for a 12-month duration and that were offered to the investing public in CBSG's unregistered offering by CBSG, ABFP Income Fund, ABFP Income Fund II, Retirement Evolution, and Fidelis Planning [ECF No. 119 at ¶¶ 50, 88, 109]. Each note that is at issue in this case is for a 12-month maturity period, where interest was to be paid over the course of the 12 months and the investor was to receive the return of their principal at the conclusion of 12 months. Payments to investors ceased to investors in April or May 2020 [ECF No, 119 at ¶ 127]. Accordingly, the current, Non-Matured notes are 12-month notes pursuant to which investors had not received the return of their principal as of April or May 2020 when payments by CBSG ceased.

2022 hearing transcript]. Thereafter, on May 20, 2022, the Commission filed an Amended Motion for Final Judgment that replaced the phrase "Ponzi scheme" with language describing Ponzi scheme conduct [ECF No. 1252 n.1]. Thus, instead of using the phrase as shorthand, the Commission argued the Ponzi scheme by arguing that conduct in detail.

In other words, the universe of Non-Matured CBSG, ABFP, RE, and Fidelis notes are those in which investors invested on or after about April or May 2019 (12 months prior to when payments ceased), where investors did not receive their principal back because payments ceased prior to the 12-month maturity date.

Accordingly, to calculate claims under a non-Ponzi scheme analysis, the appropriate method is simply to look at each Non-Matured Note (all of which would have been issued to an investor on or after March 2019 due to the 12-month maturity period) and to subtract the amount of interest and principal (if any) that was paid to that same investor on that same note. All of these payments would have occurred between March 2019 at the earliest and April or May 2020, at the latest, when CBSG ceased making payments.

As for the claims arguments raised in the Receiver's Motion, the Court did not direct a response on those matters at this time. As reflected in the Receiver's Certificate of Conferral and as stated during recent status conferences regarding the claims, the Commission will address issues concerning claims filed by individuals and entities that did not invest through the offerings at issue in this case as well as insiders (including the Chehebar investors, the Defendants, the CBSG merchant borrowers, and others) when those claims are argued.

June 5, 2024

Respectfully submitted,

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