

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

COMMODITY FUTURES TRADING	§	
COMMISSION	§	
Plaintiff,	§	
	§	
v.	§	CASE NO.: EP-21-CV-00237-DCG
	§	
ABNER ALEJANDRO TINOCO, and KIKIT &	§	
MESS INVESTMENTS, LLC,	§	
	§	
Defendants.	§	

SECOND REPORT OF THE RECEIVER

Kelly M. Crawford, as the court-appointed Receiver (“Receiver”), submits the following second report pursuant to this Court’s *Statutory Restraining Order* [Docket No. 13] (the “*SRO*”).¹ The Receiver filed his Initial Report on December 8, 2021 covering the period from the inception of the receivership on October 13, 2021 through December 7, 2021 [Docket No. 40]. This Second Report of the Receiver covers the period from December 8, 2021 through February 4, 2022.

I.

ASSETS RECOVERED TO DATE

The assets recovered to date by the Receiver are as follows:

¹ The *SRO* was continued in force by Consent Orders entered by the Court regarding the Defendant entities and the individual Defendant Abner Alejandro Tinoco [Docket Nos. 28 – 29]. The Receiver requests the Court to take judicial notice of the pleadings on file in this lawsuit.

Wells Fargo Bank:	\$838,752.98 ²
Real Property ³ :	\$260,000 (approximate equity)
Office furnishings ⁴ :	Sold for \$500
Bentley	Ownership uncertain
Audi	\$0 (lien exceeds estimated FMV)
GMC Truck	\$0 (lien exceeds estimated FMV)
2017 Lexus IS 200t	\$24,000 (estimated FMV)
Furniture	Not yet determined
Jewelry ⁵	\$16,300 (appraised values)
APAH Stallion Paint Horse	Sold for \$3,500.00
Quarter Horse “Perfect Pair”	\$80,000 (purchase price)
Return of Charitable Contribution	\$4,583.27
ATV - 2021 Can-am	Pending sale for \$24,000

The Receiver has leads on other assets that have not yet been turned over to the Receiver.

II.

POTENTIAL SOURCES OF RECOVERY

The Receiver identified the following additional sources for recovery of investor monies.

A. REAL PROPERTY

During the Receiver’s investigation, the Receiver discovered that in June 2021, the Defendants purchased the following three single family homes:

² The Receiver opened a receivership bank account in which to deposit monies and assets received.

³ See *infra* part II, A.

⁴ Includes a couch, TV, desks, chairs, office supplies, etc.

⁵ See *infra* part II, E.

1. **712 Emerald View Drive, El Paso, Texas 79932 (the “Emerald View Property”)**

The Emerald View Property was purchased on June 14, 2021 by Mr. Tinoco and his wife Zoe Rachelle Hackett. The property is subject to a lien in the amount of approximately \$479,000. The Receiver discovered that the interior of the house was gutted by the Defendants in anticipation of a complete remodel. The Receiver obtained an appraisal of the fair market value of the house in its current condition. The appraiser determined the fair market value of the property was \$660,488, but the appraiser discounted the appraisal to \$210,000 because of the significant costs to finish out the house. Since the fair market value is substantially below the amount of the lien on the property, the Receiver filed a notice of his intent to surrender his interest in the property.

2. **425 Sharondale Drive, El Paso, Texas 79912 (the “Sharondale Property”)**

The Sharondale Property was purchased for \$418,000 on June 30, 2021 by Kikit & Mess Investments, LLC. The property has a Zillow value as of February 1, 2022 of approximately \$454,000 and is subject to a lien in the amount of approximately \$279,000. Thus, the property has equity of approximately \$135,000 to \$140,00.

3. **6082 Via De Los Arboles, El Paso, Texas (the “Los Arboles Property”)**

The Los Arboles Property was purchased on June 28, 2021 by Kikit & Mess Investments, LLC. with a payment at closing of \$181,141. Contingent upon approval of the Court, the Receiver entered into a contract to sell the Los Arboles Property for \$550,000. The property is subject to a lien in an unknown amount. Considering the amount of the down-payment at closing by Kikit & Mess Investments, LLC, the property likely has equity of approximately \$130,000 - \$150,000.

The Receiver filed in the real property records of El Paso County, Texas a Notice of Lis Pendens, including a copy of the Court's *SRO*, with respect to each of the three (3) properties. The Receiver retained a broker with Coldwell Banker in El Paso to list the Sharondale and Los Arboles properties for sale, and the Receiver ordered appraisals of each property as required by the Court and pursuant to 28 U.S.C §2001(b).

B. VEHICLES AND DIAMONDS

The Receiver identified the following ATV's that were purchased by the Defendants but put in the name of Sarah Nollner and that, according to Mr. Tinoco, are in storage in Santa Teresa, New Mexico:

2020 Yamaha Quad (title was put in the name of Sarah Ann Nollner)

2020 Polaris RZR (title was put in the name of Sarah Ann Nollner)

The Defendants also purchased two trailers that have not been turned over to the Receiver.

In addition, the Receiver determined through tracing of monies that shortly before the receivership Defendant Tinoco exercised the purchase option of a leased 2018 Lamborghini and received title to the Lamborghini. The Receiver made demand upon Mr. Tinoco to turn the Lamborghini over to the Receiver. Mr. Tinoco claimed he gave the Lamborghini to Eli Noor in exchange for jewelry/diamonds.

The Receiver contacted Eli Noor and spoke with a representative of Mr. Noor's diamond company. The representative confirmed Mr. Noor's receipt of the Lamborghini and promised to provide the Receiver with documents and details regarding the exchange of jewelry/diamonds for the Lamborghini. In addition, the Receiver traced more than \$100,000 to Mr. Noor's company "Fancy Diamonds", and Mr. Noor's representative promised to provide an accounting for the monies received. To date, such information has not been received by the Receiver.

Also, the Receiver traced more than \$600,000 that was paid by the Defendants to O’Gara Coach Company. The Receiver made several demands upon O’Gara Coach Company to provide documentation regarding the goods and services provided in exchange for such money. To date such information has not been received by the Receiver.

C. COMMISSIONS AND PAYMENTS TO ASSOCIATES

The law is well established that a Receiver may recover commissions received by third parties for their role in soliciting investor monies for an unlawful scheme. *Warfield v. Byron*, 436 F.3d 551, 560 (5th Cir. 2006). In such instance, third parties are not being paid with profits earned from a legitimate enterprise, but instead are being paid commissions from the principal amount received from investors in the scheme. Regardless of whether the third parties knew or should have known that Kikit & Mess was being operated illegally, the payments the third parties received are recoverable as fraudulent conveyances. *Id.* As the recipient of a fraudulent transfer, the third parties must be able to show that he or she received the payments in good faith *and* in exchange for reasonably equivalent value. While a third party may be able to claim he or she received the payment in good faith, the third party cannot show he or she provided reasonably equivalent value in exchange for the money received. Facilitating the addition of more investors to a fraudulent scheme does not provide value, but rather only enlarges the number of victims.

To date, the Receiver traced commissions paid to the following third parties:

4M Pecan Co, LLC	\$141,000
Andrea Zamora	\$10,262
Heriberto Villa, Jr.	\$7,483.99
Hugo Andres Flores	\$2,500

Humberto Estrada	\$145,500
Jesus Sosa	\$5,000
Manual Maldonado MV Pecans	\$10,000
Oscar Escobar	\$1,400
Promotoresde la Education	\$35,000
Raul Avila	\$3,700
Samuel Tinajero	\$21,000
Shajea Investments, LLC	\$142,500
TOTAL:	\$525,345.99

The Receiver is in the process of making demand upon the recipients of commissions to return the commissions to the receivership. With the significant amount of investor funds used to compensate persons for soliciting investments in Kikit & Mess, the Receiver intends to pursue an ancillary action against such persons to recover the payments, unless such claims can be settled subject to the approval of this Court.

D. HORSES

The Receiver discovered that Mr. Tinoco purchased an American Paint Horse named “Velvet Jac” for the sum of \$7,500. The Receiver tracked down the location of the horse, conferred with the person boarding and caring for Velvet Jac, and obtained an offer from such person to purchase Velvet Jac from the Receiver for \$3,500. Based on the Receiver’s investigation into the resale value of Velvet Jac, and considering the condition of Velvet Jac, the Receiver determined it was in the best interest of the Receiver to accept the offer. Consequently, on November 12, 2021 the Receiver filed with the Court a Notice of Intended Disposition of

Horse and Office Contents [Docket No. 37]. In the absence of any objections, Velvet Jac was sold for \$3,500.

The Receiver also discovered that on or about September 7, 2021, Mr. Tinoco purchased a quarter horse named “Perfect Pair” for \$80,000. The Receiver obtained Mr. Tinoco’s signature on the paperwork required to transfer title to the horse to the Receiver. The Receiver worked with the American Quarter Horse Association to have title to Perfect Pair put in the Receiver’s name. The Receiver engaged the original owner of Perfect Pair, Kirk Goodfellow of Dreams Come True Ranch in Nacogdoches, Texas to care for the horse and broker it for sale. He will receive a commission of 10% of the sales price for brokering the sale.

E. JEWELRY

The Receiver took possession of four watches found at the Sharondale Property. The watches had designer names such as Patek Phillippe and Prada. If the watches were real, they would have had a value of several hundred thousand dollars. The Receiver had the watches professionally examined and appraised and the watches are not originals. Instead, they are knock-offs of the high priced designer watches and therefore have nominal value.

The Receiver also took possession of a gold bracelet at the Sharondale Property. The Receiver had the bracelet appraised and the resale value is approximately \$3,500.

In his investigation, the Receiver discovered a number of payments to Cartier. The Receiver served Cartier with the *SRO* and asked Cartier to produce documents regarding any jewelry purchased by the Defendants. The Receiver received from Cartier documentation identifying specific jewelry purchased by Defendant Tinoco as follows:

1. Yellow gold ring purchased for \$1,853.30 on March 15, 2021
2. Yellow gold ring purchased for \$1,883.40 on April 20, 2021

3. Yellow gold wedding band purchased for \$1,215.46 on April 20, 2021
4. Yellow gold diamond ring purchased for \$4,215.76 on July 5, 2021
5. Yellow gold bracelet purchased for \$12,154.50 on July 5, 2021
6. White gold ring purchased for \$2,823.64 on July 23, 2021
7. Yellow gold wedding band purchased for \$1,181.16 on July 23, 2021
8. Yellow gold bracelet purchased for \$2,723 on July 24, 2021
9. Yellow gold bracelet purchased for \$4,872.75 on July 24, 2021

The foregoing jewelry purchases total \$32,922.97. The Receiver provided this information to Mr. Tinoco's counsel and made demand upon Mr. Tinoco to turn over the jewelry or provide information to the Receiver regarding the disposition of the jewelry.

The Receiver met with Mr. Tinoco and his counsel in El Paso on January 5, 2022 and at such meeting Mr. Tinoco turned over two gold bands, a bracelet, and a chain.

The Receiver engaged an appraiser who appraised 6 pieces of jewelry in the Receiver's possession as having a collective fair market value of \$12,800 as follows:

Men's Cartier gold band	\$1,000
Ladies' Cartier gold band	\$800
14k yellow, rose and yellow gold necklace	\$6,000
14k yellow, rose and white gold bracelet	\$2,000
14k rose gold bracelet	\$1,500
14k rose gold bracelet	\$1,500

Other than the two Cartier gold bands listed above, the remainder of the jewelry purchases from Cartier remain unaccounted for to date.

F. MONIES PAID TO THIRD PARTIES

Mr. Tinoco advised the Receiver that shortly before the receivership he transferred more than \$100,000 to the Aidan James Agency for branding work that was never done. The Receiver confirmed the transfer of these monies to the Aidan James Agency and by letter dated January 31, 2022, the Receiver's attorney made demand upon the Aidan James Agency to turn the monies over to the receivership. To date, the Aidan James Agency has not responded to the demand.

III.**DISPOSITION OF MONIES BY THE DEFENDANTS**

Based upon a preliminary review of the bank records obtained from Bank of America and Wells Fargo regarding the activities of the Defendants, it appears that of the \$11,550,880.00 deposited into the accounts, the monies were disposed of by the Defendants as follows:

Expense Categories	Bank of America	Wells Fargo	Combined Total
Abner Credit Card			
Payments	\$137,452.74	\$92,394.06	\$229,846.80
Abner Tinoco Payments	\$107,146.93	\$113,640.00	\$220,786.93
Accounting Fees:	\$61,103.93	\$11,000.00	\$72,103.93
Audi Loan:	\$21,370.49	\$3,626.01	\$24,996.50
Auto Service/Repair:	\$97,183.67	\$0.00	\$97,183.67
Clothing	\$115,751.00	\$25,810.40	\$141,561.40
Diamonds	\$0.00	\$48,000.00	\$48,000.00
Food/Entertainment/Gas:	\$171,706.01	\$1,991.26	\$173,697.27
GMC Loan Payments	\$14,107.94	\$1,282.54	\$15,390.48
Gustavo Escobar	\$39,972.00	\$0.00	\$39,972.00
Home Improvements	\$25,361.02	\$9,500.00	\$34,861.02
Horse	\$22,425.00	\$80,000.00	\$102,425.00
Hotels/Luxury Rentals	\$231,241.76	\$72,000.00	\$303,241.76
Humberto Estrada/HE			
Pecan/Shajaea	\$181,567.84	\$452,253.92	\$633,821.76
Investors	\$2,051,269.95	\$456,729.60	\$2,507,999.55
Jewelry	\$130,813.68	\$0.00	\$130,813.68
Legal Fees	\$20,300.00	\$0.00	\$20,300.00

Marketing/Office Expenses	\$48,975.45	\$39,997.65	\$88,973.10
Miscellaneous/Unknown Payments	\$834,183.67	\$150,046.19	\$984,229.86
Motor Sports Equipment	\$240,329.14	\$0.00	\$240,329.14
Payroll/Commissions	\$244,180.69	\$44,479.63	\$288,660.32
Private Jets / Air Fare	\$930,989.27	\$144,658.00	\$1,075,647.27
Tinoco Family Members	\$71,852.97	\$44,500.00	\$116,352.97
Title Companies / Real Property	\$348,745.75	\$11,575.32	\$360,321.07
Transfers Between Companies	\$607,002.43	\$523,500.00	\$1,130,502.43
Vehicle/Exotic Car Leases	\$805,813.00	\$230,151.82	\$1,035,964.82
TOTALS	\$7,560,846.33	\$2,557,136.40	\$10,117,982.73

This is a *preliminary* accounting only and is subject to revision as additional information is obtained by the Receiver. Although \$11,550,880 was deposited into the Wells Fargo and Bank of America accounts, \$1,130,502 was transferred between accounts. Therefore, it appears that the total money deposited was \$10,420,378 [\$11,550,880 - \$1,130,502]. From those deposits, at least \$2,508,000 was paid to investors. As indicated above, the disposition of \$1,432,897.27 remains unknown at this time, as the Receiver continues to investigate and review banking transactions.

IV.

RECEIVERSHIP PROCEEDINGS IN THE LAWSUIT

The Receiver conferred with counsel for the parties to the lawsuit, and with their agreement that they did not oppose the relief sought, requested the Court to enter orders establishing procedures for the receivership and for investor and creditor claims to be handled.

A. PROCEDURES FOR RECEIVERSHIP

On November 2, 2021, the Receiver filed his *Unopposed Motion for Order Governing the Administration of the Receivership, Procedures Governing the Sale of Personal Property* [Docket 32]. By this Motion, the Receiver requested this Court to establish procedures for the Receiver to efficiently administer the receivership estate and sell personal and real property. On November 2, 2021, the Court entered an *Order Granting Receiver's Unopposed Motion for Order Governing the Administration of the Receivership, Procedures Governing the Sale of Personal Property* [Docket 33].

B. CLAIMS PROCESS FOR INVESTORS

Due to the amount of assets recovered to date, there are sufficient assets to justify the Court implementing a claims process for the distribution of assets. On November 11, 2021, the Receiver filed his *Unopposed Motion for Order Establishing Claims Adjudication Process* and on November 12, 2021 the Court entered an *Order Establishing Claim Adjudication Process* [Docket 36]. The Order 1) approves a proof of claim form to be sent by the Receiver to all known investors and creditors; 2) establishes a bar date or deadline by which all proof of claim forms with supporting documentation must be submitted by investors and creditors to the Receiver; 3) establishes a process for the Receiver to inform the Court regarding the claims received, make recommendations regarding the claims, and provide an opportunity for investors or creditors to object to the Receiver's recommendation regarding claims; and 4) allows for a hearing date, if necessary, for the Court to rule upon the claims submitted by the Receiver and consider any objections to the Receiver's recommendations regarding the claims.

Pursuant to the *Order Establishing Claim Adjudication Process*, the Receiver mailed out a notice of right to file claim and proof of claim (in both English and Spanish) to the investors

known to the Receiver. Specifically, when the Receiver seized the office of Defendant Kikit & Mess Investments, LLC, the Receiver took possession of two boxes of files with names and contracts of investors. The Receiver used this information to develop a database of investors to receive proofs of claim. In addition, the Receiver posted notice of the receivership on the door of the former office of Defendant Kikit & Mess and several investors saw the notice and contacted the Receiver. Also, the Receiver posted a copy of the *Order Establishing Claim Adjudication Process*, as well as the Notice of Right to File Claim and Proof of Claim on the receivership website, www.kikit&messreceivership.com.

The Receiver published on the *El Paso Herald* website notice of the right to file a claim in the receivership. The notice was posted on December 14, 2021 and continued on the website until December 23, 2021. In addition, the Receiver placed an advertisement with the *El Paso Times* of the right of investors to file a claim in the receivership. The *El Paso Times* confirmed such advertisement would be included in the December 16th, 17th, and 18th, 2021 editions of the newspaper. When the Receiver failed to receive an Affidavit of Publication from the *El Paso Times*, the Receiver's office discovered that the newspaper mistakenly did not publish the advertisement. Consequently, the *El Paso Times*, at no charge to the receivership, published the advertisement in the January 21st, 22nd, and 23rd, 2022 editions of the newspaper.

To date, the Receiver has received claims for 147 investors. The bar date for filing claims is February 15, 2022. The Receiver will file a report with the Court on or before March 15, 2022 with the Receiver's recommendation regarding the claims of investors and creditors.

Once the Court enters an Order approving investor and creditor claims, the Receiver will make a proposal to the Court regarding the classification of the claims and the means of distributing assets to approved claimants. Upon entry of an Order from the Court approving the

means of distribution of assets to approved claimants, the Receiver can begin distributing monies. The Receiver anticipates the claims process can be completed by the Summer of 2022, and that an initial distribution of assets can be made soon thereafter.

V.

RECOMMENDATIONS FOR THE RECEIVERSHIP

The Receiver makes the following recommendations for the receivership:

A. ENFORCE DEFENDANTS' COMPLIANCE WITH THE SRO

On December 7, 2021, the Receiver filed *Receiver's Motion for "Show Cause" Hearing to Hold Defendant Abner Alejandro Tinoco in Civil Contempt*. On January 5, 2022, Mr. Tinoco and his attorneys met with the Receiver and Mr. Tinoco answered the Receiver's questions regarding assets through Mr. Tinoco's attorneys. Mr. Tinoco refuses to testify under oath. Since that meeting the Receiver has been seeking to recover assets and corroborate information Mr. Tinoco provided to the Receiver. If such information can be corroborated and if Mr. Tinoco cooperates with the Receiver, the Receiver will withdraw the Motion.

B. DETERMINING WHETHER DEFENDANT TINOCO'S ATTORNEYS' CAN USE THE RETAINER RECEIVED

The Receiver requested counsel for Defendant Tinoco to disclose the source of the retainer for payment of the fees for representing Defendant Tinoco. The Receiver made Mr. Tinoco's counsel aware of their duty to make a good faith inquiry into the source of the fees to make sure the monies are not subject to the *Statutory Restraining Order*. *FTC v. Assail, Inc.*, 410 F.3d 256 (5th Cir. 2005), *cert. denied, sub nom., Draskovich v. Robb Evans & Assoc. LLC*, 126 S.Ct. 735, 163 L.Ed.2d 569 (2005).

Mr. Tinoco's civil attorney confidentially shared information regarding the receipt of the retainer with the CFTC and the Receiver. The CFTC and the Receiver are continuing to investigate the source of the retainer to determine whether the monies were subject to the *SRO*.

C. TIMELINE FOR THE RECEIVERSHIP

The Receiver recommends continuation of the receivership to complete the discovery, seizure, and liquidation of additional assets; pursuit of claims against recipients of fraudulent transfers; completion of the claims process described above; and distribution of the assets recovered to the approved claimants. With the scope of the receivership, number of investor victims, and amount of loss, the Receiver estimates it will be necessary to continue the receivership in place through at least the Summer of 2022.

Respectfully submitted, February 7, 2022.

RECEIVER KELLY M. CRAWFORD

/s/ Kelly M. Crawford
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 7, 2022, I electronically filed the foregoing document with the clerk of the U.S. District Court, Western District of Texas, using the electronic case filing system of the court.

/s/ Kelly M. Crawford
KELLY M. CRAWFORD

