

**ROBB EVANS**  
**Receiver of the Redress Fund for**  
**Bigsmart.com**

**Final Report of Receiver's Activities & Accounting**  
**September 1, 2005 through October 31, 2006**

This report covers the activities of the Receiver since the Eighth Report. The Receiver has completed his duties required by all orders issued by this Court. All approved distributions to claimants and creditors have been completed, and the unclaimed distributions were returned to the Defendants. The purpose of this report is to advise the Court of the Receivership's progress, and request payment of the Receiver's fees and out-of-pocket expenses, the discharge of the Receivership, and the exoneration of the bond. It does not constitute an audit of financial condition and is intended only to provide information for use by the Court.

**Appointment and Previous Events**

On March 23, 2001, this Court entered an Order appointing Robb Evans as the Receiver to administer the Redress Fund and the claims process established by the Stipulated Final Judgment and Order for a Permanent Injunction and the related Stipulated Final Order Approving Settlement Agreement in the action Federal Trade Commission vs. Bigsmart.com L.L.C., et al. These Orders were approved on March 21, 2001 and were entered on March 23, 2001.

As stated in the Receiver's Third Report, on December 19, 2001, this Court entered an Order expanding the Receivership Estate, and the powers and duties of the Receiver, to resolve the claims of remaining non-consumer creditors (Remaining Creditors). The Redress Fund increased by \$300,000 from additional payments made by the Defendants. The Redress Fund also resolved any and all claims of Remaining Creditors who properly filed claims against Bigsmart.com L.L.C. (Bigsmart). Distributions to approved Remaining Creditors were limited \$300,000 and further limited to a pro rata percentage equal to the pro rata percentage paid to consumer claimants.

As of August 31, 2005, the Defendants turned over (or were credited with turning over) \$4,445,000 (\$3,100,000 merchant reserves, \$200,000 upfront payment by Defendants on March 21, 2001 upon signing of FTC Order, \$1,050,000 monthly payments by the Defendants, \$38,000 settlement payment from Richard Slayback, and the \$38,780 credit<sup>1</sup> as mentioned in the Receiver's Eighth Report.

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<sup>1</sup> The Receiver agreed in October 2004 to fix the percentage of the distribution rate at 36% of the consumer claims, proposed by the Defendant. As a result, the amount owing by the Defendants became approximately \$38,780 less than the amount they previously owed to consumers. This proposal resolved a previously disputed \$95,761 on account of the interest that accrued on the Harris Bank reserve fund prior to March 21, 2001 as discussed in the Receiver's previous reports.

As described in the Receiver's Eighth Report, the Defendants were working with the Receiver's staff, reconciling the amount due from the Defendants to cover the remaining distribution to consumers, distributions to Remaining Creditors and credit card companies, and Receiver's fees and expenses to complete the Receivership. Based on the fixed distribution percentage at 36% and the funds that have been turned over by the Defendants, the required amount due from the Defendants was \$903,220 as of August 1, 2005.

### **Resolution of Remaining Settlement Payments By Defendants**

The Amended Court Order, approved and filed by the United States District Court on December 6, 2005, amended certain paragraphs or language of the Expanded Receivership Order, including:

- “\$903,220 is the balance due to the Redress Fund as of August 1, 2005. That sum shall be paid by the Defendants as follows:
  - [i] \$250,000 shall be paid within three calendar days of the Defendants’ reception of this Order; and
  - [ii] The remaining amount of \$653,220 shall be paid in three equal payments of \$217,740...”
- “There shall be one additional final distribution of payment to Current Eligible Consumers (defined in paragraph M of the “Definitions” section of the Consent Decree) from the \$903,220 with a schedule of all checks that are not cashed by Current Eligible Consumers and Creditors within 90 calendar days after the date of mailing will be considered to be permanent breakage; the permanent breakage shall be returned by the Receiver to the Individual Defendants within 60 calendar days after the expiration of the 90 days just described.”

The Defendants made the remaining payments of \$903,220 to the Receiver in accordance with the Amended Court Order. The Receiver returned \$186,626.60, which represented all checks that were not cashed within 90 calendar days after the mailing date of the final distribution to the eligible consumers, to the Individual Defendants.

### **Status of Consumer Claims and Remaining Creditor Claims Administration**

As stated in the Fifth Report, the Receiver's Claim Administrator completed a distribution of \$2,550,000 in May 2003 by mailing distribution checks to 46,477 claimants with approved claims of \$5.00 or more. The total of the 46,477 approved claims was \$10,732,303.92. The initial distribution was 23.76% of the approved claim amount.

Since that time, 3,310 checks were returned to the Claims Administrator by the US Postal Service for undeliverable addresses. There were also 2,976 checks that were not cashed or returned to the Administrator. All uncashed checks became void and were not paid.

The Receiver posted on the Receiver's website, and mailed out around August 22, 2005 a postcard to all eligible claimants. The information stated that the claimants without a current, working postal address by October 7, 2005 would no longer be eligible claimants and would not receive any additional distributions from the fund.

After the \$903,220 was paid in full approximately April 2006, the Claims Administrator provided the Receiver with a list of eligible claimants, including the amount of uncashed checks, if any, from the 1<sup>st</sup> distribution and their claim amount. The outstanding 1<sup>st</sup> distribution checks totaled \$107,134.59. The final distribution amounts for eligible claimants were calculated based on 12% (the fixed distribution percentage at 36% less 24% from the 1<sup>st</sup> distribution) of the approved claim amounts, plus the uncashed 1<sup>st</sup> distribution amounts, if any. The final distribution checks, totaling \$1,569,370.92, were mailed to 39,937 claimants, of which 4,870 checks totaling \$186,626.60 were not claimed by the expiration of the 90 days as described in the previous section. As required by the Court's December 6, 2005 Order, the \$186,626.60 was returned to the Individual Defendants.

In addition to the distributions to consumer claimants, the Receiver issued \$155,164.52 to the Remaining Creditors and \$28,427.53 to three credit card companies in April 2006. The total distributions to the Remaining Creditors and the three credit card companies during the Receivership approximated 36% of their approved claims.

### **Financial Report**

Tab 1 details the Receiver's Report of Receipts and Expenses for the period from the March 21, 2001 inception of the Receivership through October 31, 2006 and the current reporting period. It also details the estimated closing costs. Any funds remaining after paying existing expenses and future closing costs will be returned to the Defendants.

### **Recommendation**

The Receiver respectfully requests that:

1. The expenses paid and incurred be approved; and
2. Robb Evans, as Receiver, his agents, employees and representatives be discharged and relieved of all duties, liabilities and responsibilities, and the Receiver's bond be exonerated.

Respectfully submitted,

/s/  
Robb Evans  
Receiver