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MX Factors LLC; BBH Resources LLC
and JTL Financial Group LLC

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Securities and Exchange Commission v. MX Factors LLC, et al.
CASE No. EDCV 04-223 VAP (SGLx)

Report of Receiver's Activities
(January 19, 2005 Through August 31, 2005)

Filed September 9, 2005

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MX FACTORS, LLC, etc., et al.,

Defendants.

CASE NO. EDCV 04-223 VAP
(SGLx)

**REPORT OF RECEIVER'S
ACTIVITIES (JANUARY 19, 2005
THROUGH AUGUST 31, 2005)**

[No Hearing Set on Report]

TO: THE HONORABLE VIRGINIA A. PHILLIPS, UNITED STATES
DISTRICT JUDGE:

Attached hereto is the Report of Receiver's Activities (January 19, 2005
Through August 31, 2005).

DATED: September 9, 2004 FRANDZEL ROBINS BLOOM & CSATO, L.C.
GARY OWEN CARIS
LESLEY A NNE HAWES

By:



GARY OWEN CARIS

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ROBB EVANS
Receiver of
MX Factors, LLC, BBH Resources, LLC, and
JTL Financial Group, LLC

REPORT OF RECEIVER'S ACTIVITIES
JANUARY 19, 2005 THROUGH AUGUST 31, 2005

This is the fourth report to the Court. The purpose of this report is to provide the Court updated information on the progress of the receivership. This report does not constitute an audit of the financial condition of the receivership; it is intended only for the information of the Court and should not be relied upon for other purposes.

Asset Recovery and Liquidation

The Receiver¹ has liquidated substantially all of the available assets in the estate and assets that were turned over to the estate. The Receiver currently has about \$3 million to distribute to investors.

In the second report, the Receiver provided a detailed description of certain assets, investments, loans, and equity positions made by the Defendants. BBH Resources LLC (BBH) distributed \$8.6 million to various individuals and entities with little, if any, written documentation. Consequently, the loans and investments were made without BBH obtaining a security interest in the assets or documenting its equity interest in these businesses. All monies used to fund loans or purchase equity positions attributable to BBH came from investor funds first placed with and then obtained from MX Factors (MX), or from commissions for the sale of MX interests to third parties. For purposes of this section of the report, BBH will include any interest held by Thomas Hawkesworth or Daniel Berardi or held in the name of an affiliated company for the benefit of Mr. Hawkesworth and Mr. Berardi.

On September 26, 2003, MX and Richard Harkless consented to an order by the California Department of Corporations prohibiting MX and Harkless from engaging in unregistered securities offerings. Shortly thereafter, interest distributions to BBH from MX ceased. BBH stopped funding loans and operational costs for the start-up companies. As a result, many of the start-up companies either failed completely or continued to struggle financially. In many of the interviews, a common theme emerged. Recipients of BBH investments claim that their business ventures were severely damaged by the sudden and unexpected failure of BBH to continue funding their operations.

¹ Reference to the Receiver in this report means the Receiver, the Receiver's deputies, his staff, and his counsel.

A complicating factor in many of the investments is that the BBH interest is held indirectly through other entities and with other principals claiming an interest in the investment. Given the lack of written agreements or instruments evidencing the loans and investments, enforcement of agreements and collection efforts have been difficult and time consuming. A cost benefit analysis of potential recovery on various assets of doubtful collectability made further collection efforts inadvisable.

The subsections below describe the assets, which provided or will provide some recovery to the estate.

HellBound Steel, LLC (HBS) and American Made, Inc. (AMI) \$1,873,859

HBS is a motorcycle manufacturing company and AMI fabricates frames and parts for the construction of motorcycles. The Receiver interviewed the owners of both companies and reviewed their financial statements. HBS and AMI were struggling financially. BBH provided operational capital to HBS and AMI through an entity called Mullet Funding (Mullet). Mullet owns a 30% equity interest in both companies.

The Receiver negotiated an agreement with the principals of HBS and AMI to sell the 30% equity interest held by Mullet in HBS for \$76,487 and AMI for \$75,000. The Receiver obtained the consent of Mullet's other principals and applied to the Court for confirmation of the sale of this asset. On April 29, 2005, the Court approved the sale. The Receiver collected all of the funds due from HBS. AMI continues to make monthly payments for its purchase in a timely manner.

R.M. Sports (RMS) \$493,574

RMS is located in Palm Springs, California and markets specialized clothing with embroidery and silk screening. BBH claimed it purchased 50% of RMS for \$193,574 but did not document the transaction. BBH does not have a security interest in the equipment that was supposed to secure a \$300,000 note.

The Receiver interviewed the owner and his counsel and the Receiver has also inspected the business. The business is operational, but has serious cash flow problems and is unable to pay the balance of the note or to repurchase the undocumented equity. Settlement discussions are ongoing. Based on the lack of a security position and the bleak financial condition of the company, the Receiver estimates the potential recovery will be about \$10,000..

Traffic Vendors, LLC (Traffic Vendors) \$332,595

Traffic Vendors was an internet marketing company selling "hits" on various websites. When BBH funding ceased, Traffic Vendors could not continue financing the growth of the company, and eventually closed on February 26, 2004. The acting president resigned.

The Receiver seized \$109,013 in Traffic Vendors' bank account and took possession of office equipment, furniture, and supplies in a storage facility. The Receiver sought and obtained Court approval to include Traffic Vendors' assets in an auction with other BBH personal property assets. The assets of Traffic Vendors were of nominal value and were sold at auction for \$5,370.

The Receiver discovered that Traffic Vendors had a pre-paid credit with one of their vendors for \$36,300. The Receiver negotiated with the vendor's counsel for return of the funds. The Receiver agreed to have the funds placed in trust until Court approval could be obtained to release the funds to the Receiver. The Court has approved a motion to release the funds to the Receiver.

Creative Wealth Marketing, LLC (CWM) \$192,053

Messrs. Berardi and Hawkesworth each own a 25% interest in CWM, which they have agreed is an asset of the receivership estate. The other two partners each own a 25% interest and are members of the Anderson Law Group (ALG). CWM was established to market tax strategies and asset protection services in the Palm Desert area. Faced with a great deal of competition, the marketing efforts were not successful and the marketing efforts ceased. The principals of CWM then decided to invest in real estate and purchased an office building located at 3225 McLeod Drive, Las Vegas, Nevada. CWM explored other business ventures, which were not successful and are not operational.

Berardi and Hawkesworth informed the Receiver that they executed a document prior to the Receiver's appointment which arguably relinquished any claim to the commercial property located in Las Vegas, Nevada. Counsel for ALG advised the Receiver that Berardi and Hawkesworth did not have any interest in the commercial property, however, the Receiver was able to negotiate a settlement with counsel for ALG. Without admitting that the Receiver had a claim to the commercial building, ALG agreed to pay the estate \$15,000 as settlement of any potential claim the estate may have in the Las Vegas building.

Global Equipment \$143,893

BBH used funds to purchase various pieces of construction equipment that were then leased to a contractor in Palm Springs, California. The Receiver obtained valuation information on the equipment, and negotiated a sale of these assets with the contractor at the market value. The Receiver obtained Court approval and the sale was completed. The equipment was sold for \$82,700.

Remaining Loans and Investments

The remaining loans and investments of less than \$100,000 were comprised of start-up companies that were never operational, entities organized to manage interests held by

BBH, consulting fees, office equipment, and furniture placed with retailers on consignment, a retail outlet for the custom motorcycle manufacturer, and personal loans. With two exceptions discussed below, the funds are lost and no assets exist providing a source of recovery.

BBH loaned \$50,000 to the principal of Essential Lending. The Receiver has negotiated repayment of the full \$50,000 in the form of monthly payments with a balloon payment due in December 2005. Three payments have been received in a timely manner and payment in full is anticipated.

While reviewing American Express statements, the Receiver discovered periodic charges by an entity located in the South Pacific nation of Vanuatu. BBH provided \$10,000 to fund a new start-up business, but the business did not become operational. The Receiver arranged to have the account closed and the balance of \$5,100 returned to the estate.

The Warrior, aka The Libresea

As previously reported, the Receiver located and took control of a commercial fishing vessel known as the Libresea (formerly the Warrior). The vessel was in dry dock near Seattle, Washington. The Receiver also reported disbursements from MX for the vessel of about \$1.53 million.

Two marine professionals familiar with the Libresea estimated the total costs of repairs to make the vessel fully operational could exceed \$1 million. The Receiver was advised that it would be highly speculative to assume that an investment of \$1 million or more could be recouped on the sale of the vessel.

The Receiver negotiated a sales contract for \$359,000 and closed the sale. After payment of liens and the sales commission, the estate received \$233,987.

Real Properties and Home Furnishings

The real properties listed below were subjected to the same evaluation, marketing, and sale process. Each of the properties required two appraisals and two broker's opinions of value (BOVs) prior to a determination of market value. Realtors were interviewed and required to submit marketing and listing proposals. The selected realtors then listed the property for sale. Each of the properties sold at a price in excess of the average appraised values and the average BOVs. The only exception to the process was the Harding property in Corona, CA. This Court resolved the disposition of sale proceeds from the Corona property.

BBH Resources-Daniel Berardi

Mr. Berardi and his spouse owned three homes in Southern California. Mr. Berardi cooperated with the Receiver in the marketing and sale of each of the properties.

39 Terracina, Rancho Mirage The property was sold for \$736,000. After commission and closing costs the net proceeds equaled \$667,921. The interior furnishings were sold as part of the transaction for an additional \$26,000. The net proceeds to the estate totaled \$693,921.

72 San Simeon Place, Rancho Mirage The property was sold for \$450,000. After commission and closing costs the net proceeds equaled \$425,036. The interior furnishings were sold as part of the transaction for an additional \$7,000. The net proceeds to the estate totaled \$432,036.

7463 Neptune Drive, Carlsbad The vacant property was sold for \$885,000. After commission, closing costs and mortgage payoffs, the net proceeds equaled \$285,654.

BBH Resources-Thomas Hawkesworth

Mr. Hawkesworth and/or his spouse owned two homes in Southern California, acreage in Vermont and Massachusetts and a time-share condominium. Mr. Hawkesworth cooperated with the Receiver in the marketing and sale of each of the properties. The time-share condominium and Massachusetts acreage are not included in the list of sales described below. These two assets were extensively researched and it was determined that it was not cost-effective for the Receiver to market and sell these properties. The Receiver's analysis concluded that the cost of valuation, marketing, and closing costs would exceed the net proceeds.

49 Toscana Way, Rancho Mirage, CA The property was sold for \$999,000. After commission, closing costs and mortgage payoffs, the net proceeds equaled \$268,010.

74960 Saguaro Lane, Indian Wells, CA The property was sold for \$525,000. After commission, closing costs and mortgage payoffs, the net proceeds equaled \$197,487.

Vermont Acreage, Mount Holly, VT The acreage was sold for \$35,000. After commission and closing costs, the net proceeds equaled \$33,774.

JTL Financial Group, LLC-Randall Harding

3065 Garretson Avenue, Corona, CA The property was sold for \$2,000,000. After commission, closing costs and mortgage payoffs, the net proceeds equaled \$531,718.

Richard Harkless

3628 Larchwood Place, Riverside, CA The property is currently under contract for \$375,000 and in escrow. The Motion to approve the sale has been filed and is under submission with the Court.

Investor Claims Procedure

On March 10, 2005 this Court approved the Receiver's Proposed Claims Filing and Allowance Procedures. Pursuant to that Order, the Receiver mailed notices to all known investors and potential non-investor claimants.

Nearly 40% of investors responded to the letter with questions. About 150 investors objected to the Receiver's Proposed Claim Amount. The Receiver has resolved all but three of the objections. The Receiver is attempting to obtain additional information to settle the unresolved objections. The Receiver has documented investor claims of about \$58.5 million. After deducting interest, principal, commission, and other payments the Receivership Defendants returned to investors, the net amount owed to investors is about \$39.4 million.

Financial Analysis

The Receiver has completed an analysis of the receivership defendants' books and records. Between March 2000 and September 2003 the receivership defendants raised about \$58.5 million from investors. Of that amount MX raised about \$12.6 million, JTL Financial Group LLC (JTL) raised about \$18.9 million, and BBH raised about \$27 million.

During that same time period, the receivership defendants returned to investors about \$29.1² million in the form of "interest," principal, commissions and other payments, reducing the net amount owed to \$29.4 million. However, after removing the overpayments, the gross amount actually owed to investors was \$39.4 million. As previously reported, just \$319,745.94 was frozen in various bank accounts. Consequently, on February 26, 2004³ there was a shortfall between the available cash and the gross amount actually owed to investors of at least \$39.1 million.

As previously reported, the books and records of MX reflect minimal accounts receivable financing activity. Financing arrangements appear to have been made with 12 debtors. About \$5.2 million was advanced to these debtors and about \$2.8 million was repaid, resulting in a loss of about \$2.4 million. In February 2004 the Receiver reviewed files of account receivable debtors. Although MX had filed UCC financing statements against 12 debtors, the files were incomplete with comments and notations indicating that nothing

² This amount includes about \$10.0 million in overpayments to investors.

³ This is the date of the Temporary Restraining Order and Asset Freeze.

could be recovered from the debtors. Based on MX's records, the last payment from a debtor was received in April 2003. The Receiver spoke with some account debtors who were out of business or bankrupt.

BBH did not generate any positive returns from any of its investments in start-up businesses. As detailed in the Receiver's first report, JTL generated virtually no income, except from sales commissions paid by MX.


The analysis above as to revenue produced by MX and the other receivership defendants clearly show that funds solicited from investors were the only possible source of funds to make payments to investors totaling about \$29.1 million.

Other Issues

The Receiver is in the process of attempting to resolve several outstanding pre-receivership litigation claims, which are believed to have a minimal overall financial impact on the estate.

The Receiver has determined that claims totaling about \$10.0 million may exist against investors who received payments greater than their investment and sales agents who received commission payments. The Receiver may seek return of those funds.

Respectfully Submitted,


Robb Evans
Receiver

PROOF OF SERVICE

I, the undersigned, declare and certify as follows:

I am over the age of eighteen years, not a party to the within action and employed in the County of Los Angeles, State of California. I am employed in the office of FRANZEL ROBINS BLOOM & CSATO, L.C., members of the Bar of the above-entitled Court, and I made the service referred to below at their direction. My business address is 6500 Wilshire Boulevard, Seventeenth Floor, Los Angeles, California 90048-4920.

On September 9, 2005, I served true copy(ies) of the **REPORT OF RECEIVER'S ACTIVITIES (JANUARY 19, 2005 THROUGH AUGUST 31, 2005)**, the original(s) of which is(are) affixed hereto, to the party(ies) listed on the attached service list.

BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such document(s) were placed in envelopes addressed to the person(s) served hereunder for collection and mailing with postage thereon fully prepaid at Los Angeles, California, on that same day following ordinary business practices.

BY FACSIMILE: I caused said document(s) to be transmitted by facsimile. The telephone number of the sending facsimile machine was (323) 651-2577. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error. **(AS NOTED)**

BY OVERNIGHT DELIVERY: I deposited such document(s) in a box or other facility regularly maintained by the overnight service carrier, or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier with delivery fees paid or provided for, addressed to the person(s) served hereunder.

BY EXPRESS MAIL: I deposited such document(s) in a box or other facility regularly maintained by the United States Postal Service, in an envelope or package designated by the United States Postal Service with delivery fees paid or provided for, addressed to the person(s) served hereunder.

BY PERSONAL SERVICE: I personally delivered such document(s) to the person(s) served hereunder.

I certify under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on September 9, 2005, at Los Angeles, California.


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