



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

B.E. CAPITAL MANAGEMENT)	
FUND LP,)	
)	
Petitioner,)	
)	C.A. No. 12843-VCL
- against -)	
)	
FUND.COM INC.,)	
)	
Respondent.)	

MOTION OF RECEIVER TO DISCONTINUE LIQUIDATION

Thomas Braziel, as Receiver of Fund.com Inc. (“Company”), hereby moves for an order, in the form annexed hereto, discontinuing this liquidation proceeding, pursuant to 8 Del. C. § 301, and respectfully states:

1. This action was commenced because David Berke, the alleged sole director and officer of the Company, who admitted in an affidavit that he was appointed by Jason Galanis,¹ refused to disclose to shareholders the terms of the Company’s settlement with AdvisorShares Investments, LLC, which had been filed under seal in an action commenced by the Company against AdvisorShares in New York County Supreme Court (Index No. 650321/2012) or distribute the proceeds thereof to the Company’s stakeholders.²

¹ Jason Galanis historically controlled the Company through his indirect ownership of its Class B Shares and has since been sentenced to 15 years in Federal prison for his role in two separate frauds.

² The Receiver subsequently discovered Berke instead distributed the proceeds to himself, an LLC that he owned, and Galanis’s criminal defense lawyers, in

2. On November 29, 2016, this Court entered an order appointing Thomas Braziel as Receiver of the Company, pursuant to 8 Del. C. § 226(a)(3).

3. The Receiver subsequently obtained a copy of the AdvisorShares settlement, obtained a \$2.2 million judgment against AdvisorShares when it defaulted on the same, and collected the judgment after freezing AdvisorShares' bank accounts.

4. The Receiver also investigated what became of the fund.com URL, which the Company had represented in SEC filings that it purchased for \$10 million in 2007. That investigation revealed that the URL had been transferred to a Hawaiian corporation originally named Fund Alliance Corporation, formed by Hugh Dunkerley, a recognized front man for Galanis, and subsequently renamed Distributed Finance Corporation ("DFC") after Dunkerley was displaced. The Receiver subsequently commenced a fraudulent conveyance action against DFC in New York County Supreme Court (Index No. 152352/2017). That action was resolved, following completion of discovery, on terms that resulted in the return of the URL to the receivership estate.

5. Lastly, the Receiver set out to purge Galanis and his affiliates, front men, cronies, and associates from all levels of the Company's capital structure.

addition to the Company's attorneys in the AdvisorShares litigation and the litigation funder.

Towards that end, the Receiver obtained entry of an order, dated April 24, 2017, equitably disallowing/subordinating all claims in respect of loans extended by Galanis or his affiliate, and all Class B Shares and Preferred Shares believed to be owned by him.

6. In contemplation of discontinuing the Receivership, the Receiver reinstated service with the Company's former stock transfer agent and requested a copy of the Class A Share registry. That registry revealed nearly one-third of the Class A Shares are not publicly traded, and are held in the name of recognized Galanis cronies and associates, many of whom have been imprisoned for their role in Galanis-related (and non-Galanis-related) frauds. The Receiver subsequently moved to equitably disallow/subordinate all nonpublicly traded Class A Shares. An order granting that relief was entered August 30, 2018.

7. Having accomplished the vast majority of what he set out to do,³ the Receiver now wishes to discontinue this receivership proceeding, pursuant to 8 Del. C. § 301, which permits the discontinuance of a receivership proceeding "at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists."

³ To date, the Receiver has been unable to recover the alleged \$20 million CD held at an offshore bank, that allegedly converted to an annuity, that the Company represented it owned in its SEC filings.

8. The Receiver submits that cause for liquidation no longer exists here because the Receiver has recovered, for stakeholders' benefit, the Company's principal assets, namely, all AdvisorShares settlement proceeds outstanding as of his appointment (less attorneys' fees, that would be subject to a charging lien) and the fund.com URL, and successfully purged all traces of Galanis from the Company's capital structure.

9. On discontinuance of this receivership proceeding, the Receiver wishes to reinstate the Company as an operating business, capitalized by proceeds of the AdvisorShares settlement and the fund.com URL, and whose shares continue to trade publicly.

10. The Receiver recognizes doing so would require that the Company's SEC filings be brought up to date and that a Form 10 (a so-called "Super 10-K") be filed, covering multiple years of missed SEC filings. Towards that end, the Receiver contemplates engaging, on discontinuance of this receivership proceeding, corporate and securities counsel to bring the Company into compliance with SEC and state law disclosure obligations.

11. The Receiver also recognizes that the Company is not presently in good standing with the Division of Corporations, as annual reports and franchise taxes had not been paid for years prior to the start of the receivership proceeding, and recognizes the need to achieve and maintain good standing. The Receiver believes,

based on discussions with the Division of Corporations, that he can return the Company to good standing promptly on discontinuance of this receivership proceeding, and intends to take all steps needed to do so.

12. Section 301 provides that on discontinuance of a liquidation proceeding, “the Court of Chancery in its discretion, and subject to such conditions as it may deem appropriate, may dismiss the proceedings and direct the receiver or trustee to redeliver to the corporation all of its remaining property and assets.” The Receiver proposes that this Court discontinue this receivership proceeding upon the following terms: (a) The Company shall call a meeting of stockholders, within one-hundred and eighty (180) days following entry of an order granting the relief sought herein; and (b) Thomas Braziel shall serve as the Company’s sole director pending its first post-receivership meeting of stockholders.

13. The Receiver also respectfully requests the authority to compensate the Receiver’s professionals for any fees incurred and expenses advanced since their last fee application, filed on August 16, 2018, in an amount not to exceed \$10,000.

WHEREFORE, the Receiver requests that this Court enter the accompanying proposed order discontinuing this liquidation proceeding, and granting such other relief as this Court deems just and proper.

Dated: October 16, 2018

KLEIN LLC

/s/ Julia B. Klein

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Words: 1,017

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