

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Case No. 10-50494
)
FAIR FINANCE COMPANY) Chapter 7
)
Debtor.) Judge Marilyn Shea-Stonum
)

STATUS REPORT FOR MARCH 25, 2014 STATUS CONFERENCE

Brian A. Bash, Trustee herein, submits this status of the Trustee’s administration of the estate in an effort to address the Court’s concerns raised at the last Status Conference about information the Trustee believes the creditors should be aware regarding the progress of this case. While addressing the Court herein, the format is designed to address creditors and provide them with information regarding the case.

History of the Case

1. Four years ago, the United States Trustee appointed me as the bankruptcy Trustee for Fair Finance Company, following its collapse after years of operating as a Ponzi scheme. I know these last four years have been very difficult for the thousands of people whose money was taken by Timothy Durham and others. While my team and I have been working very hard to recover money for the victims of the scheme, the process of investigating a large fraud and recovering money through lawsuits can be frustratingly long.

2. Timothy Durham and James Cochran bought Fair Finance Company in 2002, and hired Rick Snow as Fair Finance’s Chief Financial Officer shortly thereafter. From 2002 through 2009, Durham and Cochran “lent” Fair Finance’s money to themselves, their friends, and their struggling companies. Fair Finance’s money not only bought fancy cars, shares in private jets, multiple mansions, and gambling trips, but also paid for more mundane things like payroll and expenses at the struggling companies affiliated with Durham and Cochran. The



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“borrowers” of this money almost never repaid the loans. While at least \$140 million went out of Fair Finance as “loans,” only about \$6 million was ever repaid. I have included a list of the major borrowers of these “loans” at the end of this Report as Exhibit A.

3. Since the loans were never paid back, Fair Finance did not have the money to repay creditors. As a result, Fair Finance started paying off its old creditors with money taken from new creditors – it became a Ponzi scheme.

4. In November 2009, the Department of Justice raided Fair Finance and Obsidian Enterprises, Inc., another company controlled by Durham and a recipient of many of the “loans.” In February 2010, Fair Finance was forced into bankruptcy and the United States Trustee appointed me as the Trustee.

5. My initial task was to secure and protect Fair Finance’s assets and the records at Fair Finance’s offices throughout Northeast Ohio. We needed to change all the locks at all of Fair Finance’s offices, have computer specialists make copies of Fair Finance’s servers, investigate the threatened dissolution of CLST Holdings, a company that had suspicious dealings with Durham, and send a forensic accountant to review hundreds of thousands of pages of records that the FBI seized from Fair Finance and Obsidian to search for clues about where the money went. And I searched for any identifiable, tangible assets.

Assets Initially Identified

6. The investigation revealed that Durham had a collection of cars that was acquired with money taken from Fair Finance. Though Durham sold many of his cars before the bankruptcy, we were able to obtain from Durham the remaining vehicles and sell them at auction with significant assistance from the Department of Justice. The vast majority of the cars were sold in 2010 for \$939,791.71.

7. Durham also had an art collection acquired through Fair Finance funds. An agreement was reached with Durham to turn over his art collection and allow me to sell it at auction – although the two largest buyers did not pay for the artwork until they were sued. The artwork raised \$360,040.00.

8. The situation at this time was very grim. Almost all of Fair Finance’s money and worthwhile assets were gone, having been spent or “loaned” or given to people and companies that could not or would not give the money back without a fight. When I was appointed, Fair Finance had about \$200,000 in cash and more than \$200 million in debts. Even without any expenses, that would not be enough to pay \$10 on a \$10,000 investment certificate. If you add the other assets we were able to recover without the threat of litigation, such as the cars, Fair Finance had enough to pay just over \$200 on a \$10,000 investment certificate before expenses.

Analysis of Money Trail

9. In order to fulfill my obligation to investigate the financial affairs of the Company, I needed to determine where the money went. I needed to determine the people and companies that received the money. I needed to determine whether money had been hidden and how this fraud was perpetrated and perpetuated. In short, I needed to thoroughly investigate not just Fair Finance, but dozens of people, businesses, and entities that received money from Fair Finance. Doing that investigation, and following up with lawsuits where necessary, took a significant amount of time and effort. As part of the extensive investigation that was undertaken, the forensic accountant and certified fraud examiner I hired was directed to determine where the money went and how this scheme occurred. I hired lawyers to review the evidence, interview witnesses, issue subpoenas, analyze claims and, where appropriate, file lawsuits.

10. Because Fair Finance’s money was usually sent to other related companies, such as Fair Holdings and Obsidian, and then sent to the ultimate “borrower” tracking the money was

more time consuming. Our investigation had to rely on a lot of documentary evidence. The attorneys and accountants had to review millions of pages of evidence to determine the details of exactly where the money went and who should be sued for their role in the fraud. The evidence included more than 1,500,000 pages of records produced by one of Fair Finance's business partners, approximately 550,000 pages of records that were seized by the Department of Justice during the FBI raid, more than 70,000 emails from Fair Finance officers, more than 250,000 pages of accounting work papers, tens of thousands of pages of bank and brokerage account records from over 40 separate accounts, and accounting records for many different companies.

11. During the lawsuits that were filed, one defendant produced more than 4,000,000 pages of records and another produced approximately 3.3 terabytes worth of electronic data (approximately 82,000 banker's boxes worth of documents), which we were able to reduce to approximately 60 gigabytes worth of electronic data (approximately 1,500 banker's boxes worth of documents) using computers and search terms.

12. The investigation revealed that Fair Finance money supported dozens of people and companies, some of whom are included in Exhibit A to this Report. More than \$100 million was "loaned" to failing affiliated businesses, and tens of millions more were loaned to Durham, Cochran, and their friends to pay for personal extravagances like a yacht, shares in private jets, mansions, cars, luxury gambling trips, stock investments, and loans to friends.

13. Durham, Cochran, and their friends and failing businesses usually squandered the money that was lent to them, and were unable or unwilling to repay more than a token amount of what they stole or borrowed. So we pursued the borrowers (and other recipients of Fair Finance's money) who we believed would lead us to recoveries.

Early Actions Taken

14. In addition to removing to Bankruptcy Court a class action brought by certificate holders involving claims against Durham, Cochran and other insiders seeking to recover losses caused by the management of Fair Finance, other actions had to be quickly taken after my appointment as Trustee in order: (i) to stop the dissolution of a company (CLST) that was believed to have value for the benefit of Fair Finance; (ii) to recover a transfer of \$1.9 million made to FCS Advisors to bond a judgment a creditor obtained just prior to the bankruptcy case filing; (iii) to obtain a determination that Obsidian and other entities should be substantively consolidated with Fair Finance; (iv) to obtain recovery of funds transferred to Fair Holdings and DC Investments by Fair Finance in an effort to avoid creditors' claims; and (v) to obtain a return of funds received by political candidates from Tim Durham, obtained from Fair Finance.

Litigation

15. The information obtained through investigation by my accountant and lawyers identified lawsuits that could be filed against people and companies that had an improper involvement with Fair Finance or received money from Fair Finance that should be returned. Those lawsuits included suits against (1) two sophisticated lenders that were involved with Fair Finance: Fortress Credit Corporation and Textron Financial Corporation; (2) the auditors of Fair Finance and some related companies; (3) officers and directors of Fair Finance; (4) Daniel Laikin, one of Durham's business partners; (5) National Lampoon, a company Durham and Laikin controlled; and (6) over one hundred smaller cases.

16. The litigation was affected by the United States Supreme Court's decision commonly referred to as *Stern v. Marshall*, which narrowed the set of cases where the bankruptcy court could enter a final judgment. Since a District Court must review and approve

bankruptcy court decisions that otherwise could have been made by the bankruptcy court, this increased the time and effort that would be required to obtain judgments.

17. To date, I have obtained judgments, or defendants have consented to judgments, in excess of \$400 million. Many of the largest judgments are against those who were involved in the fraud, such as Durham, Cochran, Snow, and large “borrowers” from Fair Finance, such as Fair Holdings, Obsidian, and DC Investments. As I previously discussed, many of the judgments are against entities that did not hold on to the money they received from Fair Finance and had limited or no ability to repay us. I continue to pursue collection on these judgments where I believe it will create value, and I hope to pursue others that received money from these entities. A list of the currently outstanding litigation and uncollected judgments is attached as Exhibit B to this report.

Approach Taken to Efficiently Handle Litigation

18. I tried to handle these cases as efficiently as possible, given the enormous scope of the investigation involving a complex web of dozens of companies with hundreds of millions of dollars at stake. We aligned similar cases into groups, which allowed us to depose certain witnesses fewer times and to align case deadlines efficiently. At the outset of the major lawsuits, I obtained a court order allowing me to put much of the evidence in the case in an online database for the defendants to review for themselves. This allowed the defendants to see the evidence and freed me from paying lawyers to spend thousands and thousands of hours reviewing millions of pages of documents to respond to discovery requests. We used electronic document review tools that significantly reduced the time it took to review documents, and, in some circumstances, allowed us to be more selective in the review of large portions of a document production.

19. I tried to settle litigation early rather than having it become lengthy and costly, where appropriate. I also gave matters to smaller law firms when I felt it was appropriate. I had sought to put BakerHostetler on a contingency fee arrangement for the largest cases rather than an hourly arrangement, in view of the significant fees and risks of the litigation. The request was denied.

Collection Efforts

20. As should be apparent, much of the money that was taken from Fair Finance is not easily recoverable. I'm going to use two examples of this difficulty.

21. First, Obsidian Enterprises, Inc. was a company funded and largely owed by Durham. Obsidian and its affiliates used Fair Finance's money to make payroll, pay expenses, replace bank debt, and to pay for Obsidian's offices located in Indiana. In the September 2009 financial statements submitted to the Ohio Division of Securities, Mr. Durham wrote off more than \$21 million in debt owed by Obsidian's current and former affiliates, and admitted that Obsidian and its affiliates still owed Fair Finance more than \$65 million. Of that total of \$86 million in debt, companies that were out of business owed \$37 million; another \$30 million was owed by a holding company which had almost no assets. At the remaining companies, most of the useful property having any value was mortgaged to banks before I was appointed, which meant that recoveries would be expensive and difficult.

22. Second, Durham had a mansion in Indiana. Before I was appointed, Durham granted two mortgages on his mansion. JP Morgan recorded a \$3.5 million first mortgage on the mansion and Shelby County Bank recorded a \$1.7 million second mortgage on the mansion. Thus, I would not recover anything from the sale of the house until those two bank loans have been paid in full, absent a lawsuit or agreement.

23. To increase my chances of recovering money for creditors, I reached a settlement with Shelby County Bank, which transferred their second mortgage to me.

24. JP Morgan sued Mr. Durham and obtained a judgment of approximately \$4.5 million, including legal fees and unpaid interest. JP Morgan then foreclosed upon Durham's mansion and sold it at auction on March 6, 2014. However, Durham's home sold for only \$2.25 million, not even enough to pay JP Morgan's principal.

25. Since many hard assets could not be recovered cost-effectively, the dividend I will be able to pay creditors will largely depend on my ability to collect in lawsuits. However, I have collected and liquidated or preserved substantial assets. As examples, in addition to the sale of Durham's cars and artwork previously discussed, and filing liens on real property, I have (i) recovered approximately \$3.5 million from Fair Finance's portfolio of consumer receivables, (ii) preserved approximately \$1.2 million from the sale of one of Laikin's mansions in an escrow account, pending the outcome of my suit against him, (iii) recovered approximately 10 million shares of stock in multiple entities, (iv) restructured a loan to United Trailers, an entity that likely would not have been able to repay any part of its second-lien line of credit, by facilitating a sale to its management and a partial assumption of debts that has so far generated \$378,326 for the estate, (v) reached agreement with Wayne Bank to jointly liquidate a medical office building in Indiana and to share proceeds from eminent domain proceedings against another building, (vi) recovered over \$350,000 in proceeds from the sale of additional vehicles, including buses, a stretch limousine, and several cars. In addition, I will soon initiate foreclosure proceedings involving Texas real estate.

Current Outstanding Claims

26. A list of the outstanding litigation is set forth in Exhibit B to this Report. When I discuss the litigation, please understand that the recovery may not be the same as the amount

claimed in the complaint. We may lose, win only in part, settle the case for less than the full amount, or be unable to collect everything we are owed. Hotly contested litigation is very expensive and time consuming, and many of the defendants have defended themselves vigorously. We have already completed two trials and obtained dozens of judgments and settlements.

27. The bankruptcy estate presently has approximately \$4.1 million and we have more than that in unpaid fees and expenses, primarily caused by the cost of this outstanding litigation.

28. In the costliest litigation, we currently are seeking to recover more than \$72 million from Fortress Credit Corp. We have completed most of the discovery in that case. There are motions pending before the District Court filed by both sides requesting rulings before trial. In that case, the District Court previously dismissed another defendant, Textron Financial Corporation, against whom claims of more than \$300 million were alleged, but we have the right to appeal that decision.

29. In another lawsuit, against Laikin, this Court recommended a judgment against Laikin in the amount of \$32,958,018.00 after conducting a trial on the merits of the claim made. The District Court is currently reviewing the Report and Recommendation issued by this Court.

30. Finally, I continue to pursue resolution of a \$9 million case against National Lampoon, as well as other lawsuits against former officers, directors, and an attorney for Fair Finance, all as reflected in Exhibit B to this Report.

Conclusion

31. I know that the harm caused to certificate holders and other creditors is very substantial. The fraud perpetrated has hurt many innocent people and caused a great deal of hardship. While I do not intend to give up, there is no guarantee that there will be a return for

creditors in the near future. For example, the Stanford Group International, Petters Group Worldwide, and Lou Pearlman Ponzi schemes went into liquidation approximately a year before Fair Finance and are still in active litigation today. Unfortunately that is a characteristic of Ponzi schemes. Ultimately, the recoveries creditors will receive will depend on the resolution of the pending lawsuits and the success of collection efforts, which may take months or years more. We will keep pursuing every promising path for recovery.

32. I will continue to post information regarding the progress of the case on my website, www.fairfinancetrustee.com, including future Status Reports to the extent Status Conferences are scheduled in the future.

33. And I want to express my appreciation for the focused attention this Court has brought to the various aspects of this case which resulted in obtaining the previously described advancements in this case.

Date: March 24, 2014

Respectfully submitted,

/s/ Brian A. Bash

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EXHIBIT A

Selected Judgments Against Related Parties That Received Money From Fair Finance¹

The following chart lists the judgments the Trustee has obtained against three of Fair Finance's officers and two companies that Durham and Cochran used to purchase Fair Finance. The officers are CEO Timothy Durham, Chairman of the Board James Cochran, and CFO Rick Snow.

Case Name	Judgment
<i>Bash v. Durham²</i>	\$134.8 million against Durham
<i>Bash v. Fair Holdings, Inc., et. al.</i>	\$88.0 million against DC Investments, LLC
<i>Bash v. Fair Holdings, Inc., et. al.</i>	\$53.1 million against Fair Holdings
<i>Bash v. Snow</i>	\$50.0 million against Snow
<i>Bash v. Cochran</i>	\$9.8 million against James Cochran

Durham was the CEO, Chairman of the Board, and largest shareholder of Obsidian Enterprises, Inc. The following chart lists the judgments against Obsidian Enterprises and its affiliates.

Case Name	Judgment
<i>Bash v. Obsidian Enterprises, et. al.</i>	\$29.9 million against Obsidian
<i>Bash v. U.S. Rubber Reclaiming, Inc.</i>	\$22.9 million against U.S. Rubber Reclaiming
<i>Bash v. DC Investments Leasing, LLC</i>	\$5.8 million against DC Investments Leasing
<i>Bash v. DW Leasing Company, LLC</i>	\$4.4 million against DW Leasing
<i>Bash v. Obsidian Leasing Company, Inc.</i>	\$2.7 million against Obsidian Leasing
<i>Bash v. Pyramid Coach, Inc.</i>	\$0.9 million against Pyramid Coach
<i>Bash v. Black Rock Acquisition Co.</i>	\$0.8 million against Black Rock
<i>Bash v. Champion Trailer Acquisition, LLC; Champion Trailer Co. LP; and Champion Trailer, Inc.</i>	\$0.3 million against each defendant

¹ This chart includes judgments the defendants have consented to, but which have not yet been entered. Judgment amounts are rounded. These calculations do not include post-judgment interest. Please note that some judgments will overlap (for instance, if we have a judgment against both a borrower and a guarantor, we can only recover once).

² Please note that the judgment against Mr. Durham includes additional debts he assumed from Obsidian's subsidiaries.

Exhibit B

#	Case Name	Claim Amount	Bankruptcy Case No.	District Case No.	Comment
ACTIVE CASES					
1	Bash v. Textron; Fortress; Fair Facility	\$72,237,343.20	12-5101	12-00987	Both the Trustee and Fortress have asked the Court to grant them summary judgment. The amount of the claim excludes the Trustee's claim against Textron, which was dismissed by the District Court but can still be appealed.
2	Bash v. Fair Finance (<i>McKibben</i> litigation)	\$208,000,000.00	10-5038	13-2098	Litigation against Fair Finance officers, directors and others. The District Court is presently considering motions for summary judgment filed by the Trustee, John Head, Timothy Durham, and James Cochran.
3	Bash v. Daniel Laikin	\$32,958,018.00	10-5043	N/A	Report and Recommendation from Bankruptcy Court has been entered in our favor in the amount of our claim. District Court to decide whether to enter judgment.
4	Bash v. National Lampoon	\$9,000,000.00	N/A	N/A	Case is in discovery and in settlement discussions. The Trustee's motion to appoint a receiver over National Lampoon is pending.
5	Bash v. John J. Head; Head Consulting Group, Inc.	\$2,522,333.06	12-5097	12-00981	Case deadlines are aligned with the Fortress case, no motions for summary judgment pending.
6	Bash v. Cindy Landeen	\$240,000.00	12-5026	12-01152	Ms. Landeen has threatened to file bankruptcy, and the Trustee is currently negotiating with Ms. Landeen's bankruptcy counsel.
7	Bash v. Ronald O. Kaffen; Kaffen & Zimmerman	\$169,676.00	12-5149	12-00994	Case deadlines are aligned with the Fortress case, no motions for summary judgment pending.
8	Bash v. Mark Ruh	\$75,000.00	14-5001		First pre-trial hearing set for April 2014.
9	Bash v. Dana Osler; Geist Sports Academy, LLC; Elizabeth McClure (only active as to Elizabeth McClure)		12-5158	12-00997	No set demand amount for the complaint. The District Court entered a default judgment against Dana Osler and Geist Sports Academy as a sanction for discovery misconduct. The case is still pending against Elizabeth McClure.
10	Bash v. Etelco Services, Inc. et al. (Case stayed as to Neil Lucas because of bankruptcy).	\$19,718.75	11-5233	12-00984	Case stayed against Neil Lucas due to bankruptcy, a default judgment has been entered against Etelco. Ms. Landeen has threatened to file bankruptcy, and the Trustee is currently negotiating with Ms. Landeen's bankruptcy counsel.
Total		\$325,222,089.01			

JUDGMENTS AND SETTLEMENTS (INCLUDING CONSENT JUDGMENTS THAT HAVE NOT BEEN ENTERED)

#	Case Name	Bankruptcy Case No.	District Case No.	Judgment Amount
1	Bash v. Fair Holdings, Inc.; DC Investments, LLC	12-5103	12-00990	\$141,116,304.88
2	Bash v. Timothy Durham	12-5107	12-00991	\$134,837,533.14
3	Bash v. Fair Finance (Judgment against Rick Snow)	10-5038	13-2098	\$50,000,000
4	Bash v. Obsidian Enterprises, Inc., et. al. (judgment against Obsidian Enterprises, Inc.)	11-5049	N/A	\$29,861,710
5	Bash v. US Rubber Reclaiming, Inc.	12-5148	12-02018	\$22,860,604.18
6	Bash v. James Cochran; Susan Cochran	12-5098	12-00988	\$9,756,084.40
7	Bash v. DC Investments Leasing, LLC	12-5038	12-01294	\$5,795,918.93
8	Bash v. DW Leasing Company, LLC	12-5039	12-02863	\$4,403,621.98
9	Bash v. Speedster Motorcars, Inc.; SpeedsterMotorSales Timothy Durham	12-5091	13-2380	\$3,969,128.46
10	Inc.	12-5092	12-01206	\$2,720,414.16
11	Bash v. Playa del Racing, Inc.	12-5093	12-01297	\$2,490,433.74
12	Bash v. Durco Leasing, LLC	12-5028	12-01198	\$1,288,650.00
13	Bash v. Jeffrey Osler	11-5020	N/A	\$1,247,671.91
14	Bash v. Evaco Acquisition Corporation	12-5058	12-01295	\$1,017,590.00
15	Bash v. Pyramid Coach, Inc.	12-5062	12-01296	\$975,938.40
16	Bash v. Black Rock Acquisition Corporation	12-5022	12-01195	\$838,900.00
17	Bash v. Dana Osler; Geist Sports Academy, LLC; Elizabeth McClure (default judgment entered against all defendants except Elizabeth McClure)	12-5158	12-00997	\$711,565.00
18	Bash v. Rated X Custom Garage, LLC	12-5033	12-01200	\$641,362.01
19	Bash v. J Blanton LLC	11-5235	12-01243	\$634,124.96
20	Bash v. Cannonball World Evens, LLC	12-5023	12-01196	\$446,181.76
21	Bash v. Alexander Talbott, Inc.	11-5204	12-01237	\$423,515.95

JUDGMENTS AND SETTLEMENTS (INCLUDING CONSENT JUDGMENTS THAT HAVE NOT BEEN ENTERED)

#	Case Name	Bankruptcy Case No.	District Case No.	Judgment Amount
22	Bash v. Medical Collections Group, LLC	11-5239	12-01246	\$407,412.36
23	Bash v. Pointe Leasing, LLC	11-5205	12-01238	\$385,675.34
24	Bash v. Champion Trailer Acquisition, LLC; Champion Trailer Company LP; Champion Trailer, Inc.	12-5025	12-01197	\$335,783.36
25	Bash v. Vizion Enterprises, LLC	12-5036	12-01201	\$309,234.29
26	Bash v. My Ghetto Holdings, LLC	11-5237	12-01244	\$305,160.18
27	Bash v. Guyer Durham, LLC	11-5234	12-01242	\$268,990.00
28	Bash v. Timothy Porter and Nina Porter	12-5063	12-02017	\$205,997.77
29	Bash v. Aesthetic Surgery Center, LLC; Beeson Aesthetic Surgery Institute, LLC	12-5145	12-02016	\$176,000.00
30	Bash v. Strategic Sports Agency, Inc.	12-5087	12-01205	\$172,000.00
31	Bash v. Impressive Interiors and Designs, Inc.	12-5153	14-00232	\$156,500.00
32	Bash v. Bad Boyz Toy Shop, LLC	12-5021	12-01194	\$153,900.00
33	Bash v. Durham Capital Corporation	11-5232	12-01241	\$152,452.75
34	Bash v. Chairman Cigars, LLC	12-5024	12-02013	\$144,375.00
35	Bash v. Plopper and Partners, LLC	12-5156	N/A	\$135,442.31
36	Bash v. Blair Kiel Partners Inc.	11-5231	12-02011	\$126,328.96
37	Bash v. Four Leaf Management	12-5112	12-02015	\$124,835.00
38	Indianapolis Concours	12-5018	12-02041	\$100,025.01
39	Bash v. Waterway Group Realty, LLC	12-5037	12-01202	\$89,000.00
40	Bash v. Cedric Rashad	11-5203	12-01236	\$83,340.48
41	Bash v. Aaron Landau	12-5064	12-01203	\$75,000.00
42	Bash v. CargoTrailerUSA.com	11-5209	12-01239	\$68,926.31
43	Bash v. Social Connects	12-5085	12-01204	\$63,500.00
44	Bash v. Fashion House, LLC	12-5030	12-01199	\$42,250.00
45	Bash v. Square One design, Inc.	11-5207	12-01315	\$39,090.86

TOTAL \$420,158,474

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via ECF or regular, U.S. Mail, on March 24, 2014, on the attached service list.

/s/ Brian A. Bash

Chapter 7 Trustee

SERVICE LIST

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case.

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