

offering of promissory-note securities. On December 2, 2009 this Court entered an order appointing Thomas L. Taylor III, Receiver for KCM.

Expansion of the Receivership

Based upon his investigation after appointment by this Court, the Receiver found substantial evidence that Daniel Frishberg (“Frishberg”) and Kaleta had created a network of affiliated companies: KCM, Daniel Frishberg Financial Services, Inc., d/b/a DFFS Capital Management, Inc. (“DFFS”), Frishberg & Kaleta Capital Management (“F&K”) d/b/a Frishberg & Kaleta Advisors, Relief Defendant Business Radio Network L.P., d/b/a BizRadio (“BizRadio”); BizMedia Network LLC (“BizMedia”) -- all owned and/or controlled by Frishberg and Kaleta. All of these entities had conducted business either from a shared office suite¹ or from the homes of Frishberg or Kaleta. DFFS and F&K were investment advisory firms through which Frishberg and Kaleta developed a substantial client base. A number of investment advisory clients of these entities became victims of the KCM promissory note fraud which is at the center of the present action.

BizRadio and BizMedia operated a radio network that broadcast programming designed to attract clients to the DFFS and F&K investment advisory business. KCM was employed to provide funding both to the investment adviser entities, to the radio network and to others through the sale of securities to the public. KCM was strategically positioned to raise capital for Frishberg and Kaleta’s other businesses because their shared principals, Frishberg and Kaleta, provided KCM a ready base of potential investors -- namely Frishberg and Kaleta’s investment advisory clients. The Receiver has also determined that clients of the DFFS investment advisory firm were sold promissory notes issued by BizRadio. Although the records of the Receivership entities are not completely accurate or transparent, it appears that BizRadio sold in excess of \$5

¹ 3050 Post Oak Blvd, Ste 1680, Houston, Texas.

million in promissory notes to members of the public -- primarily to investment advisory clients of DFFS.

The individuals and entities shared KCM credit cards with little attention to their repayment or proper allocation between personal or business expenses or between entities. A daisy chain of loans by and among KCM, Frishberg, Kaleta, Biz Radio, DFFS, F&K and other related parties made the accounting function little more than a creative exercise. The business records of the affiliates were conflated and it appears that only minimal efforts were made -- by shared employees acting at the direction of Kaleta and Frishberg -- to designate expenses among the affiliated entities. Loans from KCM to those entities were taken on an "as needed" basis and documented (by promissory note) after the fact. Moreover, the books and records make clear that Frishberg and Kaleta regularly used KCM assets for their personal benefit. KCM had no business operations and served no function whatsoever other than to raise money from the public. Accordingly, every dollar transferred from KCM to the affiliated entities came from defrauded investors.

Based upon the foregoing investigation and fact finding, on May 4, 2010, the Receiver filed a Motion to Expand the Receivership to expressly include as part of the Receivership Estate the following individuals and entities: Kaleta, Frishberg, and Relief Defendant DFFS, F&K, Relief Defendant BizRadio, BizMedia, Frishberg Global Investments, LLC ("FGI"), and Portnoy, LLC ("Portnoy"). After a preliminary hearing before this Court on the Receiver's Motion, on June 16, 2010, the Receiver, DFFS and BizRadio filed a Stipulation to Modify Order Appointing Receiver to expressly include DFFS and BizRadio within the Receivership Estate. This Court entered on Order on June 17, 2010 placing those entities within

the Receivership Estate. As a consequence, radio station KTEK, the principal asset of the BizRadio entities, is now held as an asset of the Receivership Estate.

KCM Borrowers and Status

1. Entities associated with David Wallace and Costa Bajjali

Through their affiliated entities, David Wallace and Costa Bajjali have sponsored investment funds whose underlying assets are principally real estate investments. Certain of these Wallace Bajjali investment funds made direct investments in BizRadio. Moreover, their affiliated entities borrowed substantial funds from KCM. A number of investors in the Wallace Bajjali affiliated entities were solicited to make direct investments in BizRadio through the purchase of BizRadio promissory notes. A number of these investors also were solicited to invest in the KCM notes and they did so.

Prior to the expansion of the Receivership, the Receiver and Messrs. Wallace and Bajjali engaged in negotiations and exchange of information focused solely upon the repayment of the monies borrowed by the Wallace Bajjali affiliated entities from KCM. The most significant of these loans from KCM were made to WB West Houston Realty fund (in excess of \$600,000) and the LFW Economic Opportunity Fund (whose balance is currently in excess of \$300,000 including accrued interest). Although no agreement was reached as to final numbers, the Wallace Bajjali affiliates did not and still have not contested their obligation to repay these amounts borrowed from KCM. They did insist that the repayment of principal and interest on these loans would have to be accomplished on a payment schedule to be negotiated. The Receiver was and is open to such arrangements upon a showing of financial inability to retire the obligation immediately.

After the expansion of the Receivership to include DFFS and BizRadio it became the Receiver's responsibility to seek redress on behalf of individuals who made direct investments in BizRadio through the purchase of its (BizRadio's) promissory notes. Based upon the Receivers' investigation of the facts and circumstances surrounding the offer and sale of the BizRadio notes, it appears that many of those investors were introduced to BizRadio by and through the Wallace Bajjali affiliates and Messrs. Wallace and Bajjali. Indeed, there is significant overlap between investors (1) directly in the Wallace Bajjali entities, (2) in BizRadio notes and (3) in KCM notes. The Receiver has advised Messrs. Wallace and Bajjali that the Receiver may assert claims against them related to the investments in BizRadio notes, as well as investments in KCM promissory notes. In view of these developments the Receiver has been unable to conclude an agreement restricted solely to repayment of the Wallace Bajjali entities' obligations to KCM. In fact, it would appear that repayment of these obligations would have to be tied to an overall settlement with Wallace, Bajjali, and the Wallace Bajjali entities of all outstanding controversies. Although substantive negotiations are ongoing, the Receiver is unable to report to this Court that agreement in principle with respect to settlement of these matters is at hand.

2. David Wallace and Costa Bajjali

At the inception of the Receivership, demand was made for repayment of outstanding loans made by KCM from proceeds of KCM's note offerings to Mr. Wallace and Mr. Bajjali personally. Those notes were in fact repaid in the following amounts: \$92,348 (David Wallace personal note), and \$45,550 (Costa Bajjali personal note).

3. Daniel Frishberg

At the inception of the Receivership, demand was made for repayment of an outstanding loan made by KCM from proceeds of KCM's note offerings to Daniel Frishberg personally. The note was repaid in the amount of \$122,069 (Daniel Frishberg personal note).

4. Masterpiece Investments

In a series of poorly documented transactions, \$300,000 in KCM funds had been transferred to Masterpiece Investments in the form of a loan to Masterpiece, payment for a number of Masterpiece sculptures and payment for shares of common stock in Masterpiece. In settlement, Masterpiece has agreed to repay KCM the amount of \$100,000 (of which \$60,000 has been received to date). In addition, as part of the settlement with Masterpiece, the shares of Masterpiece stock were cancelled without payment by KCM and Masterpiece has agreed to re-sell the Masterpiece sculptures within the possession of the Receivership Estate in its gallery in Naples, Florida. Masterpiece will market those sculptures at no charge to the Estate and all proceeds from sale of the sculptures will be paid into the Receivership Estate.

5. Protechnik Inc.

Protechnik Inc. and its principal, Brian De Armas, have declined to make payment on their outstanding indebtedness to KCM in the amount of \$160,937.50. Accordingly, on April 13, 2010 the Receiver initiated a civil action in the United States District Court (*Thomas L. Taylor III, solely in his capacity as court-appointed Receiver for Kaleta Capital Management, Inc. v. Protechnik, Inc. and Brian De Armas*, No. 4:10-cv-1189) against them. The Receiver seeks payment in full of the principal, along with interest, costs of suit and attorneys fees. The Receiver has offered reasonable accommodation in terms of scheduling re-payment, but to date these efforts have been to no avail and it appears that summary adjudication procures will be

necessary. On February 9, 2011, counsel for Brian De Armas and Protechnik filed a Motion to Withdraw as Attorneys, to which the Receiver is opposed.

Disposition of Assets of BizRadio/Proposed Sale of Radio Station KTEK

The principal asset of the BizRadio affiliated entities is Radio Station KTEK 1110 AM, FCC Facility No. 10827, licensed and broadcasting from Alvin, Texas, and various other related equipment, licenses and assets (the "Station"). Pursuant to an Order of the FCC, the station license was transferred to the name of the Receiver on July 28, 2010 and the Station continues to broadcast under the Receiver's control. The Receiver seeks to maximize the recoveries in this case by disposing of the Receivership Estate's interest in the Station.

Before BizRadio and related entities were added to the Receivership, BizRadio's management entered into an Asset Purchase Agreement with South Texas Broadcasting, Inc., ("STB") as Buyer for the sale of Radio Station KTEK. In conjunction with that agreement, STB sought and received FCC approval for the transfer of the license which approval remains in effect. In broad terms, the consideration for the Station under the agreement provided for (A) the cancellation of secured indebtedness owed by BizRadio to STB in the amount of approximately \$1,500,000 arising from BizRadio's acquisition of the Station from STB in 2008; (B) a cash payment in the amount of \$800,000; and (C) program airtime credits for BizRadio to purchase airtime from STB and/or its parent company Salem Communications Corporation; (4) the assumption of certain other expenses by STB. The agreement entered into by BizRadio's management (Daniel Frishberg) also imposed duties of indemnification upon BizRadio with respect to certain litigation concerning the Station.²

² In early February 2010, Asia Vision, Inc. and its principal Rehan Siddiqi (collectively, the "Asia Vision Plaintiffs"), commenced an action styled: *AsiaVision, Inc. et al. v. Business Radio Network, LP et al.*, Cause No. 2010-07095, in the 152nd Judicial District Court of Harris County (the "Asia Vision Litigation"), against BizRadio and its related entities and principals seeking, among other relief, injunctive relief, a temporary injunction and

The consideration and other components of the original STB agreement are unacceptable in present circumstances since the allocation of the airtime credit (originally intended for future broadcasts by Daniel Frishberg) would be of no benefit to the Receivership Estate which, as a practical matter, cannot and should not conduct the business of a radio station going forward involving the activities of Mr. Frishberg. Accordingly, the Receiver considered various approaches to selling the estate's interest in the Station. The Receiver has determined that the best approach would be to renegotiate the original agreement with STB. In that regard, the Receiver entered into negotiations with STB to modify the Original Sale Agreement to conform to present circumstances and provide a means to dispose of the Station in a manner calculated to generate the maximum value for the Receivership Estate. No agreement has been concluded as of this date. If an agreement with STB is concluded it would serve as a base line for auction procedures to follow pursuant to which the Receiver would be permitted to entertain higher offers. Absent higher bidders, the proposed modified sale agreement -- if concluded -- would be fully executed and a sale to STB closed.

Under the proposed modified sale agreement, the consideration for the sale of the Station would be adjusted to provide the following components: (A) cancellation of BizRadio's secured indebtedness owing to STB in the amount of approximately \$1,500,000; (B) a cash payment to the Receivership Estate of in an amount which is not yet finally determined; and (C) payment of certain accrued costs associated with the ownership of the Station since the inception of the Receivership. Should a modified agreement be concluded it would permit and provide for

damages relating to the Asia Vision Plaintiff's continued right to broadcast on the Station. On or about July 12, 2010, the Asia Vision Plaintiffs filed their Second Amended Petition and Application for Injunctive Relief, adding Salem, STB and other individuals and entities, contending that the Asia Vision Plaintiffs had entered into a binding agreement for purchase of the Station prior to the execution of the Original Sale Agreement and claiming that the Salem/STB parties had tortiously interfered with such agreement by entering into the Original Sale Agreement. At the request of the Receiver, the Asia Vision Plaintiffs entered into a stipulation staying the State Court action in light of the pendency of the present action.

bidding procedures which will enable the Receiver to seek better offers from third parties, prior to concluding a sale to STB.³

The Receiver had hoped to present a proposed modified sale agreement and auction procedures to this Court prior to the date of this filing but as of this date an agreement has not been concluded. When an agreement is finalized, however, the Receiver will present it to the Court as a “stalking horse” contract and purposes to solicit additional -- and potentially more favorable -- offers pursuant to auction procedures. In this regard, the Receiver has been contacted by several media brokers and other parties who have expressed an interest in acquiring the Station through an auction process which would have to be approved by the Court.

Litigation and Potential Litigation

1. Albert Kaleta

It is the Receiver’s understanding that Mr. Kaleta has consented to relief sought by the Securities and Exchange Commission herein, including disgorgement. The amount to be disgorged by Mr. Kaleta has not yet been determined. The Receiver’s investigation of Mr. Kaleta’s responsibility for the losses sustained by investors in KCM promissory notes is ongoing and the Receiver expects to pursue all remedies available for recovery of assets of the Receivership Estate which were wrongfully transferred or received by Mr. Kaleta prior to the institution of the Receivership.

2. Daniel Frishberg

The Receiver's investigation regarding DFFS and assets associated with it revealed that Barrington Financial Advisors, Inc. (“Barrington”) and its principal, William C. Heath

³ The Receiver understands that certain Wallace/Bajjali related investors may attempt to assert a security interest in the Station. The Receiver believes that these assertions are without merit, but, proposed sale procedures would provide for notice to these putative claimants. The Receiver will request that the Court approve the transfer of the Station to its buyer free and clear of any and all encumbrances.

(“Heath”), had reached an agreement with Daniel Frishberg whereby Mr. Frishberg received compensation from Barrington and/or Heath for investment advisory accounts transferred to Barrington from DFFS. The accounts and customer relationships are assets of DFFS and represent recoverable value for the receivership estate of DFFS. Mr. Frishberg's arrangement with Barrington and Heath permits him to directly receive and retain the benefit for DFFS' accounts as opposed to the Receivership Estate. The Receiver has notified Barrington, Heath and Frishberg of his position and has asked Barrington and Heath to place any and all funds purportedly owing to Mr. Frishberg into escrow pending a resolution of the Receivership Estate's claims to these funds. A similar notice was also sent to counsel for Mr. Frishberg. To date the Receiver has not received any response from Barrington, Heath or Frishberg. The Receiver anticipates filing litigation against Barrington, Heath and Frishberg to recover any and all assets of DFFS that have been improperly directed away from the Receivership Estate.

The Receiver's investigation of Mr. Frishberg's wrongful receipt of assets of the Receivership Estate prior to the institution of the Receivership is ongoing. The Receiver expects to pursue all remedies available for recovery of assets of the Receivership Estate which were wrongfully transferred or received by Mr. Frishberg prior to the institution of the Receivership.

3. Insurance Related Claims

On October 29, 2010 Barbara Dean House filed an Emergency Motion to Lift the Receivership Litigation Stay so that she might pursue her claims against Daniel Frishberg and recover from the Error & Omissions Policy covering certain of Frishberg's conduct as an employee and officer of DFFS [Doc. No. 45]. The Court denied House's request [Doc. No. 54]. The Receiver has continued his efforts to negotiate with DFFS's insurance carrier and parties

with valid claims against DFFS's policy (the "claimants") in hopes of reaching a global resolution that will provide a recovery to both the claimants, including Ms. House and others, and a benefit to the Receivership Estate and, hence, to other defrauded investors. To that end, the carrier, claimants, and the Receiver are working to schedule a joint mediation where a global settlement to all insurance-related claims, including the claims of the Receivership Estate to the policy, can be resolved.

Respectfully submitted,

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/s/Thomas L. Taylor III

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