

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC,)	CASE NO. 1:19-cv-145
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
v.)	
)	
SOUTH UNIVERSITY OF OHIO,)	
LLC, <i>et. al.</i> ,)	
)	
Defendants.)	

ORDER TERMINATING RECEIVERSHIP AND APPROVING
LIQUIDATION LITIGATION TRUST

This matter came before the Court upon the Motion of Mark E. Dottore, Receiver, herein for an Order Terminating Receivership and Approving Liquidation Litigation Trust [Dkt. No. 848.] The Court scheduled a deadline of November 1, 2024 for objections to the Receiver’s motion and a hearing date of November 13, 2024. Because no objections were filed, the Court canceled the November 13, 2024 hearing. Upon due consideration, the Court finds that the unopposed Motion Approving Liquidation Trust is well taken as is further explained below.

1. On January 18, 2019, plaintiff, Digital Media Solutions, LLC, filed a Complaint [Dkt. No. 1] against South University of Ohio, LLC (“**South Ohio**”), DCEH Education Holdings, LLC (“**DCEH**”) and Argosy Education Group (“**Argosy**”) among others, commencing this case styled as *Digital Media Solutions,*

LLC, v. South University of Ohio, LLC, et. al., United States District Court, Case No. 1:19-cv-145; and

2. On the same date, South, DCEH and Argosy (the “**Defendants**”) filed an answer admitting the allegations made in the Complaint; and

3. On the same date, the Plaintiff filed a Motion for the Appointment of a Receiver, Motion for Temporary Restraining Order and Motion for Preliminary Injunction (the “**Receiver Motion**”) [Dkt. No. 3] and Defendants responded to the Receiver Motion, stating that the imposition of a receivership would serve to protect all stakeholders; and

4. On the same date, this Court entered its Order Appointing Receiver (the “**Initial Receiver Order**”) [Dkt. No. 8]. On January 24, 2019, this Court entered the Order Granting Receiver’s Motion for Clarifying Order Appointing Receiver (the “**Clarifying Order**”) [Dkt. No. 14] and on March 13, 2019, the Court entered its Amended Order Appointing Receiver [Dkt. No. 150] (the “**Amended Receiver Order**” and together with the Initial Receiver Order and the Clarifying Order the “**Receiver Order**”); and

5. The Court appointed Mark E. Dottore as Receiver over the following entities: South Ohio, DCEH, and (ii) DCEH’s assets, including but not limited to, its direct subsidiaries, The DC Art Institute of Raleigh-Durham LLC, The DC Art Institute of Charlotte LLC, DC Art Institute of Charleston LLC, DC Art Institute of Washington LLC, The Art Institute of Tennessee – Nashville LLC, AiTN Restaurant LLC, The Art Institute of Colorado LLC, DC Art Institute of Phoenix

LLC, The Art Institute of Portland LLC, The Art Institute of Seattle LLC, The Art Institute of Pittsburgh, DC LLC, The Art Institute of Philadelphia, DC, LLC, DC Art Institute of Fort Lauderdale LLC, The Illinois Institute of Art LLC, The Art Institute of Michigan LLC, The Illinois Institute of Art at Schaumburg LLC, DC Art Institute of Phoenix, LLC, Dream Center Argosy University of California LLC; Dream Center Education Management LLC; and, South University of Michigan LLC; (iii) the direct subsidiaries of Art Institute of Phoenix LLC (listed above), Art Institute of Las Vegas LLC, The Art Institute of Indianapolis, LLC, and AiN Restaurant LLC; and (iv) the direct subsidiary of Dream Center Argosy University of California LLC (listed above), Argosy Education Group LLC (collectively the “**Receivership Entities**”); and

6. The Court has, for some time, believed that the Receivership has served its essential purpose and need not continue. Accordingly, on April 26, 2019, the Court put on an Order re Termination of Receivership as of May 31, 2019 (the “**May 29, 2019, Order**”). The Receiver thereafter highlighted the need to continue the Receivership in order to maximize the value of what few assets remained. The Receivership has therefore continued; and

7. On July 24, 2024, the Court, working with certain former DCEH officers and directors, the Dream Center Foundation, and the insurance carriers who issued policies covering DCEH and its former officers and directors, fashioned a settlement of the Receiver’s claims against the former officers and directors and the

Dream Center Foundation (the “**Settlement**”). The Draft Settlement is being tendered to the Court under a separate Motion to Compromise.

8. Given the pendency of the Settlement, there are two potential outcomes: the Settlement is approved and the proceeds of the agreement will need to be distributed, and the remaining claims the Receiver has against various third parties will need to be liquidated; or, the Settlement will be rejected, in which case the Receiver’s claims against the former DCEH officers and directors will need to be liquidated, as will the remaining claims the Receiver has against various third parties. In any event, the medical claims of the former DCEH employees under a separate medical services plan under separate consideration by this Court. Regardless of whether the Settlement is approved or not, the Court concludes that such work, which will inure to the benefit of a number of stakeholders, including the former Receivership Entity employees who suffered unpaid medical expenses that should have been covered by the enterprise’s health care coverage, the Art Institute teachers in Las Vegas who provided services without compensation after the Receivership was established, and the Secured Lender, can be completed in the context of a liquidating trust, rather than a Receivership. Thus, the Court is terminating the Receivership as suggested by the Receiver in his Motion To Approve Liquidation Litigation Trust, Terminate Receivership, and authorize Transfer of Assets to Liquidation Litigation Trust (the “**Motion**”)(all capitalized terms used in this Order that are not specifically defined will utilize the definitions set forth in the Motion); and

9. During the course of the Receivership, the Receiver has caused to be prepared and filed accountings of all funds received and expended during the Receivership, with the most recent having been filed on October 24, 2024 (Dkt. 850); and

10. The Receiver, through the life of the Receivership, has filed three applications for compensation and reimbursement of expenses, as have his attorneys, Whitmer & Ehrman LLC (“W&E”) and McCarthy Lebit Crystal & Liffman (“MLCL”). The first, filed May 16, 2019, covered the period of January 18, 2019 through May 10, 2019 [Dkt. 333 and 334.] Therein, the Receiver and counsel asked for reimbursement of a total of \$2,151,681.61 for fees and expenses. The Court issued an Order on December 6, 2019, awarding \$750,000 for the Receiver’s fees and expenses, and a total of \$750,000 for outside counsel’s fees and expenses. [Dkt. 502.] That Order noted that the payment would “not fully compensate his receiver and his attorneys for the work they have done this case to date. The court anticipates that additional payments will be approved with notice to creditors and interested parties as contemplated by Local Rule 66.1.”

11. The second application, dated February 28, 2020, requested fees and expenses from May 11, 2019 through December 31, 2019 [Dkt. 538 and 539]. Therein, the Receiver and his outside counsel sought reimbursement for the services performed and expenses advanced during that period, as well as payment for the unpaid balance remaining on the original application for fees and expenses.

There being minimal new money added to the estate, on September 22, 2020, the Court denied that motion without prejudice to re-filing at a later date. [Dkt. 615].

12. The amended second applications for payment of Receivership expenses were filed contemporaneously with the Receiver's Motion to Terminate Receivership. [Dkt. 815 and 816]. Therein, the Receiver requested that he be authorized to pay from the Receivership estate \$2,516,277.50 for the Receiver's services provided, \$6,251.22 for reimbursement of expenses paid by the Receiver, and the outstanding balance of \$260,289.24 remaining due following the Court's December 6, 2019, Order authorizing partial payment. [Dkt 502 (Order), Dkt 816 (Motion)]. The Receiver's outside counsel applied for compensation regarding services provided and expenses advanced: Whitmer & Ehrman, LLC requested \$1,001,756.50 for services, \$5,332.96 for reimbursement of expenses, and the outstanding balance due of \$192,418.21 following the Court's December 6, 2019 order; McCarthy Lebit Crystal & Liffman Co., LPA requested \$1,599,873.00 for services, \$14,085.67 for reimbursement of expenses, and the outstanding balance due of \$143,251.45 following the Court's December 6, 2019 order; and Diamond McCarthy requested \$11,065.00 for services, and \$485.34 for reimbursement of expenses [Dkt 815]. The two motions were granted by this Court on November 18, 2024.

13. The most recent applications for reimbursement of Receivership Expenses were filed on October 31, 2024 and November 4, 2024. The Court has considered these applications for fees and expenses and authorizes the Receiver to

pay the applications for reimbursement. As the Court approves the Liquidation Litigation Trust, the Court understands the Receiver will transfer the obligation to pay those sums to the Trust, and the Trust will pay those sums as it is able, per the terms of that Trust.

14. Notice of the issues concerning the termination of the receivership is adequate; and

IT IS HEREBY ORDERED that the receivership shall be terminated after the Receiver performs and concludes certain duties and responsibilities as are outlined in this Order Terminating Receivership and upon the commission of those duties and responsibilities, by the terms of this Order, the Receiver, his agents, members, officers, independent contractors, attorneys and representatives shall be and will be: (i) discharged; (ii) released from all claims and liabilities arising out of and/or pertaining to the receivership; and (iii) relieved of all duties and responsibilities pertaining to the receivership; and it is further

ORDERED that the Receiver shall file a Final Report showing the cash amounts now on hand and the proposed assignment of those funds to the Trust ; and it is further

ORDERED that the Receiver shall pay the Fee Applications consistent with the Orders of this Court, and make other payments which are approved by this Court consistent with the Receiver's Final Report; and it is further

ORDERED in the event that any counsel fees are incurred by the Receiver thereafter, the Court shall retain jurisdiction to review any supplements to any

applications for fees incurred solely related to the termination of the Receivership and the entry of this Order, which supplement shall be filed, if at all, no later than thirty days from the acceptance of the final report; and it is further

ORDERED that the Receiver shall transition any remaining student records to state educational regulatory authorities at the earliest possible time in order to insure the preservation and safety of the student records; and it is further

ORDERED that if the Receiver remains in possession of student records at his warehouse, that the student records be destroyed once the Receiver has a reasonable belief that all litigation in which he is involved and for which the student records could be relevant, has finally concluded; and it is further

ORDERED that the Receiver may destroy any other Receivership Entity business records (be they in hard copy or electronic format) once the Receiver has a reasonable belief that all litigation in which he is involved and for which the business records could be relevant, has finally concluded, and it is further

ORDERED that any funds in the hands of the Receiver shall be transferred to the DCEH Liquidating Trust for distribution under the terms of that Trust; and it is further

ORDERED that the Receiver shall file a notice (the “**Notice**”) that he has performed all of his duties faithfully after the occurrence of all of the following events: (i) the entry of the final report on the docket; (ii) the Court’s acceptance of the final report; (iii) the payment of professional fees and all other approved and

allowed expenses of the Receivership; and (iv) the payment of any excess funds to the Receivership Entity to which they belong; and it is further

ORDERED that neither the Receiver nor any agent, employee, member, officer, independent contractor, attorney, or representative of the Receiver shall have any liability to any person or entity for any action taken in good faith in connection with carrying out the Receiver's administration of the receivership estate, and the exercise of any powers, duties and responsibilities in connection therewith; and it is further

ORDERED that all creditors, claimants, parties in interest, and their respective attorneys, servants, agents, and employees, and all other persons, firms, and corporations be, and they hereby are, jointly and severally, enjoined and stayed from commencing any action at law or suit or proceeding in equity in any court or to prosecute any claim, or to execute or issue or cause the execution or issuance out of any court of any writ, process, summons, attachment or subpoena, against Mark E. Dottore, the individual, or any entity in which he holds an interest, or any family member, or any agent, employee, member, officer, independent contractor, attorney or representative of the Receiver, arising in or out of or relating to this receivership, without first obtaining permission of this appointing Court; and it is further

ORDERED that the DCEH Liquidation and Litigation Trust, attached to the Motion as Exhibit A is hereby approved, with Mark E. Dottore to serve as the initial Trustee thereof. Once the payments to be made from the remaining Receivership cash holdings are distributed as described above, Dottore shall execute the

assignment attached to the Motion as Exhibit B, thereby transferring the remaining Receivership's assets to the Liquidation Litigation Trust; and it is further

ORDERED that, upon the Receiver's windup of the DCEH Liquidation and Litigation Trust and the resolution therein of all Global Claims (as that term is defined by the Settlement), Dream Center Education Holdings and Dream Center Education Management are judicially terminated and dissolved by this Order; and, to the extent there are any members remaining in such entities, any and all remaining members shall be deemed disassociated; and it is further

ORDERED that the Receiver's transfer of Receivership assets to the Trust will include the server(s) containing data obtained from DCEH's data center in Pittsburgh, as well as the existing electronic data he holds from DCEH's systems; and it is further

ORDERED that the \$177,618, or other present sum, of funds the Receiver is holding to be applied to outstanding employee medical claims will be transferred to the Trust along with the other Receivership assets the Receiver is currently holding, and that the \$177,593 will be utilized by the Trust per its terms to pay Medical Claims; and it is further

ORDERED that the \$1,193,919, or other present sum, the Receiver is currently holding in restricted Perkins funds be transferred to the Trust for the Trustee to complete negotiations with the U.S. Government regarding the appropriate distribution of those funds; and it is further

ORDERED that the parties in this case and their respective, attorneys, servants, agents, and employees, and all other persons, firms, creditors, claimants, parties in interest, and corporations be, and hereby are, jointly and severally permanently enjoined from bringing suit against the Receivership Entities, and further than any claims said persons or entities have are transferred to the corpus of the DCEH Liquidation Litigation Trust and those claims will be resolved per the terms of that Trust; and it is further

ORDERED that after the entry of this Order and upon the filing of the Notice, and without further order of this Court, the Receivership shall be terminated, and the oath of the Receiver shall be cancelled, and the bond of the Receiver shall be refunded to him upon his demand or otherwise cancelled and discharged; and it is further

ORDERED that all Orders issued through the course of the Receivership shall remain in full force and effect following the termination of the Receivership; and it is further

ORDERED that this Court shall retain jurisdiction over any and all matters relating to the Receiver, the receivership and the receivership estate, including any matters relating to the distribution of funds received by the Receiver in connection with his obligations as Receiver or otherwise received after the receivership is closed. Said continuing jurisdiction extends to the Trust and Trustee thereof as well. To the extent that any dispute arises concerning the Receiver's or Trustee's administration of the receivership estate or to the extent that any person or entity

seeks to pursue or assert any claim or action against Mark E. Dottore as an individual or as Receiver/Trustee or any agent, employee, member, officer, independent contractor, attorney or representative of the Receiver/Trustee, arising out of or relating to this Receivership, the Court shall retain jurisdiction to hear and resolve any such dispute or claim.

IT IS SO ORDERED.

Dated: November 18, 2024

s/ Dan Aaron Polster
United States District Judge