

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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SECURITIES AND EXCHANGE :
COMMISSION :

v. :

CIVIL NO. 09-63

JOSEPH S. FORTE and :
JOSEPH FORTE, L.P. :

----- :
COMMODITY FUTURES TRADING :
COMMISSION :

v. :

CIVIL NO. 09-64

JOSEPH S. FORTE :

ORDER

On December 2, 2019, Marion A. Hecht, as Receiver for Joseph Forte, L.P. filed a Motion for Entry of Discharge Order, and submitted a Proposed Discharge Order. (Civ. No. 09-63, Doc. No. 286; Civ. No. 09-64, Doc. No. 256). As outlined in the Proposed Order, the Receiver has provided notice of the terms of the Discharge Order to counsel for the SEC and CFTC, to all persons who submitted a claim pursuant to the Claims Bar Date, and to all taxing authorities. (*Id.*) There has been no objection to the proposed relief during the period for responses as outlined by Local Rule 7.3(c). (*Id.*) The Receiver has informed me that the IRS has accepted all receivership tax returns as filed, and there are no further issues with those returns. (*Id.*) She has also completed the Fifth and Sixth Distributions to approved claimants, and has complied with all other requirements of my June 21, 2019 Order (as modified on October 4, 2019), which, *inter alia*, sets out the format for a Discharge Order in this matter. (Civ. No. 09-63, Doc. No. 276, 285; Civ. No. 09-64, Doc. No. 246, 255.) Having concluded that the Receiver has completed her duties and

responsibilities as Receiver in accordance with the Receivership Order, I will grant her Motion for a Discharge Order (Civ. No. 09-63, Doc. No. 286; Civ. No. 09-64, Doc. No. 256), and adopt the Proposed Order (Civ. No. 09-63, Doc. No. 286-1; Civ. No. 09-64, Doc. No. 256-1) in its entirety.

AND NOW, this 2nd day of January, 2020, upon consideration of the Motion of Marion A. Hecht, as Receiver for Joseph Forte, L.P., Motion for Entry of Discharge Order (Civ. No. 09-63, Doc. No. 286; Civ. No. 09-64, Doc. No. 256) the Receiver's Motion is hereby **GRANTED** and the Receiver's Proposed Discharge Order (Civ. No. 09-63, Doc. No. 286-1; Civ. No. 09-64, Doc. No. 256-1), attached here as Ex. A, is **APPROVED** and **ADOPTED** in its entirety.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

January 3, 2020

Paul S. Diamond, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	
	:	No. 09-CV-0063
v.	:	
	:	
JOSEPH S. FORTE and	:	
JOSEPH FORTE, L.P.,	:	
	:	
Defendants.	:	

COMMODITY FUTURES TRADING	:	
COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
	:	No. 09-CV-0064
v.	:	
	:	
JOSEPH S. FORTE,	:	
	:	
Defendant.	:	

**ORDER TERMINATING THE RECEIVER'S APPOINTMENT, DISCHARGING
RECEIVER, ENJOINING CLAIMS, APPROVING PAYMENTS FROM
RECEIVERSHIP ESTATE, AND APPROVING PROCEDURES FOR
POTENTIAL SUBSEQUENT DISTRIBUTIONS BY THE SEC FROM THE
RECEIVERSHIP**

And now, this _____ day of _____, 2019, upon consideration of the Receiver Marion A. Hecht's Motion for Entry of Discharge Order; and notice of the terms of the Order having been provided to counsel for the Securities and Exchange Commission, counsel for the Commodity Futures Trading Commission, all persons who

submitted a claim pursuant to the Claims Bar Date, and all taxing authorities; and there being no objection to the relief sought herein; and it appearing that no other or further notice need be given or is so required; and the Receiver having notified the Court (when she sought approval for the Fifth Distribution to approved claimants) that the IRS has accepted all receivership tax returns as filed and that there are no further issues with such returns; and the Receiver having made Fifth and Sixth Distributions to approved claimants as approved by this Court; and the Receiver having completed all the requirements of the Court's Order of June 21, 2019 (Dkt. #276 of 09-cv-0063; Dkt. #246 of 09-cv-0064), as modified by the Court's Order of October 4, 2019 (Dkt. #285 of 09-cv-0063; Dkt. #255 of 09-cv-0064); and the Court having jurisdiction over the Receivership proceeding pursuant to Section 22(a) of the Securities Act of 1933, 15 U.S.C. § 77v(a), and Section 21(e) and 27 of the Securities Exchange Act of 1934, 15 U.S.C. §§ 77u(e) and 78aa, and Section 6c of the Commodity Exchange Act, 7 U.S.C. § 13a-1, and venue being proper; and upon the full record of the Receivership proceeding before the Court; and due consideration having been given to the Motion and sufficient cause having been shown therefore; and the Court having determined that the Receiver has completed her duties and responsibilities as Receiver in accordance with the Receivership Order; it is hereby ORDERED that the Motion is GRANTED and

It is further hereby ORDERED that:

1. Marion A. Hecht's appointment as Receiver in this matter is hereby terminated.
2. Marion A. Hecht, Receiver, shall be, and hereby is, fully relieved and discharged of all duties and obligations of, and any duties or obligations incident to, her service or appointment as Receiver in this matter under the order appointing receiver entered by this Court on March 30, 2009 (Docket #26 in Civil Action No. 09-cv-0063, Docket #24 in Civil Action 09-cv-0064).

3. The Receiver, and her Professionals, including but not limited to, Dixon Hughes Goodman LLP, CliftonLarsonAllen LLP, Hoyle, Fickler, Herschel & Mathes LLP, and Schnader Harrison Segal & Lewis LLP, and all persons acting by, through, or in concert with any of them (collectively, "Releasees") shall not be liable for any and all claims and causes of action, whether known or unknown, arising out of, or relating in any way to their good faith (i) compliance with any order, rule, law, judgment or decree; and (ii) performance of their duties and responsibilities in this receivership case and the administration of the receivership estate, including without limitation: (a) claims by any governmental entity or other party for any fees, charges or liabilities asserted in connection with the administration of this receivership estate; (b) claims by any creditors, investors, parties in interest, and any owners, stockholders, members, managers or persons in control of Joseph Forte, L.P., including, without limitation, Joseph Forte; and (c) any claims relating to the filing of any local, state, or federal tax returns, personal property returns and any compliance/reporting for the receivership estate, Joseph Forte, L.P., or the reporting of any income, assets, or tax consequences to any person or entity; and (iii) actions taken or omitted by them, or any of them, but excepting any actions or omissions by Releasees, or any of them, found by the Court to be in bad faith or to constitute gross negligence or reckless disregard of their duties in this receivership proceeding.

4. All professional fees, costs and expenses as reflected on any SFAR that were paid in the ordinary course of business or operations since the Court's entry of the Receivership Order out of the assets of Joseph Forte, L.P. and not previously approved by prior order of this Court, are hereby approved.

5. Upon entry of this Order, all creditors, claimants, investors, and parties in interest shall be, and hereby are, permanently and forever barred, restrained and enjoined from taking any action to impose, or seek to impose, liability on Releasees, or any of them, without

first obtaining relief to do so from this Court, except to the extent that any such claim is a claim described in the exception set forth in paragraph 3(iii) of this Order.

6. The following payments may be made and are the final payments to be made to the Receiver, her counsel, and her agents:

- a. Payment to CliftonLarsonAllen LLP (“Clifton”) in the amount of \$109,678.20 for the services of the Receiver and for accounting and other services in support of the Receiver performed during the final expense period of April 1, 2018 through the termination of the Receivership, representing eight percent (80%) of the Receiver’s reasonably invoiced fees, is APPROVED and may be paid by the Receiver at this time.
- b. Payment to Clifton in the amount of \$1,075.12 for expenses incurred during the final expense period April 1, 2018 through the termination of the Receivership, representing one hundred percent (100%) of the Receiver’s reasonably invoiced expenses, is APPROVED and may be paid by the Receiver at this time.
- c. Payment to Receiver’s Counsel, Schnader Harrison Segal & Lewis LLP (“Receiver’s Counsel”) in the amount of \$77,918.00 for services performed during the period April 1, 2018 through the termination of the Receivership, representing eighty percent (80%) of the Receiver’s Counsel’s reasonably invoiced fees, is APPROVED and may be paid by the Receiver at this time.
- d. Payment to Receiver’s Counsel in the amount of \$1,099.52 for expenses incurred during the period April 1, 2018 through the termination of the Receivership, representing one hundred percent (100%) of the Receiver’s Counsel’s reasonably invoiced expenses, is APPROVED and may be paid by the Receiver at this time.

7. In light of the likelihood that the Receivership Estate will receive substantial additional distributions from the Liquidating Agent (the “Liquidating Agent”) for the former Bankruptcy Estate of John N. Irwin (the “Debtor”), No. 10-14407 (ELF) (Bankr. E.D. Pa.), the Receivership shall remain open to accept additional payments from the Liquidating Agent. In connection therewith,

- a. The Liquidating Agent shall direct to the Securities and Exchange Commission (the “SEC”) all payments from the Debtor in consideration of the Receiver’s allowed claim against the Debtor.
- b. The SEC shall hold the funds (collectively, the “Fund”) and may propose a plan to distribute the Fund subject to the Court’s approval. The Court shall retain jurisdiction over the administration of any distribution of the Fund.
- c. The Liquidating Agent may send payments electronically to the SEC, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Payment may also be made by certified check, bank cashier’s check, or United States postal money order payable to the “Securities and Exchange Commission,” which shall be delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169.

- d. All payments shall be accompanied by a copy of this Discharge Order and shall specify that payment is made pursuant to this Order.

- e. The Liquidating Agent shall simultaneously transmit photocopies of evidence of payment and case identifying information to:

Jennifer Chun Barry
Regional Trial Counsel
U.S. Securities and Exchange Commission
Philadelphia Regional Office
1617 JFK Boulevard, Suite 520
Philadelphia, PA 19103
215-597-3192 (direct)
barryj@sec.gov

with a copy to:

Catherine E. Pappas
Senior Advisor
U.S. Securities and Exchange Commission
Philadelphia Regional Office
1617 JFK Boulevard, Suite 520
Philadelphia, PA 19103
215-597-0657 (direct)
pappasc@SEC.gov

8. The Receiver shall transmit the residual balance of \$21,867.26 of the estate (which includes \$21,693.26, representing the residual remaining in the Reserve established by the Receiver to fund the remaining activities and, as discussed in paragraph 9 hereof, one uncashed sixth distribution check in the amount of \$74.00 that has been outstanding for more than 45 days since the Receiver mailed the sixth distribution checks to the claimants on October 7, 2019) to the SEC pursuant to the directions in paragraph 7 hereof, in lieu of the Joseph Forte Victims Restitution Fund as previously required pursuant to paragraph 7 of the Court's Order of June 21, 2019.

9. As of the filing of the Motion seeking the entry of this Order, one allowed claimant, Investor Number 1015, had not cashed his sixth distribution check in the amount of \$74.00. In accordance with paragraph 6 of this Court's order of October 4, 2019, this claimant will be ineligible for a distribution from the sixth distribution unless and until a subsequent

distribution is approved by this Court. If this claimant timely provides updated contact information to the SEC counsel identified in paragraph 7.e, such claimant may be considered for eligibility under any Court-approved plan for future distributions, including a distribution that includes, as a result of the application of the Forte hybrid methodology, the claimant's allocated share of the sixth distribution under this Order.

10. The Receiver shall provide promptly to the SEC any spreadsheets, calculations, investor contact information, and/or other information requested by the SEC to facilitate any additional distribution(s) of Receivership collections.

11. The Receiver shall maintain the Receivership Website at www.fortereceivership.com until March 31, 2020.

12. Nothing in this Order shall be construed as releasing or discharging the obligation owed by Defendant Joseph Forte to the Securities and Exchange Commission pursuant to the Final Judgment entered in this matter on September 12, 2018 (Docket # 267 in Civil Action No. 09-cv-0063). Likewise, nothing in this Order shall be construed as releasing or discharging any other obligation that is, or may be, owed by Defendant Joseph Forte to the Securities and Exchange Commission, Department of Justice, any creditor, lender, investor, or victim.

13. This Court shall retain jurisdiction over any and all matters relating to the administration of this receivership estate.

BY THE COURT:

Paul S. Diamond, U.S.D.J.