

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: 13-18620 CA 13

CHIRAG AMIN,

Plaintiff,

vs.

GIGNESH MOVALIA and
OM GLOBAL INVESTMENT FUND LLC,

Defendants.

**CORPORATE MONITOR'S MOTION TO
APPROVE SETTLEMENT AGREEMENT WITH DERMEBX**

James D. Sallah, not individually but solely in his capacity as the court-appointed Corporate Monitor (the "Corporate Monitor") for Defendant OM Global Investment Fund LLC and OM Global LP (collectively, "OM Global"), moves this Court for approval of the settlement agreement with third party DermEbx.¹

A. Introduction

Pursuant to the Agreed Order Granting Plaintiff's Unopposed Motion for Appointment of Corporate Monitor dated May 29, 2013 and the Agreed Order Granting the Corporate Monitor's Emergency Motion to Expand Corporate Monitorship over OM Global LP dated August 17, 2013 (collectively, the "Appointment Orders"), the Corporate Monitor is obligated to, among other things, take possession of OM Global's assets for the benefit of their investors who are

¹ DermEbx is a management company specializing in healthcare services.

owed repayments of their investments. The Corporate Monitor's goal, of course, is to quickly and efficiently distribute those assets to investors with allowed claims.

On April 1, 2010, Defendant Gignesh Movalia ("Movalia") launched OM Global Investment Fund LLC as a new hedge fund. At all material times, Movalia was the fund's portfolio manager. According to Movalia's accounting, investor contributions were \$15.6 million and redemptions were \$3.8 million. However, based on the Corporate Monitor's cash reconstruction, total contributions were approximately \$21.3 million and total redemptions were approximately \$6.7 million.² Moreover, OM Global Investment Fund LLC suffered significant trading losses in Facebook ("FB") and Proshares Ultra VIX Short-Term Futures ETF ("UVXY"). The Corporate Monitor's analysis indicates the trading losses from UVXY trades exceeded \$5.2 million and FB trading losses were approximately \$7.1 million. However, when accounting for all investment activity in OM Global Investment Fund LLC beyond the FB and UVXY losses, the fund's total trading losses were approximately \$8.9 million.

B. Undisclosed Account at Bank of America

When this proceeding began, Movalia agreed to shut down the OM Global hedge fund, and therefore agreed to not continue soliciting investments from OM Global investors. However, the Corporate Monitor learned in August 2013 that Movalia had continued to solicit investments from OM Global investors at the time of this proceeding's commencement and after the Corporate Monitor's appointment. Specifically, Movalia had opened an account at Bank of America in the name of OM Global LP (as opposed to OM Global Investment Fund LLC). Through July 2013 – which was more than one month after the appointment – Movalia had continued to solicit investments in this account under the OM Global name from OM Global

² Therefore, it appears that Movalia's investor deposits were understated by approximately \$5.7 million and redemptions were understated by approximately \$2.9 million.

investors. Because Movalia was continuing to solicit investors in OM Global under a name – *i.e.*, OM Global LP – that caused them to think that OM Global was still operational, it was appropriate to expand the Corporate Monitorship over OM Global LP, thereby freezing its account(s) and any funds directly or indirectly derived therein.

C. Emergency Motions and Agreed Orders

As such, the Corporate Monitor filed the following three emergency motions:

- Corporate Monitor’s Emergency Motion to Expand Corporate Monitorship over OM Global LP;
- Corporate Monitor’s Emergency Motion to Enjoin Defendant Gignesh Movalia from Communicating with Investors; and
- Corporate Monitor’s Emergency Motion to Compel Defendant Gignesh Movalia to Produce Records Regarding OM Global LP.

In response to the three emergency motions, Movalia consented to the Court issuing agreed orders granting all three motions. As a result of the three Agreed Orders, the following occurred:

- the Corporate Monitorship was expanded to include OM Global LP;
- all provisions regarding OM Global Investment Fund LLC imposed in the Appointment Order were extended to cover OM Global LP, including the asset freeze over any and all assets and accounts of OM Global LP, as well as the right to turnover of such funds; and
- covered funds, assets, or accounts include funds deposited by OM Global LP and/or transferred by OM Global LP to any third parties.

Movalia produced several documents regarding OM Global LP in compliance with the Agreed Orders, including the bank records from Bank of America. The Bank of America records showed the following:

- Movalia persuaded two (likely unknowing) investors to invest \$380,000 in total in the new OM Global LP fund;
- the \$380,000 was deposited on May 24, 2013 (the same day this lawsuit commenced and five days before entry of the Appointment Order);
- on May 28, 2013 (five days after this lawsuit commenced and one day before entry of the Appointment Order), OM Global LP transferred \$330,000 to DermEbx;
- on July 5, 2013, Movalia persuaded another unknowing investor from the initial OM Global fund to invest \$45,000, after which the funds were deposited in the LP account; and
- Movalia transferred another \$29,000 to DermEbx (as such, DermEbx received \$359,000 in total).³

D. Demand Letter on DermEbx

The Corporate Monitor served a demand letter for return of the \$359,000 in new investor funds channeled through OM Global LP on the recipient of funds – DermEbx. The Corporate Monitor has since secured \$35,000.00 from Movalia related to the transaction. As such, the Corporate Monitor has given a credit of \$35,000 to DermEbx, meaning that a net amount of \$324,000.00 is still owed by DermEbx.

DermEbx contends that they had received the funds from OM Global LP pursuant to a valid term sheet, and that neither the company or its officers had any previous knowledge of actions by Movalia which led to this Court's proceedings and the actions of the Corporate Monitor against Movalia.

³ There was no signed written document explaining why DermEbx received the funds, but apparently it was a loan.

The Corporate Monitor and DermEbx have agreed to resolve all outstanding debts on the following conditions:

- (1) DermEbx (or its designee) shall pay the Corporate Monitor, on or before January 31, 2014, a lump sum amount of \$275,000.00 in total for all outstanding amounts owed;
- (2) If the payment is not timely made, and in addition to having the right to seek contempt against DermEbx's officers for failure to timely pay, the Corporate Monitor shall have the additional remedy to immediately garnish DermEbx's bank accounts for the amount owed;
- (3) DermEbx represents and promises that it has not, directly or indirectly, held and is not, directly or indirectly, holding any money or assets on behalf of Movalia;
- (4) DermEbx represents and promises that it did not receive any additional money, directly or indirectly, from Movalia or OM Global, or anyone on their behalf, beyond the \$359,000.00 amount; and
- (5) This settlement shall be conditioned on an Order from the Court presiding over the OM Global proceeding.

A copy of the Settlement Agreement is attached as Exhibit A.

E. The Proposed Payoff Is Reasonable and Should Be Approved

The Corporate Monitor believes that the settlement is reasonable under the circumstances. Although the \$275,000 global payoff amount is approximately a 15% discount to DermEbx, the Corporate Monitor is receiving a significant sum of funds within the next 30 days. Moreover, the settlement payment will be made at the end of January, which is near the time that the Corporate Monitor is planning to make a first distribution to investors and therefore will further increase the rate of return for the first distribution. Finally, the \$275,000 payoff amount avoids the expenditure of thousands of dollars in attorneys' fees in potential litigation and, naturally, the risk inherent in all litigation. As a result, the Corporate Monitor believes that the payoff is reasonable and therefore that this Court should approve the subject payoff and settlement.

The Corporate Monitor has corresponded with the U.S. Securities and Exchange Commission (the "SEC"). The SEC takes no position on this Motion.

WHEREFORE, the Corporate Monitor respectfully requests that this Court approve the Settlement Agreement and enter such other relief that this Court deems just and proper.

Dated: January 21, 2014.

Respectfully submitted,

**LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP**
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By: Patrick J. Rengstl, Esq.
Jeffrey C. Schneider
FL Bar No. 933244
Patrick J. Rengstl
FL Bar No. 0581631

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail and electronic mail on this 21st day of January, 2014, upon Chirag Amin, Gignesh Movalia, and Gary Klein, Esq., The Klein Law Group, 7832 Red Mahogany Road, Boynton Beach, Florida 33437.

s:/Patrick J. Rengstl, Esq.
Patrick J. Rengstl

SETTLEMENT AGREEMENT

James D. Sallah, not individually but solely in his capacity as the court-appointed Corporate Monitor (the "CORPORATE MONITOR") for OM Global Investment Fund LLC and OM Global LP (collectively, "OM Global") and DermEbx (all parties to this SETTLEMENT AGREEMENT are collectively, the "Parties") hereby stipulate and agree as follows:

WHEREAS, the CORPORATE MONITOR was appointed over OM Global Investment Fund LLC and OM Global LP by the Honorable Daryl E. Trawick in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, in *Chirag Amin v. Gignesh Movalia and OM Global Investment Fund LLC*, Case No. 13-18620 CA 13;

WHEREAS, one of the CORPORATE MONITOR's duties is to attempt to recover funds owed to OM Global;

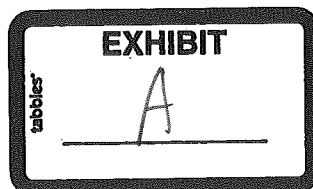
WHEREAS, DermEbx received \$359,000.00 from OM Global LP;

WHEREAS, the CORPORATE MONITOR has previously secured \$35,000.00 related to the transaction and has provided a credit to DermEbx in that amount;

WHEREAS, the CORPORATE MONITOR contends that OM Global LP is currently owed a net amount of \$324,000.00 from DermEbx;

WHEREAS, DermEbx contends that they had received the funds from OM Global LP pursuant to a valid term sheet, and that neither the company or its officers had any previous knowledge of actions by Movalia which led to this Court's proceedings and the actions of the Corporate Monitor against Movalia;

WHEREAS, without any of them conceding the validity or correctness of the position of the other, in order to avoid the costs, uncertainty and vexation of further legal proceedings, the



Parties want to finally and conclusively resolve all their differences, including any and all causes of action and claims the CORPORATE MONITOR may have against DermEbx;

WHEREAS, and as limited below, none of the Parties admits any liability and all Parties agree that this Agreement does not constitute an admission of any kind;

NOW THEREFORE, it is hereby stipulated, consented to and agreed, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by and between the Parties, as follows:

- (1) DermEbx (or its designee) shall pay the CORPORATE MONITOR, on or before January 31, 2014, a lump sum amount of \$275,000.00 in total for all outstanding amounts owed;
- (2) If the payment is not timely made, and in addition to having the right to seek contempt against DermEbx's officers for failure to timely pay, the CORPORATE MONITOR shall have the additional remedy to immediately garnish DermEbx's bank accounts for the amount owed;
- (3) DermEbx represents and promises that it has not, directly or indirectly, held and is not, directly or indirectly, holding any money or assets on behalf of Gignesh Movalia;
- (4) DermEbx represents and promises that it did not receive any additional money, directly or indirectly, from Gignesh Movalia or OM Global, or anyone on their behalf, beyond the \$359,000.00 at issue; and
- (5) This settlement shall be conditioned on an Order from the Court presiding over the OM Global proceeding.

This Agreement is voidable if any of the information provided to the CORPORATE MONITOR during this matter is incorrect.

DermEbx and its employees, agents, principals, officers, directors, representatives, attorneys, successors, and assigns, past and present, for the consideration as above discussed and the receipt of which is hereby acknowledged, do hereby release, acquit, and forever discharge the CORPORATE MONITOR and his employees, adjusters, agents, principals, officers, directors,

representatives, attorneys, successors, and assigns, past and present, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, loss of earnings, loss of earning capacities, loss of consortium, and/or any other legally recoverable category of damages, compensatory and/or punitive, economic and/or noneconomic, whether known or unknown, that DermEbx has or may hereafter have with, or in any way growing out of or connected with OM Global.

Except for purposes of enforcing this Agreement, the CORPORATE MONITOR and his employees, adjusters, agents, principals, officers, directors, representatives, attorneys, successors, and assigns, past and present, for the consideration as above discussed and the receipt of which is hereby acknowledged, do hereby release, acquit, and forever discharge DermEbx of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, loss of earnings, loss of earning capacities, loss of consortium, and/or any other legally recoverable category of damages, compensatory and/or punitive, economic and/or noneconomic, whether known or unknown, that the CORPORATE MONITOR has or may hereafter have with, or in any way growing out of or connected with OM Global.

It is understood and agreed that the Parties rely solely on their own judgment, belief, and knowledge here, and this Agreement is executed without reliance upon any statement or representation by the other.

It is understood and agreed that this Agreement is a compromise of a doubtful and disputed claim, and is not to be construed as an admission of liability on the part of either Party.

The Parties further declare and represent that no promise, inducement, or agreement not herein expressed have been made to the other, and that this Agreement represents the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior

discussions, negotiations, and writings with respect thereto, and that the terms of this Agreement are contractual and not a mere recital.

DermEbx irrevocably and unconditionally (1) agrees that any dispute, suit, action, or legal proceeding arising out of or relating to this Agreement shall be brought in the exclusive forum of the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County before the Honorable Daryl E. Trawick; (2) consents to the exclusive jurisdiction of said Court in any such suit, action, or legal proceeding; and (3) waives any objection which it may have to the laying of venue of any such dispute, suit, action, or legal proceeding in said Court. This Agreement, and all rights and obligations hereunder, shall be governed by the laws of the State of Florida.

This Agreement may be executed by facsimile or other electronic means in counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one agreement.

The Parties have had the opportunity to have this Agreement reviewed by counsel and to be advised by counsel as to the rights and obligations hereunder; and this Agreement shall not be construed or interpreted more strictly against either Party.

Each Party shall bear their own attorneys' fees and costs.

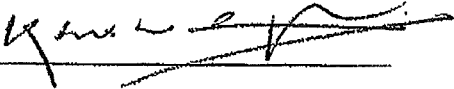
The Parties declare and represent that they have read the foregoing Agreement and fully understand its terms, and have entered into this Agreement voluntarily, fully cognizant of its terms, and mentally unimpaired. Additionally, the Parties hereto represent and warrant that the

individual(s) signing this Agreement have the authority to sign.

By: 
JAMES D. SALLAH, Corporate Monitor

Dated: January 20, 2014.

DermEbx

By: 

Dated: January 14, 2014.

Its: MEMBER