

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-60907-CIV-MORENO/SELTZER

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants.

**RECEIVER JONATHAN E. PERLMAN'S OBJECTIONS TO
SEPTEMBER 27, 2019 REPORT AND RECOMMENDATION [ECF NO. 419]**

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Jonathan E. Perlman, as Permanent Receiver, submits his Objections to the September 27, 2019 Report and Recommendation [ECF No. 419], which recommends granting Amanda Finley's Expedited Motion for Imposition of Equitable Lien (the "Motion") on Real Property Located at 300 Royal Plaza Drive, Fort Lauderdale, Florida 33301 (the "Property") [ECF No. 404].

I. INTRODUCTION

In her Motion, Amanda Finley ("Finley") attempts to cast herself as an innocent bystander to her ex-husband Defendant Jeremy Marcus' ("Marcus") massive fraud. In fact, she was a significant beneficiary of Marcus' pilfering of innocent consumers. She lived an extravagant lifestyle with expensive cars, jewelry, and a multi-million dollar luxury home through the victimization of consumers. In her Motion, she improperly seeks to victimize consumers again. Equity requires that the Property's sale proceeds go towards consumer redress and not Finley.

Finley, as a sales associate, claims that her equitable lien represents the funds that the broker, Florida Coastal Realty Group ("Florida Coastal"), chose to rebate to reduce the purchase price of the Property; a residence purchased in the name of a trust named after Finley's household pet, "*Jean Pierre*" and financed entirely with stolen consumer funds. Here, Finley, as a sales associate, is barred under Florida law from seeking the relief sought in her Motion. *See* Fla. Stat. §475.42(1)(d).

Without a hearing, Magistrate Judge Seltzer submitted a report that recommended granting the Motion. The Magistrate found that Finley, not Florida Coastal, rebated \$107,500 towards the purchase of the Property. This finding contradicts the exhibit relied upon by Finley, and her claim to enforce an equitable lien is improper under Florida law. *Id.*; *see also Bergin v*

Kickliter, 538 So. 2d 950 (Fla. 2d DCA 1989)(Florida legislature clearly prohibited a real estate salesman from maintaining any action to collect a real estate brokerage commission except from his/her employer at the time). In his report, the Magistrate fails to address the clear statutory prohibition of the relief sought in the Motion.

Florida law imposes equitable liens primarily to prevent unjust enrichment. *In re Performance Leasing Corp. of Collier County*, 385 B.R. 317, 326 (Bankr. M.D. Fla. 2008). Under these and the remainder of the circumstances outlined herein, granting Finley such a lien would be entirely unjust and inequitable.

It is undisputed that Finley and Marcus purchased the Property with \$5,250,000 in cash from directly traceable as stolen consumer funds. The brokerage commission Finley alleges she contributed as a price reduction to the purchase price of the Property is directly traceable to stolen consumer-funds. Here, the Property is in the process of being sold for more than \$1,000,000 less than what Marcus and Finley paid with stolen consumer funds. There is no equity in the Property for her purported lien to attach and her Motion improperly seeks to enrich Finley at the expense of consumer victims. Based upon these facts, Finley's claim for equitable lien fails. *See generally, In re Financial Federated Title & Trust Inc.*, 273 B.R. 706 (S.D. Fla. 2001); *Securities and Exchange Commission v. Detroit Memorial Partners, LLC*, 2016 WL 6595942 (N.D. Ga. Nov. 8, 2016) ("A court sitting in equity has the discretionary authority to deny state law remedies as inimical to the receivership.") (internal citation omitted); *Commodity Futures Trading Comm'n v. Hudgins*, 620 F. Supp. 2d 790 (E.D. Tx. 2009) (granting the receiver an equitable lien on the property finding that where innocent party paid off mortgage with proceeds obtained through fraud, it would be inequitable for her to keep the property and become unjustly enriched at the expense of ex-boyfriend's victims).

Finley argues that she “separately contributed” to the purchase of the Property with “separately and independently earned funds.” This is a circular meritless argument for several reasons. First, Finley is asking to receive double the value of her purported contribution. Initially, she received the value of a reduced purchase price for a home she resided in for over eighteen months. If the Court were to find an equitable lien of \$107,500 from the proceeds of the sale of the Property, Finley would enjoy the value of the purported contribution twice, an inherently inequitable result. Moreover, no benefit was conferred on the Property, nor were the funds used to make improvements upon the Property. Instead, the rebated commission by another party was used to benefit her in the purchase of the Property, not the Property itself.

In addition, the Magistrate found that the Receiver would be receiving an “improper windfall” if the equitable lien were not paid. The evidence does not support the Magistrate Judge’s conclusion that the Receiver would be receiving an improper windfall if Finley’s Motion was denied. Moreover, the equities of these circumstances do not support granting Finley’s Motion. For all of these reasons, the Receiver respectfully requests that this Court should, on its *de novo* review of the record and law, deny the Motion.

II. FACTUAL BACKGROUND

A. The Purchase of the Property.

Prior to Finley’s marriage to Marcus, Marcus and Finley purchased the Property for \$5,250,000 in cash using 100% directly traceable stolen consumer funds.¹ Florida Coastal was the real estate broker for the buyer, and Finley acted as a sales associate,² for the “Jean Pierre

¹ The Receiver’s uncontroverted forensic expert analysis tracing the funds used in this transaction has been part of the record since as early as the Receiver’s Second Interim Report. [ECF No. 136 at Ex. D]. No evidence to the contrary has been provided, that the \$5,250,000 was taken directly from Receivership Entities and consumers.

² In Florida, Finley, as a sales associate, has no standing to pursue an action against the seller for failure to pay the commission. Such cause of action belongs solely to Florida Coastal. Fla. Stat. § 475.42(1)(d).

Trust #1” that was owned and controlled, entirely, by Marcus. In this capacity, and with the permission of her broker, Florida Coastal rebated to Finley and Marcus \$107,500 as a credit that might otherwise be payable to Florida Coastal in cash at closing. Florida law permits brokers to rebate parts of their commission to the buyer in the form of cash at closing to *reduce the purchase price of the home*.³ This rebate—or “commission credit” as it is often called—is not typically given as cash to the buyer, instead it is generally disclosed on the HUD form as a credit from the broker to lower the down payment or closing costs otherwise payable by the buyer. This was not a new concept to Finley. Florida Coastal, at Finley’s recommendation, had in fact “rebated” numerous commissions to Marcus (or Receivership Entities) as the real estate agent for the buyer (or seller) on several other properties. [ECF No. 413, Ex. G at 208:18–209:15].⁴ This transaction was no different. Months later, Marcus, on behalf of the Jean Pierre Trust #1, issued a quitclaim deed deeding the property to Marcus and Finley as tenants by the entirety.

According to the HUD attached to Finley’s Motion, Florida Coastal was to receive \$157,500 as commission related to the purchase of the Property. Florida Coastal applied \$107,500 of that commission as a buyer’s “credit” to lower the purchase price for the buyers’ benefit. [ECF No. 404 at Ex. A]. Finley admits that she received \$34,250 in commission at closing. [ECF No. 404 at 3 n.2]. Further, Mr. Kapila determined that on July 12, 2016, Marcus was transferred \$158,556.56 in overages from the closing agent for the purchase of the Property. [ECF No. 413, Ex. E].

B. Marcus’ Scheme.

³ Fla. Admin. Code § 61J2-10.028 states that “The sharing of a brokerage compensation by a licensee with a party to the real estate transaction with full disclosure to all interested parties is not considered a violation of Chapter 475, Part I, F.S.”

⁴ “Q: Why did you send two checks on August 14, 2015, to Jeremy Marcus in the total amount of \$25,000? A: Because it was a rebate of the commission to the buyer, which I had done on some of the initial properties I was doing for him.”

The evidence submitted by the FTC and State of Florida, and this Court's findings in the Permanent Injunction ("PI") and the Turnover Motion, which are adopted and incorporated for ease of reference herein, established that Finley's ex-husband Marcus directed the scheme.⁵ Defendants ensnared consumers through extensive bogus loan and account takeover campaigns.⁶ In the loan campaign, Marcus, and others, lured consumers with false promises of guaranteed, low interest rate debt consolidation loans through direct mail, internet websites, radio advertisements, and unsolicited phone calls pitching the scam.⁷ By promising to pay, settle, or dismiss their debts, Defendants received monthly payments from consumers in amounts ranging from \$200 to \$1,000 or more.⁸ Defendants also lured consumers through account takeover campaigns whereby they would mislead consumers into transferring their escrowed monies into defendants' accounts,⁹ or by simply taking the escrowed funds without the consumers' consent.¹⁰

Consumers eventually learned from their creditors that Defendants, despite taking money from their checking accounts each month as payment for their services, had never contacted the consumers' creditors to seek to pay, settle, or dismiss the consumers' debts.¹¹ While Defendants collected millions from consumers, consumers generally received little, if anything, in return.

⁵ Jeremy was at all times the owner, director, president, managing member, or authorized representative of each Receivership Defendant. *Plaintiffs' Ex Parte Motion For Temporary Restraining Order With Asset Freeze, Appointment of A Receiver, And Other Equitable Relief, And Order To Show Cause Why A Preliminary Injunction Should Not Issue, And Memorandum In Support* (the "PI Motion") [ECF No. 6 at 10 n.66]. Jeremy is also an authorized signatory on nearly all corporate defendant bank records. *Id.* at n.67.

⁶ *PI Motion* [ECF No. 6 at 3-8].

⁷ *Id.* at 3 n.5-6, 3-4 n.10, 11, and 5-6 n.16.

⁸ *Id.* at 7 n.31.

⁹ *Id.* at 7 n.36.

¹⁰ *Id.* at 7-8 n.37.

¹¹ *Id.* at 8 n.44, 45. Consumers often first learned that defendants intended to keep their loan "repayments" and/or funds transferred from their escrow accounts, as "fees," upon making complaints to law enforcement or the Better Business Bureau. *Id.* at 9 n.51.

Defendants left consumers in worse financial positions, many of whom were already in financial distress, elderly or disabled.¹²

In short, Defendants clearly engaged in a fraudulent scheme, including misrepresentations to consumer victims,¹³ collection of advance fees in violation of federal law,¹⁴ and misappropriations of monies from consumers' escrow accounts.¹⁵

On April 23, 2018, this Court entered a Stipulated Order for Permanent Injunction and Monetary Judgment against Marcus ("Stipulated Judgment").¹⁶ The Stipulated Judgment provided a monetary judgment in favor of the Plaintiffs against Marcus for \$85,326,648.45 and specifically required Marcus to transfer all right, title, and interest in the Property to the Receiver.¹⁷ Marcus, personally, and through the Receivership Entities, routinely conducted real estate transactions with consumer monies. In fact, before taking the Fifth, Marcus admitted to the Receiver that he used these and other funds from consumers to acquire property for his own personal benefit.¹⁸ The Property was one such property. Finley acted as real estate agent for Marcus and his entities from 2015 through the date of the Permanent Injunction in 2017 in at least 15 real estate transactions involving over \$10.6 million. *See e.g.*, [ECF No. 413, Ex. G at 39:21–44:11, 85:20–24; 193:23–194:8, 196:20–25, 200:11–14, 205:6–11]; *see also* Real Estate Transactions on Behalf of Defendants. *See* [ECF No. 413, Ex. E].

¹² *Id.* at 9–10 n.58, 60.

¹³ Besides the misrepresentations above, Defendants also misrepresented that their debt relief program was provided by a non-profit entity; and that they would improve consumers' creditworthiness.

¹⁴ The law specifically prohibits deceptive and abusive telemarketing acts or practices regarding debt relief services. *See* 16 C.F.R. § 310.3(a)(2)(x). Such businesses are also expressly prohibited from collecting advance fees—*i.e.*, requesting or receiving fees until **after** having renegotiated or settled their consumers' debts. *See* 16 C.F.R. § 310.4(a)(5)(i).

¹⁵ *PI Motion* at 23 n.162, 163.

¹⁶ [ECF No.231].

¹⁷ *Id.* at VII(A), VII(E)(i).

¹⁸ *Receiver's Second Interim Report* [ECF No. 136 at 14–15].

C. The Property Was Purchased Using Receivership Monies.

The Receiver retained as his forensic accounting expert Soneet R. Kapila, and his firm KapilaMukamal, LLP (collectively “Kapila” or “KM”), to conduct a forensic accounting investigation, including bank reconstruction and tracing funds for the Receivership defendants.¹⁹ KM traced the funds used to purchase the Property totaling \$5.25 million dollars as coming from three Receivership defendants: (1) Cockburn & Associates, LLC (“Cockburn”); (2) Associated Administrative Services, LLC (“Associated”); and (3) Halfpay International, LLC (“Halfpay”).²⁰

Specifically, Mr. Kapila identified \$2,550,000 that originated from consumer escrow funds transferred into Receivership defendant Cockburn’s Bank of Montreal operating account.²¹ These monies held by Cockburn were escrowed monies of specific consumers to resolve creditor issues. This \$2,550,000 of stolen consumer escrowed monies was then used, along with \$2.1 million from Receivership Defendant Associated²² and \$600,000 from Receivership Defendant Halfpay, to purchase the Royal Plaza Property. Mr. Kapila’s funds tracing analysis and supporting bank records for the Property purchase was filed as an exhibit to the *Receiver’s Second Interim Report*. [ECF No. 136-4].

Prior to the purchase of the Property, Finley was aware that Marcus was using funds from

¹⁹ See *Declaration of Soneet R. Kapila in Support of Receiver’s Agreed First Verified Motion to Expand Receivership and Receiver’s Agreed Motion to Turn Over and Transfer Title to Certain Real Property and Sales Proceeds* [ECF No. 91].

²⁰ On November 30, 2017, a final judgment was entered against Halfpay. *Order of Final Judgment on the Pleadings by Consent Against JLMJP Pompano, LLC, Halfpay International, LLC, Halfpay NV, LLC, and Nantucket Cove of Illinois, LLC* (the “Final Judgment”) [ECF No. 174]. On September 7, 2018, a default final judgment was entered against Cockburn and Associates, among others. [ECF No. 293].

²¹ Cockburn consumers are primarily located in Canada. Bank and processing records show that monies collected from Cockburn consumers flowed into a Cockburn bank account at Bank of Montreal. See *Expansion Motion* [ECF No. 89 at 10–11]. Jeremy was the sole signor on the Cockburn account. *Id.*

²² KM analyzed the bank records of Receivership Defendant Associated and determined that on June 20, 2016, Associated transferred \$400,000 of comingled consumer monies to Jeremy’s account at City National Bank of Florida. That same day, Marcus transferred \$400,000 for the deposit on the Property to Florida Coastal, the real estate broker for the transaction. See [ECF No. 136-4].

Receivership Entities to acquire the Property. *See* [ECF No. 413, Ex. A]. Finley also regularly collected significant fees and commissions in connection with Marcus buying and selling this and other properties utilizing stolen funds as described more fully herein.²³

D. Finley and the Receiver.

In September 2017, Plaintiffs were in the process of adding Finley as a Relief Defendant in these proceedings based upon her interest in the Property as a recipient of ill-gotten gains from Marcus' scheme. As a result, Finley transferred her interest in the Property to Marcus in order to avoid being joined as a Relief Defendant.

In her Motion, Finley takes the remarkable position that, in connection with her transferring her interest to Marcus, the Receiver acknowledged Finley's claim of ownership and equitable lien. [ECF No. 404 at 3-4]. The exhibit Finley claims to support this argument does not support her claim. At the time Finley transferred her interest in the Property to Marcus, the Receiver merely acknowledged that this transfer would not waive "any potential rights to assert an equitable lien." As set forth in the exhibit attached to the Motion, the Receiver never acknowledged Finley's purported equitable lien on the Property.

Subsequently, Finley and Marcus dissolved their marriage. In connection with those proceedings, Finley filed a financial affidavit under penalty of perjury in Broward County Circuit Court attesting that she owns no interest in the Property. [ECF No. 413, Ex. E].

In August 2019, the Receiver was under contract to sell the Property to a third party for more than \$4,000,000. The closing on the sale of the Property was set for September 12, 2019. In connection with the request by the title company issuing title insurance, on August 15, 2019,

²³ Finley acted as the agent for Marcus and the Receivership Defendants in at least 15 real estate transactions involving over \$10.6 million. *See e.g.*, [ECF No. 413, Ex. G at 39:21–44:11, 85:20–24; 193:23–194:8, 196:20–25, 200:11–14, 205:6–11].

the Receiver provided Finley with a special warranty deed disavowing any homestead rights in the Property. In violation of this Court's orders, Finley refused to cooperate and execute that deed.²⁴ Instead, Finley requested that the Receiver agree to pay her \$107,500 from closing proceeds from the sale of the Property under an equitable-lien theory before cooperating with the Receiver. Absent this cooperation, the Receiver would not be able to secure title insurance and sell the Property.

Given the importance of the sale of the Property, on August 24, 2019, the Receiver offered to hold in trust the amount of Finley's purported equitable-lien claim from closing proceeds pending this Court's determination on her lien claim in exchange for the deed needed for closing. Finley did not respond to the Receiver's offer, but instead filed her Motion.

Based upon Finley's lack of cooperation and failure to respond to the Receiver's offer to hold sale proceeds in trust, on August 30, 2019, the Receiver filed his Expedited Motion to Compel Amanda Finley to Provide a Warranty Deed (the "Expedited Motion"). [ECF No. 406]. Despite the Expedited Motion and offer to hold monies in trust, Finley did not respond to the Receiver.

On September 10, 2019, Judge Seltzer issued a paperless order requiring Finley to respond in less than 24 hours to the Expedited Motion and the Receiver's offer to sell the Property and hold \$107,500 in proceeds in trust pending resolution on the Motion. [ECF No.

²⁴ Finley was served with the Temporary Restraining Order on May 10, 2017. The PI/TRO requires Finley to "fully cooperate with and assist the Receiver." [*Id.* at 21]. The PI/TRO also enjoined Finley from "Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants, or the Receiver." [*Id.* at 22]. The PI/TRO further prohibited *Finley* from "[d]oing any act or refraining from any act whatsoever to interfere with the Receiver's taking custody, control, possession, or managing of the assets or documents subject to this receivership; to harass or interfere with the Receiver in any way; to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants; or to *refuse* to cooperate with the Receiver or the Receiver's duly-authorized agents in the exercise of their duties or authority under any Order of this Court." *Id.*

408]. It took Magistrate Seltzer's order for Finley to respond to the Receiver's offer pending for almost two weeks and the following day Finley provided the deed requested in the Expedited Motion.

ARGUMENT

A. Standard of Review.

This Court referred the Motion to the magistrate judge for a report and recommendation [ECF No. 407]. Consequently, the standard of review is *de novo*. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); *Jackson v. Motel 6 Multipurposes, Inc.*, 172 F.R.D. 462, 465 (M.D. Fla. 1997) (referral to issue report and recommendation reviewed *de novo*); 12 FED. PRAC. & PROC. CIV. § 3069 (3d ed.) (referral for recommendation reviewed *de novo* even if referral could have been for decision, and collecting cases). “*De novo* review’ means the district court must consider the matter referred to a magistrate judge anew, as if it had not been heard before and as if no decision previously had been rendered.” 12 FED. PRAC. & PROC. CIV. § 3070.2.

B. The Magistrate Judge’s Findings.

The Magistrate Judge made several assumptions and inaccurate findings of fact in rendering his recommendation. Specifically, Judge Seltzer found that “the Property was purchased **in part** by Marcus based on the proceeds of fraud, this asset, or a portion of it, was subject to eventual turnover.” [ECF No. 419 at 2]. The Court granted the Receiver’s Motion for Turnover, or Alternatively, for an Equitable Lien, which clearly detailed the forensic analysis showing that the Property was purchased with 100% stolen consumer funds. [ECF No. 212].²⁵

²⁵ See also Receiver’s Response in Opposition to Finley’s Motion for Imposition of Equitable Lien [ECF No. 413 at 8–9] and the Receiver’s Second Interim Report [ECF No. 136]. In each of these, the Receiver attached uncontroverted expert forensic analysis tracing 100% of the funds used to purchase the Property to Receivership Entities and consumers.

Additionally, the Magistrate Judge found that if Finley was unable to recover the funds, the Receiver would receive a windfall. [ECF No. 419 at 5–6]. The current contract for sale of the Property is for over \$1,000,000 less than the amount of stolen consumer goods used to purchase the Property.²⁶ Moreover, the Receiver has expended \$261,491.51 as of the date of this filing, in required taxes, insurance, maintenance, and repairs to the Property. Accordingly, any allegations that the Receiver would be receiving a windfall is simply inaccurate.

The Magistrate Judge also concluded that the Receiver was not granted an equitable lien upon which Finley’s lien may be subordinated. [ECF No. 419 at 5 n.3]. While it is true that the Property was turned over by stipulation, in his Response in Opposition to Finley’s Motion [ECF No. 413], the Receiver specifically set forth legally and factually his equitable lien on the Property. The Magistrate Judge wholly failed to consider those arguments.

The Magistrate Judge also erroneously found that her contributions were “akin to a purchase-money security interest.” [ECF No. 419 at 5 n.3]. Judge Seltzer failed to provide any legal authority, and the Receiver is unaware of any such authority, whereby a real estate agent that rebated its commission to the buyer is granted a “purchase-money security interest” in the Property. Such a result would certainly have far-reaching ramifications into the long-standing practice of real estate agent buyer-rebates, which are encouraged as a method to enhance competition.

C. Finley Is Not The Party In Interest To Enforce The Purported Lien And Any Such Lien Would Be Inequitable.

While Finley claims to have been the real estate broker on the acquisition of her home, the HUD attached as Exhibit A to the Motion reflects another party as being owed the

²⁶ On March 13, 2019, the Receiver commissioned another appraisal for the Property. The opinion of value for the Property was \$4,150,000.

commission she now claims is her equitable lien. Specifically, the HUD attached to the Motion reflects that Florida Coastal, not Finley was entitled to a commission for the buyer. [ECF No. 404, Ex. A]. The HUD document identifies Finley as Florida Coastal's sales associate. However, Fla. Stat. §475.42(1)(d) provides:

A sales associate may not collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of the employer and with the express consent of the employer; and no real estate sales associate, whether the holder of a valid and current license or not, shall commence or maintain any action for a commission or compensation in connection with a real estate brokerage transaction against any person except a person registered as her or his employer at the time the sales associate performed the act or rendered the service for which the commission or compensation is due.²⁷

Here, Finley, a sales associate, has brought an action for a commission against the Receiver and not her employer, Florida Coastal, in connection with a real estate brokerage transaction. Such an action is barred under the aforementioned Florida Statute. *See Bergin*.538 So. 2d at 950. Judge Seltzer does not address this statutory prohibition to the relief sought or that Finley is not the proper party to seek the relief in her Motion.

Finley asserts that the funds were the result of her independent work as a realtor for herself as the buyer. Again, as the buyer of a property purchased with stolen consumer funds and realtor for that purchase, all Finley accomplished was a reduction of the purchase price of the home. She does not now get to recover the value of her reduction. Finley's argument that the funds were separately earned is circular and unpersuasive. All funds that were to be distributed due to the purchase of the Property are directly traceable to stolen consumer funds. The argument that the funds were paid by the seller is merely a red herring to confuse the issues before the Court. As described herein, it is undisputed that the funds used for the all cash purchase of the

²⁷ Violation of this statute is a second-degree misdemeanor.

Property were directly traceable to stolen consumer funds, similarly the funds alleged to have been owed to Florida Coastal at closing by the seller would also be directly traceable to those stolen funds.

Finley, as the purported Property owner and sales associate for the buyer (herself), is seeking to recover double the value of the rebate by Florida Coastal. Because buyer-rebates work to lower the amount due at closing by the buyer, as the buyer in that transaction, Finley received a benefit in the form of a reduction in the purchase price on the home. Specifically, she received a \$107,500 reduction in the costs assessed to the buyer at closing. Were she to receive a lien on the sale proceeds now for that same amount, she would receive this value for a second time. An inherently inequitable result.

The crux of Finley's argument is that she "contributed" to the Property where she utilized her real estate commission, comprised entirely of stolen consumer funds, in the acquisition of the Property by Finley and Marcus. This argument misses the mark. Finley's contribution conferred no benefit to the Property but merely reduced the monies needed by Finley and Marcus to purchase the Property. Ultimately, her alleged contribution benefitted Finley, not the Property.

Finally, the Magistrate Judge indicates that he was "troubled" by the Receiver's purported accusations of Finley's "unclean hands" made with no evidentiary support. [ECF No. 419 at 6 n.4]. As to this finding, the Receiver would merely like to clarify for the record that each of the citations highlighted by the magistrate judge as having no evidentiary support²⁸ were in fact duly supported by exhibits and cites to the record. *See* [ECF No. 413 at Ex. A-G].

D. Alternatively, Should the Court Grant Finley a Lien on the Sale Proceeds, Any Such Amount Granted Should be Reduced in Proportion to the Decrease in Value to the Property.

²⁸ [ECF No. 419 at 6 n.4].

The Receiver disputes that Finley has the right to any proceeds from the sale of the Property; however, should this Court agree that Finley's funds were separately contributed and adopt the Magistrate Judge's Report, he asks that the Court reduce her contribution to account for the devaluation of the Property and her interest in the Property. The current contract for sale of the Property is for \$4,000,000, which is \$1,250,000 less than the consumer funds used to buy it. In addition, the Receiver has spent \$261,491 on the Property.

The loss to consumers in this case is well over \$85,000,000, which the Receiver has been tasked to take all appropriate actions to recover up for the benefit of the victims. The Receiver is entitled to recover the full value, plus any appreciation, of the Property. *See In re American Way Service Corp.*, 229 B.R. at 531. Here, the Property has significantly depreciated and Finley's interest, if any, is worthless. *See also Commodity Futures Trading Comm'n v. Hudgins*, 620 F. Supp. 2d 790, 795 (E.D. Tx. 2009) (denying any distribution to innocent homeowner where she failed to establish equity in the home sufficient to cover the Receiver's lien and any of her purported contribution); *In re Fin. Federated*, 348 F.3d 880, 892 (11th Cir. 2003) (finding that decreases in value of the home are charged against homeowner rather than constructive lien holder). Should the Court agree with Judge Seltzer that Finley has an equitable lien on the proceeds of any sale due to the buyer-rebate; the Receiver posits that it would be unjust for her to recover 100% of her purported value where the loss to the consumers is so substantial and the Property has substantially depreciated, and asks the Court to reduce her award accordingly. If the current contract were to close on the Property, the Receiver will only recover 73% of the consumer funds used to purchase and maintain the Property. While the Receiver believes Finley should get nothing, if this Court were to disagree, then equity requires she gets no more than 73% of Florida Coastal's remaining commission or \$78,475.

CONCLUSION

For all of these reasons, the Receiver respectfully contends that this Court, on its *de novo* review of the record and law, should deny Finley's Motion. Because of the novel questions of law and fact raised by the parties, the Receiver respectfully requests a hearing before the Court, and asserts that the record would be incomplete without the opportunity to be heard on these matters.

Respectfully submitted on October 11, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and entities in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Gregory M. Garno
Gregory M. Garno, Esq.

SERVICE LIST
Federal Trade Commission v. Jeremy Lee Marcus, et al.
USDC, SD Fla., Case No. 17-cv-60907-MORENO

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