

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents

**SECOND SUPPLEMENTARY REPORT TO THE SECOND REPORT TO THE COURT
SUBMITTED BY MNP LTD., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

October 11, 2018

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October 11, 2018

I INTRODUCTION AND PURPOSE OF THIS REPORT

1. On June 14, 2018 ("**Date of Appointment**"), MNP Ltd. was appointed as receiver (the "**Receiver**") without security, of all assets, undertakings and properties of TheRedPin, Inc. ("**TRP Inc.**") and Theredpin.Com Realty Inc. ("**TRP Realty**" and together with the TRP Inc., collectively hereinafter referred to as the "**Debtors**") acquired for or used in relation of a business carried on by the Debtors, including all proceeds thereof (the "**Property**") pursuant to an Order, dated June 14, 2018 (the "**Appointment Order**") issued by the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

2. On September 10, 2018, the Receiver filed its second report to the Court (the **"Second Report"**), wherein it to provided the Court with information in support of the Advice and Direction Motion concerning whether any or all of the Third-party Commissions collected and to be collected by the Receiver are held and to be held in trust for benefit of the TRP Salespersons, the Outside Brokerages, the Assignees and/or the Cashback Buyers.
3. On September 28, 2018, the Receiver served its supplementary report to the Second Report (the **"Supplementary Report"**) wherein it provided the Court with updated information concerning issues raised in the Second Report, as well as additional information identified since the filing of the Second Report.
4. On October 3, 2018 the affidavit of William Durrell, sworn October 3, 2018 (the **"Durrell Affidavit"**) was served by AGB on behalf of Jeff Klein in response to the Supplementary Report.
5. On October 9, 2018 the affidavit of Jared Kalish, sworn October 9, 2018 (the **"2nd Kalish Affidavit"**) was served by Counsel for the Lenders in response to the Supplementary Report.
6. This second supplementary report to the Second Report (the **"2nd Supplementary Report"**) is to be read in conjunction with the Second Report and the Supplementary Report.
7. The purpose of the 2nd Supplementary Report is to:
 - (a) Update the Court on information received in connection with issues raised in the Second Report and any comments in response to the Durrell Affidavit and the 2nd Kalish Affidavit;

- (b) provide support for the Receiver's request for an Order of the Court, authorizing the payment from the Third-party Commissions funds in the Receiver's Commission Account of the Receiver's Net HST Obligation (defined below), *nunc pro tunc*; and
- (c) should it be determined that all or part of the Competing Parties are entitled to a priority to all or part of the Third-party Commissions, provide support for the Receiver's request for an Order of the Court, *inter alia*:
 - (i) approving the methodology for the application of certain costs of the receivership administration to the respective successful Competing Parties; and
 - (ii) approving and authorizing the Receiver to make distributions to such Competing Parties net of the respective parties' portion of the Proposed Standard Cost (as such term is later defined) without further Orders of this Court.

II TERMS OF REFERENCE

8. In preparing the 2nd Supplementary Report, the Receiver has relied on information regarding the Debtors and the Property:

- (a) included in the motion records and other materials filed with the Court by the Applicant in connection with these proceedings. In particular, information included in:

- (i) the affidavit of Jared Kalish sworn June 13, 2018, which was Tab 2 to the Application Record, dated June 13, 2018, filed with this Court in support of the application for the Appointment Order;
- (ii) the affidavits of Tarik Gidamy and Dennise Paccione, which are included as Tab 1 and Tab 2 of the Responding Motion Record, dated September 19, 2018, of Dennise Paccione and Michael Sotoadeh, respectively, representatives of the TRP Salespersons; and
- (iii) information provided by the Debtors' directors and management, the Applicants and their respective legal counsel; and

(b) as otherwise made available or provided to the Receiver and its counsel.

9. Except as described in the 2nd Supplementary Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada Handbook.
10. All currency references contained herein are in Canadian Dollars, unless otherwise specified. All capitalized terms not otherwise defined herein shall have the meanings as defined in the Second Report and the Appointment Order, unless otherwise specified.

III UPDATE

11. As outlined in footnote 4 (page 11) of the Second Report, the Receiver has now confirmed with brokerWolf that the bank account types (General, Trust and Commission Trust) are preset in the program and can't be changed.

IV HST DUE ON COMMISSION COLLECTIONS

12. In carrying out its duties pursuant to the Appointment Order, the Receiver is controlling TRP Realty's receipts and disbursements, including the collection of HST. The Receiver is responsible for remitting to CRA the net tax (the "**Receiver's Net HST Obligation**"), representing the difference between the HST collected on Total Commissions and any HST paid and payable (the "**ITCs**") to the Competing Parties.

13. Prior to the Date of Appointment, TRP Realty calculated the net tax as being equal to the difference between:
 - (a) Actual HST collected on the Total Commissions in the period; essentially HST collected was on a cash basis and not an accrual basis;
 - (b) All ITCs claimed, with the primary ITC associated with commissions being paid to the Outside Brokerages and the TRP Salespersons from the Commissions Account;
 - (c) Historically, the payment of these commissions and therefore the generation of ITCs usually occurred in the same period, resulting in a lower amount being remitted to CRA; and
 - (d) The net tax was then paid from TRP Realty's Operating Account, as the net amount due to CRA represented only the HST on the amount TRP Realty received as its share.

14. Since the Date of Appointment, all HST on the Commissions Receivables collected have been deposited into the Commissions Account, but due to the competing positions being asserted as part of the Advice and Direction Motion no ITCs have been generated to be claimed or offset

against the HST collected, as no commissions have been paid out to the Outside Brokerages or the TRP Salespersons.

15. In order to properly match the payment of HST to CRA to the HST actually collected/received, the Receiver has drawn from the Commissions Account the HST collected in connection with such Commissions Receivables collections. For the period from the Date of Appointment to the HST reporting period ending August 31, 2018, a total of \$129,492.12 of HST has been paid from the Commissions Account to satisfy the Receiver's HST obligations to CRA.
16. As the Third-party Commissions in the Commissions Account are subject to the Advice and Direction Motion, the Receiver is seeking the Court's approval of the Receiver's actions with respect to the HST remittance, *nunc pro tunc*.

V ALLOCATION OF THE COLLECTION COSTS AND DISTRIBUTIONS

Methodology

17. If all or certain of the Competing Parties¹ are determined to be entitled to receive a portion of the Total Commissions collected by the Receiver, the Receiver believes that such parties should bear a portion of the Receiver's professional fees and costs in connection with the set-up, collection and distribution of the Commissions Receivables (collectively, the "**Commissions Costs**"), as they would be the beneficiaries of such efforts.
18. For the purposes of these discussions, the TRP Salespersons also includes the Assignees, unless otherwise noted.

¹ Alternatively, if the Lenders and Trilogy are ultimately successful in asserting their claim over the Commissions Receivables, no cost allocation is necessary as all set-up, collection and distribution costs would be borne by the Lenders and Trilogy.

19. As the collection of the Commissions Receivables is expected to run until sometime in 2023 and as it unreasonable for those parties entitled to such funds, if so determined, to wait until the conclusion of these receivership proceedings for the proportional application of the total actual costs incurred, the Receiver proposes that the Commissions Costs should be applied on a standard cost and transactional basis or on a per trade basis.
20. To that end, the Receiver has developed and proposes a standard cost for the Commission Costs (the “**Proposed Standard Cost**”) to be used and applied. The Proposed Standard Cost takes into account the tasks required in the commission collection and distribution process and the level of professional performing such tasks. Additionally, the Receiver has also taken into consideration the situations where the particular Commissions Receivable is shared or alternatively belongs almost entirely to TRP Realty². In such situations where the particular Commissions Receivable is subject only to interest of TRP Realty³, not all of the tasks will be required to be performed given no interest in same by the TRP Salesperson(s).
21. The Proposed Standard Cost’s estimated number of standard hours by task and by professional staff level is set-out below in Table 1.

² For 157 trades where TRP Realty is expected to receiver 80% to 100% of the Commissions Receivables. Such trades are primarily associated with “New Development” or pre-construction trades and have been denoted in the Proposed Standard Cost table as “All TRP Commissions”.

³ As will be discussed later in this report these trades will be reflected in Tier 1 (as such term is later defined).

Table 1.

Task	Standard Hours per Trade			
	Commissions Shared		All TRP Realty Commissions	
	Manager	Administrator	Manager	Administrator
Collection follow-up	0.10	0.15	0.10	0.15
Receivable tracking and trade identification	0.05	0.15	0.05	0.15
Documentation provision	0.05	0.20	0.05	0.20
Deposit to Commissions Account	0.05	0.30	0.05	0.30
Other*	0.10	0.20	0.10	0.20
Cheque to TRP Salesperson(s)	0.05	0.20	0.00	0.00
Agent correspondence re: commission	0.05	0.20	0.00	0.00
Transfer to TRP Operating Account	0.05	0.20	0.05	0.20
RECO information provision for TRP Salesperson(s)	0.05	0.05	0.00	0.00
TOTAL	0.55	1.65	0.40	1.20

* - includes cheque to Outside Brokerage and/or Seller(s)/Balance due re: deposit held, cash back cheque to Seller(s), etc.

22. The manager's role is supervisory in nature, including oversight of the collections process and the approval of the payments (only certain officers of the Receiver are authorized to sign cheques and transfer monies). The bulk of the work is performed by an administrator of the Receiver. The professional fee hourly rates⁴ of the manager and administrator that have been applied for the Proposed Standard Cost is \$395 and \$245 (both excluding HST), respectively (average hourly rate per trade \$282.50, excluding HST).
23. The standard hours per trade have been developed by the Receiver based its on actual collection experience and takes into account the complexities and the nature of the task to be performed. For some of the tasks, the standard hours or length of time to complete the task may seem significant; however, the Receiver notes that in addition to the Receiver's less familiarity⁵ with

⁴ The professional hourly rates to be applied takes into account inflationary changes in the current rates over the contemplated collection period.

⁵ The Receiver originally sought to hire the Deal Administrator to collect the Commissions Receivables, however the Deal Administrator declined the offer.

the accounts and parties, it has different record keeping requirements as part of its fiduciary duties and regulatory requirements, which adds to the level of work to be performed.

24. In addition to the standard hours associated with each task, the Receiver has taken into consideration who (TRP Realty and/or the TRP Salespersons) proportionately benefits from the each of the above tasks. Based on information provided by the Deal Administrator, the Receiver has categorized the Commissions Receivables into three (3) tiers:

- (a) Trades where TRP Realty is expected to receive 80% to 100% of the Commissions Receivables (“Tier 1”);
- (b) Trades where TRP Realty is expected to receive 50% or more but less than 80% of the Commissions Receivables (“Tier 2”); and
- (c) Trades where TRP Realty is expected to receive less than 50% of the Commissions Receivables (“Tier 3”).

25. The above categorization of the Commissions Receivables into three (3) tiers was necessary in order to simplify the application of the Proposed Standard Cost, while maintaining a fair and equitable application of such costs.

26. As of the Date of Appointment and based on information provided by the Deal Administrator, details about each of the tiers associated with the 731⁶ properties to be settled are as follows:

⁶ The Commissions Receivables relates to more than 730 properties and more than 940 transactions, due to there being multiple commission instalments on pre-construction condominium properties

Tier 1	<ul style="list-style-type: none"> • Represents 157 trades, of which 144 are a 0/100 split (i.e. TRP Salespersons 0%/TRP Realty 100%); • Principally “New Development” trades (152 out of 157 trades); • Commissions Receivables in this tier total \$1,152,078;
Tier 2	<ul style="list-style-type: none"> • Represents 156 trades, of which 110 trades are a 50/50 split; • Principally “New Development” trades (151 out of 156 trades); • Includes Commissions Receivables in this tier total \$1,436,176;
Tier 3	<ul style="list-style-type: none"> • Represents 418 trades, of which 225 trades are less than, 187 trades equal to, and 6 trades are more than (but less than 50%) a 70/30 split; • Combination of “New Development” (298 trades), “Resale” trades (90 trades) and other (30 trades); • Includes Commissions Receivables in this tier total \$4,064,861;

27. The Receiver’s proposed percentage allocation of the time/cost for each task by tier is set-out below in Table 2.

Table 2.

Task	Percentage Allocation per Task					
	Tier 1		Tier 2		Tier 3	
	TRP Salesperson	TRP Realty	TRP Salesperson	TRP Realty	TRP Salesperson	TRP Realty
Collection follow-up	0%	100%	46%	54%	75%	25%
Receivable tracking and trade identification	0%	100%	46%	54%	75%	25%
Documentation provision	0%	100%	46%	54%	75%	25%
Deposit to Commissions Account	0%	100%	46%	54%	75%	25%
Other*	0%	100%	46%	54%	75%	25%
Cheque to TRP Salesperson(s)	0%	0%	100%	0%	100%	0%
Agent correspondence re: commission	0%	0%	100%	0%	100%	0%
Transfer to TRP Operating Account	0%	100%	0%	100%	0%	100%
RECO information provision for TRP Salesperson(s)	0%	0%	100%	0%	100%	0%

* - includes cheque to Outside Brokerage and/or Seller(s)/Balance due re: deposit held, cash back cheque to Seller(s), etc.

28. The above splits were developed based on the Receiver’s analysis of the Commissions Receivables and the commissions splits as per the information provided by the Deal Administrator and TRP Realty, including the Contractor’s Agreement in effect at the Date of Appointment.

29. Under the Proposed Standard Cost, the Receiver proposes that for Tier 2 and Tier 3 the total cost per trade of \$621.50, plus HST, would be allocated⁷ to the TRP Salespersons and TRP Realty (effectively the Lenders and Trilogy) on a per trade basis as follows:

- Tier 2 - TRP Salespersons - \$345.80 plus HST, and TRP Realty - \$275.70 plus HST; and
- Tier 3 - TRP Salespersons - \$456.94 plus HST, and TRP Realty - \$164.56 plus HST.

For Tier 1, the Receiver proposes that the total cost per trade of \$452.00⁸, plus HST, would be allocated solely to TRP Realty.

30. Attached hereto as **Appendix "A"** is a copy of the Receiver's Proposed Standard Cost Summary summarizing the above figures.

31. The Receiver notes that as of September 30, 2018, the Receiver has settled 91 trades (primarily associated with "Resales") and have expended 146.5 hours in connection with such trades; however, this does not include certain anticipated additional time associated with distributions and potential RECO claims or information provision requests associated with the TRP Salespersons. Based on the Proposed Standard Cost and after adjusting for tasks not completed (as noted above), the total adjusted hours that would be estimated to be expended for the 91 trades has been calculated to amount to 141.05 hours.

Proposed Distributions of Third-party Commissions

32. As noted earlier in this Report, it is expected that the collection of the Commissions Receivables will run until sometime in 2023. As it would seem unreasonable for the parties entitled to the

⁷ According to the commission split rates noted above in Table 2

⁸ The lower figure reflects the elimination of the tasks that would not be applicable given the TRP Salespersons' lack of financial interest in such Commissions Receivables.

Commissions Receivables, once and if determined, to wait until the conclusion of these receivership proceedings to receive a distribution of their respective share of such Commissions Receivables monies collected, the Receiver proposes that such a distribution be made as soon as practically possible once the monies are in the hands of the Receiver in respect to each trade.

33. The Receiver further proposes that the allocation of the Total Commissions between the respective parties shall be based on the Trade Record Sheet⁹ as per TRP Realty's books and records, unless mutually agreed upon between the party or parties and the Receiver (the "**Party's Share of Commissions**").

34. In connection with the Receiver's administration of this commissions collection and disbursement process, the Receiver has and will continue to incur out-of-pocket costs, including but not limited to postage on distribution cheques, photocopying, bank charges and monthly software licensing fees for brokerWolf¹⁰ (collectively, the "**Administrative Disbursements**"). In order to equitably share the burden of the Administrative Disbursements, the Receiver proposes a flat fee of \$35, plus HST (the "**Administrative Disbursement Fee**") be charged by the receivership estate to defray such costs.

35. The Receiver proposes that the amounts to be distributed of the Third-party Commissions, subject to the outcome of the Advice and Direction Motion, shall be as follows:

⁹ The details of which have been confirmed with other supporting documents and information available to the Receiver.

¹⁰ The cost of the brokerWolf software license is \$592.40 plus HST per month (over 5 years - \$35,544.00 plus HST)

- (a) In the case of the TRP Salespersons and Assignees, the amount distributed shall be equal to the Party's Share of Commissions, less the TRP Salesperson's share of the Proposed Standard Cost¹¹ and the Administrative Disbursement Fee;
- (b) In the case of Outside Brokerages, the amount distributed shall be equal to the Party's Share of Commissions, without deduction for a portion of the Proposed Standard Cost, but less the Administrative Disbursement Fee; and
- (c) In the case of Cashback Buyers, the amount distributed shall be equal to the Party's Share of Commissions, without deduction for a portion of the Proposed Standard Cost but less the Administrative Disbursement Fee.

36. Given the quantum of the potential gross amounts (inclusive of HST, if applicable) distributable to the Outside Brokerages and the Cashback Buyers of approximately \$117,000 (or 1.75% Total Commissions) and \$443,000 (or 6.66% Total Commissions), respectively, the Receiver believes that it is not material and the time/cost to administer the pro-ration of the Proposed Standard Cost against such parties outweighs the benefits of doing so.

VI CONCLUSION AND RECOMMENDATION

37. Based on the foregoing, the respectfully recommends that, subject to the outcome of the Advice and Direction Motion, the Court make an order granting the relief detailed in paragraph 7(b) and (c) of this Report.

¹¹ Plus applicable HST

All of which is respectfully submitted this 11th day of October 2018

MNP LTD.

in its capacity as Court-appointed Receiver of
TheRedPin, Inc. and TheRedPin.com Realty Inc.
and not in its personal or corporate capacities
Per:



Matthew Lem, CIRP
Licensed Insolvency Trustee

Appendix "A"

TheRedPin.com Realty Inc., in Receivership
Proposed Standard Cost Summary

Assumption: The TRP Salespersons are successful in claim to a portion the Commissions Receivables

Professional Fee Rates Applied:

Manager	\$	395.00	per hour
Administrator	\$	245.00	per hour

Tier 1 - TRP Realty is to receive 80% to 100% of the Commissions Receivables

Task	Standard Hours per Trade		Standard Cost per Trade		
	Manager	Administrator	Manager	Administrator	Total
Collection follow-up	0.10	0.15	39.50	36.75	76.25
Receivable tracking and trade identification	0.05	0.15	19.75	36.75	56.50
Documentation provision	0.05	0.20	19.75	49.00	68.75
Deposit to Commissions Account	0.05	0.30	19.75	73.50	93.25
Other*	0.10	0.20	39.50	49.00	88.50
Cheque to TRP Salesperson(s)	0.00	0.00	-	-	-
Agent correspondence re: commission	0.00	0.00	-	-	-
Transfer to TRP Operating Account	0.05	0.20	19.75	49.00	68.75
RECO information provision for TRP Salesperson(s)	0.00	0.00	-	-	-
TOTAL	0.40	1.20	158.00	294.00	452.00

Percentage Allocation		Allocation of Cost	
TRP Salesperson	TRP Realty	TRP Salesperson	TRP Realty
0%	100%	-	76.25
0%	100%	-	56.50
0%	100%	-	68.75
0%	100%	-	93.25
0%	100%	-	88.50
0%	0%	-	-
0%	0%	-	-
0%	100%	-	68.75
0%	0%	-	-
		-	452.00

Tier 2 - TRP Realty is to receive 50% or more but less than 80% of the Commissions Receivables

Task	Standard Hours per Trade		Standard Cost per Trade		
	Manager	Administrator	Manager	Administrator	Total
Collection follow-up	0.10	0.15	39.50	36.75	76.25
Receivable tracking and trade identification	0.05	0.15	19.75	36.75	56.50
Documentation provision	0.05	0.20	19.75	49.00	68.75
Deposit to Commissions Account	0.05	0.30	19.75	73.50	93.25
Other*	0.10	0.20	39.50	49.00	88.50
Cheque to TRP Salesperson(s)	0.05	0.20	19.75	49.00	68.75
Agent correspondence re: commission	0.05	0.20	19.75	49.00	68.75
Transfer to TRP Operating Account	0.05	0.20	19.75	49.00	68.75
RECO information provision for TRP Salesperson(s)	0.05	0.05	19.75	12.25	32.00
TOTAL	0.55	1.65	217.25	404.25	621.50

Percentage Allocation		Allocation of Cost	
TRP Salesperson	TRP Realty	TRP Salesperson	TRP Realty
75%	25%	57.19	19.06
75%	25%	42.38	14.13
75%	25%	51.56	17.19
75%	25%	69.94	23.31
75%	25%	66.37	22.12
100%	0%	68.75	-
100%	0%	68.75	-
0%	100%	-	68.75
100%	0%	32.00	-
		456.94	164.56

Tier 3 - TRP Realty is to receive less than 50% of the Commissions Receivables

Task	Standard Hours per Trade		Standard Cost per Trade		
	Manager	Administrator	Manager	Administrator	Total
Collection follow-up	0.10	0.15	39.50	36.75	76.25
Receivable tracking and trade identification	0.05	0.15	19.75	36.75	56.50
Documentation provision	0.05	0.20	19.75	49.00	68.75
Deposit to Commissions Account	0.05	0.30	19.75	73.50	93.25
Other*	0.10	0.20	39.50	49.00	88.50
Cheque to TRP Salesperson(s)	0.05	0.20	19.75	49.00	68.75
Agent correspondence re: commission	0.05	0.20	19.75	49.00	68.75
Transfer to TRP Operating Account	0.05	0.20	19.75	49.00	68.75
RECO information provision for TRP Salesperson(s)	0.05	0.05	19.75	12.25	32.00
TOTAL	0.55	1.65	217.25	404.25	621.50

Percentage Allocation		Allocation of Cost	
TRP Salesperson	TRP Realty	TRP Salesperson	TRP Realty
46%	54%	35.08	41.18
46%	54%	25.99	30.51
46%	54%	31.63	37.13
46%	54%	42.90	50.36
46%	54%	40.70	47.77
100%	0%	68.75	-
100%	0%	68.75	-
0%	100%	-	68.75
100%	0%	32.00	-
		345.80	275.70

* - includes cheque to Outside Brokerage and/or Seller(s)/Balance due re: deposit held, cash back cheque to Seller(s), etc.