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UNIQUE CHALLENGES IN CRYPTOCURRENCY BANKRUPTCIES

The cryptocurrency winter of the past year shows some signs of abating, but many hurdles to recovery still exist for customers of bankrupt crypto platforms.

By Deborah Kovsky-Apap *

The past year has been an *annus horribilis* for cryptocurrency, with the collapse of cryptocurrencies Luna and TerraUSD in May 2022, followed by (among other things) the implosion of Singapore-based crypto hedge fund Three Arrows Capital and the chapter 11 filings in the U.S. of crypto lending and trading platforms Voyager Digital Holdings, Inc.,¹ Celsius Network LLC,² FTX Trading Ltd.,³ BlockFi Inc.,⁴ and Genesis Global Holdco, LLC.⁵ According to the World Economic Forum, “[c]onsumers, businesses, and investors around the world lost nearly \$2 trillion in the digital assets market last year.”⁶

Despite some recent signs of a turnaround in the prices of cryptocurrency,⁷ customers of bankrupt crypto platforms face additional structural hurdles to recovery. Key questions that have arisen in the cases include who owns the digital assets on the debtors’ platforms; how and when cryptocurrency claims are valued and paid; and whether transfers of customers’ coins may be subject to avoidance and recovery under the Bankruptcy Code.

NOT YOUR KEYS, NOT YOUR COINS

Celsius, a crypto lending platform, encouraged retail customers to place eligible cryptocurrency into interest-bearing accounts (“Earn Accounts”), which Celsius then pooled, purportedly in order to generate returns. Alex Mashinsky, Celsius’s co-founder, majority owner and CEO, “repeatedly told customers in his weekly livestream conversations . . . that customer-deposited

¹ *In re Voyager Digital Holdings*, No. 22-10943 (Bankr. S.D.N.Y. July 5, 2022).

² *In re Celsius Network LLC*, No. 22-10964 (Bankr. S.D.N.Y. July 13, 2022).

³ *In re FTX Trading Ltd.*, No. 22-11068 (Bankr. D. Del. Nov. 11, 2022).

⁴ *In re BlockFi Inc.*, No. 22-19361 (Bankr. D.N.J. Nov. 28, 2022).

⁵ *In re Genesis Global Holdco, LLC*, No. 23-10063 (Bankr. S.D.N.Y. Jan. 19, 2023).

⁶ World Economic Forum, *2022 Was a Hard Year for Crypto – But It May Have Been Just What the Industry Needed* (Apr. 14, 2023), <https://www.weforum.org/agenda/2023/04/2022-was-a->

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hard-year-for-cryptocurrencies-but-it-may-have-been-just-what-the-industry-needed/.

⁷ Forbes, *April 2023 Crypto Market Forecast* (Apr. 3, 2023), <https://www.forbes.com/advisor/investing/cryptocurrency/crypto-market-outlook-forecast/> (noting that “Bitcoin prices are up 68.4% year-to-date, while Ethereum prices are up 49.2%”).

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