UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 9:19-cv-80633-ROSENBERG

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO., ET AL.
_____/

FINDINGS OF FACT AND CONCLUSIONS OF LAWREGARDING ASSET FREEZE AGAINST WINNERS CHURCH, FREDERICK SHIPMAN, and WHITNEY SHIPMAN

I. PROCEDURAL HISTORY

A. The Complaint

1. On May 13, 2019, the U.S. Securities and Exchange Commission filed a Complaint against Defendants Jose Angel Aman ("Aman"), Natural Diamonds Investment Co. ("Natural Diamonds"), Eagle Financial Diamond Group Inc. ("Eagle"), and Argyle Coin LLC ("Argyle Coin"), alleging they engaged in a three-tiered Ponzi scheme and that Aman and Argyle Coin lured investors through a series of misrepresentations and omissions concerning the safety of the securities investments and the use of investors' funds, in violation of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 and Section 17(a) of the Securities Act of 1933. DE 1.

2. The Complaint also alleges that all Defendants engaged in the unregistered offer and sale of the Natural Diamonds, Eagle, and Argyle Coin securities in violation of Sections 5(a) and 5(c) of the Securities Act. DE 1.

3. Among other relief, the Complaint seeks an Order directing the Defendants to disgorge their ill-gotten gains, which are alleged to total at least $30 million in investors' contributions to the Natural Diamonds, Eagle, and Argyle Coin securities offerings. DE 1.

4. The Complaint alleges that the Relief Defendants received ill-gotten gains from the Defendants to which they have no legitimate claim, and therefore seeks an Order directing the Relief Defendants to disgorge the ill-gotten gains if the Commission is successful on its claims against the Defendants. DE 1.

B. The *Ex Parte* Motion for Temporary Restraining Order And Order Granting Same

5. Simultaneous with the Complaint, the Commission filed an *Ex Parte* Motion for Temporary Restraining Order, Asset Freeze, and Other Relief (the "TRO Motion"), with evidence. TRO Mot., DE 4; Exhibits, DE 5. The Motion sought, among other things, asset freezes against the Winners Church-Shipman Relief Defendants, limited to the amounts received by each of them from the Defendants. DE 4.

6. On May 14, 2019, the Court granted the Motion and entered a Temporary Restraining Order. Order, DE 12.

7. As set forth in the record considered by the Court in issuing the Temporary Restraining Order, Defendant Eagle and its principals, Defendants Aman, Harold Seigel, and Jonathan Seigel offered investors securities in the form of investment contracts. Eagle Investment Contract, DE 1-3. No registration statement was filed with the Commission or in effect during the offer and sale of the Eagle securities. Attestation, DE 5-5. To lure investors, the Seigels told potential investors that Eagle would use their investment funds to buy, cut, polish, and resell diamonds for profits, and that Eagle would pay them profits and would return their principal within two years. *See* TRO Mot., DE 4, 8-14. Eagle, Aman, and the Seigels raised more than $25 million

from investors. *Id.* However, Aman misappropriated investor funds for his personal use and also used investor funds to operate a Ponzi scheme, whereby he used investor funds to pay Eagle and Natural Diamonds investors their purported investment returns. Etienne Dec., DE 5-9. Investor funds were deposited into Eagle's bank account, and Aman transferred at least $1 million from this account to Winners Church, at least $705,000 to Frederick Shipman, and at least $40,000 to Whitney Shipman. *Id.*

8. The Temporary Restraining Order included, among other things, asset freezes against the Winners Church-Shipman Relief Defendants in the following amounts: $1,000,000 as to Winners Church, $705,000 as to Frederick Shipman, and $40,000 as to Whitney Shipman. Order, DE 12.

9. The Court ordered the Defendants and Relief Defendants to show cause on May 23, 2019 why a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 should not be granted against them ("Preliminary Injunction Hearing" or "Hearing"). Order, DE 12.

C. Preliminary Injunction Hearing

10. On May 23, 2019, the Winners Church-Shipman Relief Defendants filed a Memorandum of Law opposing the continuation of the asset freezes and the entry of a preliminary injunction, DE 31, and the Court conducted the Preliminary Injunction Hearing, DE 33.

11. During the Hearing, the Relief Defendants admitted that they received funds from Eagle and did not provide any services in exchange for the funds. DE 49-1, Hr'g Tr. 34:10-35:18; 59:9-14.

12. In their Opposition Memorandum, the Winners Church-Shipman Relief Defendants opposed the asset freeze on the following grounds:

a. The Court should apply the Florida Uniform Fraudulent Transfer Act ("FUFTA") because if the Commission had filed a state law claim against Winners Church under

the law, then the claim would fail because donations to a religious organization are exempt under FUFTA. Mem., DE 31, 2.

b. The Court should apply the religious organization exemption of FUFTA to Frederick and Whitney Shipman because they are a bishop and pastor, respectively. *Id.*

c. The Relief Defendants have a legitimate claim to the funds because in bankruptcy cases, courts have found no fraudulent transfer where a debtor donated to a charity in exchange for items and services like banquet tickets and spiritual counseling, or where the donation was earmarked for a specific third-party charitable organization and the church merely acted as a conduit for transferring the funds to that third party. *Id.* at 9-10.

d. Winners Church wants to use the funds to build a larger church, and if the funds are frozen it will not be able to do so in 2020. *Id.* at 6.

e. The Relief Defendants did not know the money Eagle sent them was from victims of a Ponzi scheme and unregistered securities offering. *Id.* at 7.

13. During the Show Cause Hearing, Frederick Shipman and Whitney Shipman both testified that: (1) they and Winners Church received funds from Defendants Aman, Eagle, Natural Diamonds and Argyle; (2) the Sworn Accountings they filed with this Court reflected the amounts received; and (3) they and Winners Church provided no services in exchange for the funds. DE 49-1, Hr'g Tr.at 31-45, 51-52.

14. Following the Hearing, the Court directed the Commission and the Winners Church-Shipman Relief Defendants to file proposed Findings of Fact and Conclusions of Law concerning the Preliminary Injunction the Commission seeks, which includes an asset freeze and document retention order. Order, DE 32.

15. On May 28, 2019, with agreement from Winners Church and the Shipmans, the Court entered a Preliminary Asset Freeze extending the Temporary Restraining Order for 14 days, to give the parties an opportunity to litigate whether the asset freeze should be extended during the pendency of this litigation. Order, DE 41.

16. The Court also entered a Preliminary Injunction Order against all Defendants and Relief Defendant H.S. Management Group LLC ("H.S. Management"), the findings of which the Winners Church and Shipman Relief Defendants did not oppose. Prelim. Inj., DE 40.

17. As set forth in the Preliminary Injunction Order against the Defendants, the Court found that the Commission made a *prima facie* showing that, among other things: (a) from 2014 until 2018, Defendants Aman, Eagle, Harold Seigel, and Jonathan Seigel offered and sold securities in Eagle in violation of the registration provisions of the federal securities laws; (b) Aman operated Eagle as a Ponzi scheme and also misused and misappropriated investors' funds; and (c) from no later than May 2014 until December 2018, Eagle raised at least $25.6 million from 276 investor victims through the Eagle securities offering. Prelim. Inj., DE 40.

II. FINDINGS OF FACT

A. The Relief Defendants

18. Frederick Shipman testified that he has been affiliated with Winners Church since 1994, and it is a non-profit corporation and a charitable religious organization. DE 49-1, Hr'g Tr. 20:8-20:23.

19. Frederick Shipman has been employed as a bishop of Winners Church since 2011, DE 49-1, Hr'g Tr. 20:4-8, and Whitney Shipman is currently employed by Winners Church as senior pastor, DE 49-1, Hr'g Tr. 47:6-19.

20. Relief Defendant Frederick Shipman is the President of Winners Church; DE 5-13; and he has also been a Director of Winners Church from at least 2008 until present; DE 31-1 ¶ 4; DE 5-13, 41-52.

21. Frederick Shipman testified that he and Whitney Shipman have known Defendant Aman for about twelve years. DE 49-1, Hr'g Tr. 21:7-24. Frederick Shipman testified that he first met Aman when he began attending the Winners Church in about 2007 and believes Aman was homeless and living out of his car at that time. *Id.* at 21:7-24.

22. From 2016 until about May 2019, Defendant Aman was a Director of Winners Church and a member of its Board of Directors. DE 49-1, Hr'g Tr. 22:15-22; 32:6-8; DE 31, 8; DE 31-1, ¶¶ 5-6; DE. 31-2, ¶¶ 5-6.

B. The Relief Defendants Received Ill-Gotten Gains

1. Winners Church Received More Than $1.2 Million from the Defendants

23. In support of its Motion for a Temporary Restraining Order, the Commission presented sufficient evidence that from May 2014 until May 2019, Eagle transferred at least $1 million of victims' funds to Winners Church. DE 5-9, ¶¶ 9-10; DE 49-1, Hr'g Tr. 43:2-7, 60:13-18; Order, DE 40, 10-11.

24. Pursuant to the Temporary Restraining Order, financial institutions were to freeze $1 million in the Winners Trust bank accounts. DE 12. Initially, the banks froze $2,827,044.69; however, the freeze was corrected so that only $1 million of this amount is currently frozen in the bank accounts. DE 49-1, Hr'g Tr. 33:5-11; DE 50.

25. The Temporary Restraining Order directed the Relief Defendants to provide Sworn Accountings listing the amounts received from the Defendants, and Winners Church filed Sworn Accountings. Prelim. Inj., DE 12; DE 34-1; DE 26.

26. According to Winners Church's Sworn Accountings, from May 13, 2014 through present, Winners Church received $1,249,000 from Aman, Eagle, Natural Diamonds, and Argyle Coin. DE 34-1; DE 26; DE 49-2, Strandell Dec.

27. The transfers from the Eagle bank accounts to Winners Church included investors' funds. DE 49-1, Hr'g Tr. 60:13-18, 59:15-23; DE 5-9, ¶ 9; Prelim. Inj., DE 40, 10-11.

28. Winners Church continues to operate and has about 3,000 members; the Church's expenses are paid for by donations. DE 49-1, Hr'g Tr. 20:4-15, 23:20-22.

29. Winners Church intends to spend the funds it received for the construction of a new church. Mem., DE 31, 6, 11.

30. Winners Church plans to spend the funds if they are not frozen, and that if the freeze remains in place, then Winners Church will have to scale back its expenditures. Mem., DE 31, 11.

2. Frederick Shipman Received About $729,000

31. In support of its Motion for a Temporary Restraining Order, the Commission presented evidence that from May 2014 until May 2019, Eagle transferred at least $705,000 of victims' funds to Frederick Shipman. Etienne Dec., DE 5-9, ¶ 10.

32. Pursuant to the Temporary Restraining Order, financial institutions were to freeze $705,000 in Frederick Shipman's bank accounts. Prelim. Inj., DE 12. The bank has frozen $147,000, which was the balance at the time of the asset freeze. DE 49-1, Hr'g Tr. 44:11-13.

33. Pursuant to Frederick Shipman's Sworn Accounting, he admits that from May 13, 2014 through present, he has received a total of about $729,000 from Aman, Natural Diamonds, Eagle, or Argyle Coin. DE 34-3; Strandell Dec., DE 49-2. During the Show Cause Hearing, Frederick Shipman testified and confirmed that the Sworn Accounting reflects the amounts he received. DE 49-1, Hr'g Tr. 43:19-44:10.

34. The transfers to Frederick Shipman included Eagle investors' funds. DE 49-1, Hr'g Tr. 43:14-44:10; Etienne Dec., DE 5-9, ¶¶ 9-10.

35. Some of the checks payable from Eagle to Frederick Shipman include a notation that the check is for "commissions." DE 49-1, Hr'g Tr. 41:11-42:25 (testimony regarding DE 34-2).

36. Frederick Shipman testified that he continues to receive funds and salary from Winners Church and is able to pay his living expenses despite the freeze of $147,000 in this banking account. DE 49-1, Hr'g Tr. 44:11-45:5.

3. Whitney Shipman Received About $41,000

37. In support of its Motion for a Temporary Restraining Order, the Commission presented evidence that from May 2014 until May 2019, Eagle transferred at least $40,000 of victims' funds to Whitney Shipman. Etienne Dec., DE 5-9 ¶ 10; DE 49-1, Hr'g Tr. 61:4-11; DE 40, 10-11.

38. In the Temporary Restraining Order, the Court ordered that $40,000, representing the amount Whitney Shipman received in ill-gotten gains, be frozen, and this amount is currently frozen in Whitney Shipman's bank account. TRO Order, DE 12.

39. Pursuant to the Temporary Restraining Order, financial institutions were to freeze $40,000 in Whitney Shipman's bank accounts. TRO Order, DE 12. Initially, the banks froze $90,463.91; however, the freeze was corrected so that only $40,000 of this amount is currently frozen in the bank accounts. DE 49-1, Hr'g Tr. 33:5-11.

40. The Temporary Restraining Order also directed the Relief Defendants to provide Sworn Accountings listing the amounts received from the Defendants, and Whitney Shipman filed a Sworn Accounting. TRO Order, DE12; DE 34-4.

41. In the Sworn Accounting, Whitney Shipman admits that he received funds totaling $41,000. DE 25.

42. The transfers to Whitney Shipman included Eagle investors' funds. DE 49-1, Hr'g Tr. 61:4-15; DE 5-9 at ¶ 10; Prelim. Inj., DE 40, 10-11.

C. The Relief Defendants Provided No Services in Exchange For The Funds

43. Frederick Shipman admits that he and Winners Church provided no services to Aman, Natural Diamonds, Eagle, or Argyle Coin in exchange for the money Aman and Eagle paid him. DE 49-1, Hr'g Tr. 43:2-10.

44. Whitney Shipman admits that he and Winners Church provided no services in exchange for the money Aman and Eagle paid them. DE 49-1, Hr'g Tr. 51:5-14; W. Shipman Dec. DE 49-3.

45. The Receiver for Defendant Argyle Coin, who is also the Court-appointed Monitor for Defendants Natural Diamonds and Eagle, testified at the Show Cause Hearing that the Companies' records do not reflect any service or benefit from Winners Church. DE 49-1, Hr'g Tr. 73:23-74:1.

III. CONCLUSIONS OF LAW

46. At the preliminary injunction stage, a District Court may rely on declarations and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is appropriate given the character and objectives of the injunctive proceeding. *Levi Strauss & Co. v. Sunrise Intern. Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (citing *Asseo v. Pan American Grain Co., Inc.*, 805 F.2d 23 (1st Cir. 1986)).

47. The Court has determined that the declarations and other evidence relied upon in the Findings of Fact are appropriate evidence for the Court to consider at this preliminary

injunctive stage, where the Commission is seeking to continue expedited relief that freezes ill-gotten gains so they are not dissipated.

48. As set forth in the Preliminary Injunction Order, DE 40, the Commission is likely to succeed on the merits of its claims against the Defendants.

A. Relief Defendants

49. Resolution of the issues before this Court turn on whether Winners Church, Frederick Shipman, and Whitney Shipman are "relief defendants."

50. A relief defendant, sometimes referred to as a "nominal defendant," has no ownership interest in the property that is the subject of litigation but may be joined in the lawsuit to aid the recovery of relief. *SEC v. Cavanagh*, 445 F.3d 105, 109 n. 7 (2d Cir. 2006) (finding business associate and wife were relief defendants because they received shares from the defendant which were ill-gotten gains, in exchange for no consideration).

51. A relief defendant is not accused of wrongdoing, but a federal court may order equitable relief against such a person where that person (1) has received ill-gotten funds, and (2) does not have a legitimate claim to those funds. *Id.*at 109-110.

52. As the Court in *C.F.T.C. v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 191 (4th Cir. 2002), explained:

> Because a nominal defendant has no ownership interest in the funds at issue, once the district court has acquired subject matter jurisdiction over the litigation regarding the conduct that produced the funds, it is not necessary for the court to separately obtain subject matter jurisdiction over the claim to the funds held by the nominal defendant; rather, the nominal defendant is joined purely as a means of facilitating collection. In short, a nominal defendant is part of a suit only as the holder of assets that must be recovered in order to afford complete relief.

53. Section 21(d)(5) of the Securities Exchange Act of 1934 provides: "In any action or proceeding brought or instituted by the Commission under any provision of the securities laws,

the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors." 15 U.S.C. § 78u(d)(5).

54. At the preliminary injunction stage, the Court may use its broad equitable power to freeze assets nominally held by a relief defendant – *i.e.*, a third party that received ill-gotten funds and lacks a legitimate claim to those funds. *SEC v. Cavanagh,* 155 F.3d 129, 136-37 (2d Cir.1998) (finding, where defendant in securities fraud action gave shares as gift to his business associate, who then had shares transferred to his wife, a relief defendant, neither business associate nor wife had legitimate claim to shares and thus district court did not abuse its discretion in freezing, for possible disgorgement, the wife's proceeds from sale of stock).

55. The burden of proof that must be satisfied to obtain an asset freeze is lower than what is necessary to obtain a Temporary Restraining Order. *SEC v. Heden*, 51 F. Supp. 2d 296, 298 (2d Cir. 1999) ("Unlike a preliminary injunction enjoining a violation of the securities laws, which requires the SEC to make a substantial showing of likelihood of success as to both a current violation and the risk of repetition, an asset freeze requires a lesser showing."); *SEC v. Unifund SAL*, 910 F.2d 1028 (2d Cir. 1990) (court upheld asset freeze, notwithstanding fact that it found evidence insufficient to uphold the entry of a preliminary injunction). *Cavanagh*, 155 F.3d at 132 ("An asset freeze requires a lesser showing [than a TRO]; the SEC must establish only that it is likely to succeed on the merits.").

56. "The standard of review for an injunction freezing assets of a relief defendant is whether the SEC has shown that it is likely to succeed on the merits; the SEC need not make any showing that a future violation is likely, because it is not accusing the nominal defendant of any wrongdoing." *Cavanagh*, 155 F. 3d at 136.

57. Thus, to obtain an asset freeze against a relief defendant, the Commission must present sufficient evidence from which a reasonable fact finder could infer that the Relief Defendants (1) "received ill-gotten funds" and (2) "does not have a legitimate claim to those funds" (the "*Cavanaugh* Factors"). *Cavanaugh*, 155 F.3d at 136. *Accord, Byers*, No. 08-CIV-7104(DC), 2009 WL 33434, at *2 (S.D.N.Y. Jan. 7, 2009) ("I conclude that the SEC has adduced sufficient evidence from which a reasonable fact finder could infer that Intervenors [Relief Defendants] have received ill-gotten funds in the form of mortgage payments on the Lakewood Property and that they do not have a legitimate claim to the property. Hence, the *Cavanagh* factors have been met."); *C.F.T.C. v. Vision Financial Partners, LLC*, No. 16-60297-CIV, 2017 WL 2875428, at *5 (S.D. Fla. Mar. 23, 2017) (finding *Cavanaugh* factors met where relief defendant received ill-gotten gains and provided no services); *F.T.C. v. IAB Marketing Associates, LP*, No. 12-61830-CIV, 2013 WL 12032604, at *1 (S.D. Fla. Dec. 27, 2013) (finding *Cavanaugh* factors met where relief defendant received funds from defendant pursuant to a consulting agreement and she provided no services).

B. The Commission Has Met Its Burden Of Showing It Is Likely To Succeed In Proving The *Canavaugh* Factors Against The Relief Defendants

1. The First Cavanaugh Factor: Ill-Gotten Funds

58. As to the first *Cavanaugh* Factor, the Commission need only demonstrate it is likely to succeed in showing that payments to the Relief Defendants were made from accounts or funds that contained investor funds. *See Byers*, 2009 WL 33434, at *3 ("a freeze order need not be limited only to funds that can be directly traced to defendant's illegal activity for the reason that the defendant should not benefit from the fact that he commingled his illegal profits with other assets") (internal quotations omitted). *See also SEC v. Sekhri*, No. 98 Civ. 2320 (RPP), 2000 WL 1036295 (S.D.N.Y. July 26, 2000). This principle, based on the concept that money is fungible, applies to

the Relief Defendants here. *See, e.g., C.F.T.C. v. Amerman*, No. 1:07-cv-2280-WBH, 2013 WL 12099156, at *8 (N.D. Ga. Apr. 19, 2013) (ordering relief defendant to disgorge ill-gotten gains; "The relief defendant need not still possess the ill-gotten gains so long as the relief defendant 'previously received benefits that were derived from another person's unlawful conduct.'") (quoting *SEC v. Aragon Capital Advisers*, No. 07 Civ. 919(FM), 2011 WL 3278907, at *18 (S.D.N.Y. July 26, 2011).

59. The Commission presented undisputed evidence that between May 15, 2014 and May 2019, Relief Defendant Winners Church received about $1.2 million, which included investors' funds, from the Defendants' bank accounts. *See supra*, ¶¶ 23-42. Based on this evidence, the Court finds that the Commission has presented sufficient evidence showing it is likely to succeed on the first *Cavanaugh* Factor with respect to Winners Church.

60. The Commission presented undisputed evidence that between May 15, 2014 and May 2019, Relief Defendant Frederick Shipman received about $729,000, which included investors' funds, from the Defendants' bank accounts. *See supra*, ¶¶ 31-36. Based on this evidence, the Court finds that the Commission has presented sufficient evidence showing it is likely to succeed on the first *Cavanaugh* Factor with respect to Frederick Shipman.

61. The Commission presented undisputed evidence that between May 15, 2014 and May 2019, Relief Defendant Whitney Shipman received about $41,000, which included investors' funds, from the Defendants' bank accounts. *See supra*, ¶¶ 37-42. Based on this evidence, the Court finds that the Commission has presented sufficient evidence showing it is likely to succeed on the first *Cavanaugh* Factor with respect to Whitney Shipman.

2. The Second Cavanaugh Factor: Legitimate Claim to The Funds

62. "To have no legitimate claim to the funds means, in the securities context, that an individual "gave no consideration for the [ill-gotten funds] and thus received them as a gift." *Cavanaugh*, 155 F.3d at 137. "When there has been no consideration given for the receipt of the ill-gotten gains, there is no legitimate claim to the funds and a relief defendant must return the proceeds." *SEC v. Cavanagh*, No. 98 Civ. 1818, 2004 WL 1594818, at *31 (S.D.N.Y. July 16, 2004). *Accord*, *C.F.T.C. v. Walsh*, 618 F.3d 218, 226 (2d Cir. 2010) ("[T] he receipt of property as a gift, without the payment of consideration, does not create a 'legitimate claim' sufficient to immunize the property from disgorgement"); *SEC v. Infinity Group Co.*, 993 F. Supp. 324, 326, 331 (E.D. Pa. 1998) (ordering relief defendant Bondage Breaker Ministries to disgorge $1.265 million received from defendant as an undisclosed donation without the exchange of consideration).

63. In *George*, the Sixth Circuit Court of Appeals entered a disgorgement order against relief defendants who received ill-gotten gains as gifts from the defendant, and explained the reasoning for the principle that there cannot be a legitimate claim to assets received as gifts:

> The pricey diamond ring and the $32,000 that [the relief defendant] received from [defendant] came from funds [defendant] received from investors. Because [defendant] obtained the money through fraud, then gave it to [the relief defendant] as a gift, she has no legitimate claim to the funds. To hold otherwise "would allow almost any defendant to circumvent the SEC's power to recapture fraud proceeds by the simple procedure of giving the proceeds to friends and relatives, without even their knowledge."

SEC v. George, 426 F.3d 786, 798 (6th Cir. 2005) (quoting *Cavanagh*, 155 F.3d at 137).

64. It is undisputed that the Winners Church-Shipman Relief Defendants received the funds as donations or gifts from the Defendants and provided no services in exchange for the funds. *See supra*, ¶¶29-49.

65. The Relief Defendants resist this conclusion by citing to *SEC v. Sun Capital*, No. 209-cv-229-FTM-29SPC, 2009 WL 1362634 (M.D. Fla. May 13, 2009). That case is distinguishable from the facts here. In *Sun Capital*, the relief defendant received loan proceeds from the defendant pursuant to a written loan agreement that imposed obligations and rights upon Sun Capital. *Id.* at *2. As a result, the Court found that Sun Capital had a legitimate ownership interest in the funds and was not a proper relief defendant. *Id.* Here, the Relief Defendants did not have a loan agreement, contractual obligations, or creditor-debtor relationship, and they provided no services in exchange for the funds.

66. Because it is undisputed that the Relief Defendants received the funds as gifts or donations and provided no services in exchange for the funds, they do not have legitimate claims to the funds and the second *Cavanaugh* factor is also met. Accordingly, the Commission has met its burden for obtaining an asset freeze as to the Winners Church-Shipman Relief Defendants.

C. The Relief Defendants' Arguments

The Relief Defendants press a number of arguments to suggest that the asset freeze should be lifted. The Court briefly addresses those arguments here:

1. *Florida's Uniform Fraudulent Transfer Act*

67. The Relief Defendants ask the Court to find, as a matter of first impression, that the Court should not issue a preliminary injunction and asset freeze based on Florida Uniform Fraudulent Transfer Act ("FUFTA"), Fla. Stat. 726.109. This argument would require the Court to consider the Commission to be analogous to a private party that had filed a state law claim for a "claw back" under FUFTA. The Relief Defendants argue that under FUFTA, Winners Church would be exempt from any kind of claw back based on its status as a religious organization. DE 49-1, Hr'g Tr. 11:7-12:11; *see also* DE 31.

68. The Relief Defendants' efforts to analogize this case to a private action under FUFTA are misplaced. The statutory right of the Commission, as a regulatory entity, to seek an asset freeze and disgorgement of ill-gotten gains is distinct from a private party's state law claim to avoid a fraudulent transfer. *See Securities Investor Protection Corp. v. Madoff*, 987 F. Supp. 2d 311, 323 (S.D.N.Y. 2013) (rejecting bankruptcy Trustee's effort to analogize efforts to claw back funds under the common law to the asset freeze and disgorgement standards in *Cavanaugh*) ("[T]he statutory right of the SEC, as a regulatory entity, to seek disgorgement of ill-gotten gains is a different matter entirely from the Trustee's assertion of standing to bring common law claims in order to claim additional funds on behalf of a bankruptcy estate."). As the Second Circuit has explained:

> In seeking to freeze appellants' accounts, the Commission is requesting ancillary relief to facilitate enforcement of any disgorgement remedy that might be ordered in the event a violation is established at trial…It simply assures that any funds that may become due can be collected. The order functions like an attachment. That does not mean, however, that its issuance must be tested against state law standards, as would be the case if the relief were sought pursuant to Rule 64 of the Federal Rules of Civil Procedure. Congress has authorized the Commission to obtain preliminary injunctive relief upon a "proper showing," and it is a matter of federal law whether the showing the Commission has made is sufficient to support an interlocutory freeze order.

SEC v. Unifund SAL, 910 F.2d 1028, 1041 (2d Cir. 1990).

69. Unlike Florida's fraudulent transfer statute, the federal securities laws do not include an exemption from disgorgement or any other equitable relief for religious organizations.

70. Federal district courts have broad equitable powers to reach assets otherwise protected by state law to satisfy a disgorgement award. *SEC v. Solow*, 682 F. Supp. 2d 1312, 1325 (S.D. Fla. 2010) (citing cases). *See also Branch Banking & Trust Co. v. Hamilton Greens, LLC*, No. 11–80507–CIV, 2014 WL 160 3759 (S.D. Fla. Feb. 26, 2014) (Report and Recommendation) ("Because federal courts have 'broad equitable powers to reach assets otherwise protected by state

law to satisfy a disgorgement' it would appear as though federal courts have more power to enforce compliance with a disgorgement order than they do with a standard money judgment.") (quoting *Solow*, 682 F. Supp. 2d at 1325) (affirmed and adopted at *Branch Banking*, 2014 WL 1493086 (S.D. Fla. Mar. 24, 2014)).

71. Federal district courts need not consider state law or other limitations when determining disgorgement matters. *Solow*, 682 F. Supp. 2d at 1325 ("[A] district court can ignore state law exemptions as well as other state law limitations on the ability to collect a judgment in fashioning a disgorgement order.") (internal citations omitted); *Huffman,* 996 F.2d at 803 (holding that disgorgement is not a "debt" under the Federal Debt Collection Procedures Act, and defendants could not avail themselves of the state law exemption under the Act); *SEC v. AMX, Int'l, Inc.*, 872 F. Supp. 1541, 1544-45 (N.D. Tex. 1994) (homestead exemption not taken into account); *SEC v. Musella,* 818 F. Supp. 600 (S.D.N.Y. 1993) (holding exemptions from attachment under New York law did not alter a person's duty to pay under a disgorgement order); *Pension Benefit Guaranty Corp. v. Ouimet Corp.*, 711 F.2d 1085, 1093 (1st Cir. 1983) (ignoring state law limitations on alter ego theory in ERISA context).

72. With regard to the Relief Defendants' argument that FUFTA should apply here, FUFTA applies in the context of debtors, creditors, and claims, which are defined as "a right to payment." Fla. Stat. §§ 726.102(4), 726.105, 726.106. This is not the context of this case. The issue before the Court is not a right to payment nor a matter involving debtors and creditors, but the Commission's request for an asset freeze, "a means of preserving funds for the equitable remedy of disgorgement." *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734-35 (11th Cir. 2005) (finding the Federal Debt Collections Procedures Act inapplicable to an asset freeze because "the SEC is not now seeking to recover for a judgment or 'obtain' any assets. At this point, the SEC is

attempting to freeze assets to prevent their disbursement."). *See also In re Bonham*, 224 B.R. 435, 437-38 (Bankr. D. Alaska 1998) (finding disgorgement is not a debt owing to the United States but rather an equitable remedy designed to deter violations of securities law, and therefore "neither the trustee nor the SEC [were] within the ambit of the FDCPA."). And, although the issue of disgorgement is not presently before the Court, disgorgement as well is not a debt owing to the Commission or the United States, but rather an equitable remedy designed to deter violations of the federal securities laws. *Id.*

73. Moreover, the Relief Defendants' reliance on *Scholes v. Lehmann*, 56 F.3d 750 (7th Cir. 1995) to support their theory that FUFTA applies to this context is misplaced and unavailaing. To begin with, *Scholes* considered a receiver's efforts to recover investor funds, not a Commission-initiated enforcement action. *Scholes* did not involve a relief defendant or an asset freeze; instead, it involved a receiver's fraudulent transfer claim under an Illinois fraudulent transfer statute. Furthermore, Judge Posner's commentary on the unfairness of applying Illinois's fraudulent transfer statute to religious organizations is *entirely* dicta. Indeed, Judge Posner concludes his lament regarding the Illinois statute by observing that the religious entities' argument, though "appealing," is "addressed to the wrong body." *Id.* at 761. The Court agrees with Judge Posner that the "carving of exceptions is a task better left to the legislature." *Id.*

2. The Bankruptcy Code

74. The Relief Defendants also ask the Court to extend the religious exemptions found in the avoidance provisions of the Bankruptcy Code to this civil enforcement action brought by a regulatory and enforcement agency under the federal securities laws.

75. The Relief Defendants' reliance on bankruptcy law is misplaced. Neither Aman nor any of the Defendants has filed a bankruptcy petition in bankruptcy court. Therefore, any

protection bankruptcy law may afford the donations is irrelevant. *SEC v. Aragon Capital Advisers, LLC*, 2011 WL 3278907, * 8 (S.D.N.Y. July 26, 2011) (rejecting the argument that the Court should consider bankruptcy law protections for IRA accounts when considering disgorgement; "Zvi's reliance on bankruptcy law is misplaced. Zvi has not filed a petition in bankruptcy court; any protection bankruptcy law may afford to IRA accounts therefore is irrelevant.").

3. *In the alternative, even if FUFTA or the Bankruptcy Code were Applicable, the Relief Defendants would not be Exempt from an Asset Freeze.*

76. First, even if FUFTA were applicable, the Shipmans would not be exempt from disgorging ill-gotten gains because the FUFTA exemption applies only to "religious organizations," and not to individuals. Fla. Stat. 760.109(7)(a) ("The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under s. 726.105(1)(b)").

77. Second, the Bankruptcy Code provision for the avoidance of charitable contributions to religious organization also applies only to contributions by a natural person. 11 U.S.C. 548(d)(3). Here, Financial Investigator Etienne's undisputed testimony was that all funds the Relief Defendants received came from Eagle. Therefore, the avoidance provision in the Bankruptcy Code would not apply even if this were a bankruptcy case.

78. Third, the religious organization exemptions in FUFTA and the bankruptcy code do not apply when transfers are made with actual intent to defraud. FUFTA's exemption for religious organizations in fraudulent transfer claims is only for *constructive* fraud. Fla. Stat. 726.109(7)(a) (stating the exemption applies to "fraudulent transfers under § 726.105(1)(b)," which concerns constructive fraud claims only, as opposed to subsection (1)(a), which concerns fraud committed with actual intent to defraud). The FUFTA provision for fraudulent transfers with actual fraud, § 726.105(2), contains no exemption for religious organizations. Fla. Stat.

716.105(2). Similarly, the Bankruptcy Code only provides an avoidance defense for charitable contributions made in the context of a constructive fraud (a transfer for less than reasonably equivalent value while insolvent). 11 U.S.C. § 548(d)(3). The Bankruptcy Code provides no avoidance provision for charitable provisions in the context of an actual fraud claim under 11 U.S.C. § 548(a)(1).

79. *If* this was a FUFTA case or bankruptcy proceeding, then the claim would be for actual fraud. Payments made in furtherance of securities fraud, like a Ponzi scheme, are presumed to be made with actual intent to defraud by the transferor. *Wiand v. Lee*, 753 F.3d 1194, 1200-01 (11th Cir. 2014) (FUFTA); *Perkins v. Haines*, 661 F.3d 623, 626 (11th Cir. 2001) (bankruptcy). This presumption applies to nearly all transfers a Ponzi entity makes. As the Court in *In re Manhattan Inv. Fund Ltd*., 310 B.R. 500, 509 (Bankr. S.D.N.Y. 2002), explained:

> When a debtor operating a Ponzi scheme makes a payment with the knowledge that future creditors will not be paid, that payment is presumed to have been made with actual intent to hinder, delay or defraud other creditors—regardless of whether the payments were made to early investors, or whether the debtor was engaged in a strictly classic Ponzi scheme."

80. For example, in *Liebersohn v. Campus Crusade for Christ, Inc.*, 280 B.R. 103, 111-12 (Bankr. E.D. Pa. 2002), the bankruptcy court held that debtor's transfers to a charitable organization were subject to the Ponzi scheme presumption. The court addressed the requisite connection between the transfers and the Ponzi scheme as follows:

> In perpetrating the Ponzi scheme, Burry had to know that the monies from investors would eventually run out and that the payments to charities would contribute to the eventual collapse of the stratagem. Knowledge that future investors will not be paid is sufficient to establish actual intent to defraud them.

Id. at 112.

81. The Ponzi scheme presumption applies here. The Relief Defendants presented evidence at the Show Cause hearing that Eagle was a Ponzi scheme, that Eagle and the other Aman

entities were insolvent, and that these entities could not pay their debts when due. DE 49-1, Hr'g Tr. 66:17-67:3. The Commission presented evidence with its Motion that Eagle, Natural Diamonds, and Argyle Coin operated as Ponzi schemes and Aman was the signatory on the bank accounts as well as an officer and owner of each company. *See* Mot., DE 4; Evidence in support of Mot., DE 5-1, 5-4, 5-6, 5-9, 5-12. Further, Aman transferred investor funds into the Defendant entities' accounts in order to cure the negative account balances. *Id*. The Defendants were insolvent and could not pay their debts. DE 49-1, Hr'g Tr. 66:21-24. Still, they undisputedly made substantial donations to Winners Church and the Shipmans.

82. Accordingly, not only are FUFTA and the Bankruptcy Code irrelevant to this civil enforcement action, but even if they were applicable, these state and bankruptcy laws would not provide exemptions for the transfers to the Relief Defendants

4. Relief Defendants' Argument That They No Longer Possess the Funds

83. The Relief Defendants' argument that an asset freeze is improper because the actual dollars they received are no longer in their bank accounts is unavailing. It is not relevant whether the actual dollars Eagle transferred into the Relief Defendants' accounts remain in the account today. *C.F.T.C. v. Gresham*, 2012 WL 1606037, at *3 (N.D. Ga. May 7, 2012) ("'An individual may be a proper relief defendant even if she does not possess the actual ill-gotten gains if she previously received benefits that were derived from another person's unlawful conduct.'") (quoting *SEC v. Aragon Capital Advisors*, 2011 WL 3278907, at *18 (S.D.N.Y. July 26, 2011)). "[T]he causal connection required is between the amount by which the defendant was unjustly enriched and the amount he can be required to disgorge. To hold ... that a court may order a defendant to disgorge only the actual assets unjustly received would lead to absurd results." *SEC v. Banner Fund Int'1*, 211 F. 3d 602, 617 (D.C. Cir. 2000).

84. Here, the Commission presented the sworn declaration of a Financial Investigator, who also testified at the Show Cause Hearing, to establish the causal connection between the fraudulent activity and the Eagle funds the Relief Defendants received. The funds received by Relief Defendants included investor funds. *See supra*, ¶¶ 23-42.

85. Further, where a relief defendant commingles legitimate funds with tainted funds, all funds can be subject to an asset freeze due. *SEC v. Ahmed*, 123 F. Supp.3d 301, 311 (D. Conn. 2015). Here, Relief Defendant Frederick Shipman testified that Winners Church commingles the funds in its bank accounts. DE 49-1, Hr'g Tr. 25:23-26:6. Accordingly, the Relief Defendants' argument that the tainted funds might have been spent before the asset freeze occurred is without merit.

5. Hardship to the Relief Defendants

86. The Relief Defendants argue that even if an asset freeze is appropriate, the Court should not freeze their funds or should unfreeze a portion of the funds because they want to use the frozen assets to build a bigger church and need the funds for the ministry of the Church.

87. "While the primary purpose of freezing assets is to facilitate compensation of defrauded investors in the event a violation is established at trial, 'the disadvantages and possible deleterious effect of a freeze must be weighed against the considerations indicating the need for such relief.'" *Ahmed*, 123 F. Supp.3d at 311 (quoting *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1105 (11th Cir. 1972)). The touchstone of the Court's inquiry is "equity" and a party seeking to carve out assets from an asset freeze "must establish that the funds he seeks to release are untainted and that there are sufficient funds to satisfy any disgorgement remedy that might be ordered in the event a violation is established at trial." *SEC v. Stein*, 2009 WL 1181061, at *1 (S.D.N.Y. Apr. 30, 2009) The Relief Defendants have presented no such evidence.

88. Courts also consider evidence of the moving party's "overall assets or income" and will deny such requests where parties are "found to have other sources of income or were requesting funds for luxuries, not necessities." *SEC v. Dowdell*, 175 F. Supp. 2d 850, 854 (W.D. Va. 2001). Here, Frederick Shipman testified at the Show Cause Hearing that he has other sources of income from Winners Church that are not frozen, he continues to receive payments for his living expenses, and he can pay his living expenses. DE 49-1, Hr'g Tr. 44-45:5. Winners Church has more than $1.8 million in its bank accounts that is not frozen. DE 49-4. As for Whitney Shipman, he also receives his salary from the Church and he has at least $50,000 of unfrozen monies in his bank account as well. DE 49-4.

89. To the extent the Relief Defendants request a release of funds so they can meet their immediate needs, that request is premature. They have not demonstrated that they lack sufficient funds for their immediate needs, and they have other sources of funding. Winners Church receives ongoing donations and has significant funds available that remain unfrozen; Whitney Shipman has unfrozen funds in his bank account; and both Shipmans receive a salary from the Church, which Frederick Shipman admitted in his testimony is sufficient to cover his expenses.

6. The Shipmans' Lack of Knowledge of the Scheme

90. Winners Church and the Shipmans also argue consistently that they had no knowledge of the Ponzi scheme. *See, e.g.*, DE 48-1, ¶ 27. Regardless, a relief defendant's knowledge regarding the source of funds received from a Defendant is not relevant to the Court's analysis. *See Cavanagh*, 155 F.3d at 137. As set forth above, a Relief Defendant is not charged with wrongdoing and therefore their scienter is not relevant. *SEC v. Renaissance Capital Management, Inc.*, 2003 WL 23353464 (E.D.N.Y. Aug. 25, 2003) ("Here, the relief defendants all received checks from the NNPD account, which was 'dedicated to holding investor funds to make

payment s.' The funds in that account were "ill-gotten" because they were obtained from investors on fraudulent grounds, and the relief defendants' innocence in that fraud doesn't change that fact.").

91. As the Court in *Renaissance* explained regarding relief defendants who are outraged at returning investor funds because they were not privy to the fraudulent nature of the transfers:

> While the court can understand the relief defendants' outrage at having to pay the disgorgement funds, that outrage must be directed at [defendant] Allen Andrescu, because as a matter of law, the relief defendants must disgorge those amounts they received from the NNPD account, funds that by rights must be returned to the defrauded investors….
>
> Thus, although the court sympathizes with the plight of the relief defendants, they have not proven a legitimate interest in the funds they received, and they must disgorge them in the amounts sought.

2003 WL 23353464, at *4 (finding *Cavanagh* factors met and ordering relief defendants to disgorge ill-gotten proceeds they received from defendant as repayments on a loan to him; "[Defendant] owed the relief defendants money, but the NNPD investors did not.").

92. Similarly, this Court concludes that the Commission has shown it is likely to prove the Relief Defendants lack a legitimate interest in the funds they received from the Defendants.

93. There is good cause to believe that, unless restrained and enjoined by order of this Court, the Relief Defendants will dissipate, conceal, or transfer from the jurisdiction of this Court assets that could be subject to an order directing disgorgement or the payment of civil monetary penalties in this action such that an order freezing the Relief Defendants' assets, as specified *infra*, is necessary to preserve the status quo and to protect this Court's ability to award equitable relief in the form of disgorgement of illegal profits from fraud and civil penalties.

94. "The SEC's burden for showing the amount of assets subject to disgorgement (and, therefore available for freeze) is light: 'a reasonable approximation of a defendant's ill-gotten gains

[is required] ... Exactitude is not a requirement.' *ETS Payphones*, 408 F.3d at 735 (quoting *SEC v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004)).

95. Here, the Relief Defendants admit the amounts received, which have been frozen: $1,249,000 against Winners Church, $729,000 against Frederick Shipman, and $41,000 against Whitney Shipman.

Therefore, for all the foregoing reasons, the Commission's Motion for a Preliminary Injunction, DE 6, is **GRANTED** insofar as it seeks a preliminary asset freeze against Winners Church, Whitney Shipman, and Frederick Shipman, as well as a document-retention order against them during the pendency of this litigation.

IV. PRELIMINARY ORDERS

Accordingly, **IT IS HEREBY ORDERED** that, pending trial on the merits or further order of the Court:

A. Asset Freeze As To Relief Defendant Winners Church

IT IS ORDERED that:

a. Relief Defendant Winners Church and each of its officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, electronic mail, or overnight delivery service, shall hold and retain funds and other assets of defendants and presently held by them, for their direct or indirect benefit, under their direct or indirect control or over which they exercise actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located, and shall prevent any withdrawal, sale, payment (including, but not limited to, any charges on any credit card or draws on any other credit arrangement), transfer, dissipation, assignment, pledge, alienation,

encumbrance, disposal, or diminution in value of any such funds or other assets, which are hereby frozen, including, but not limited to, such funds held in Winners Church's SunTrust account ending in 3127.

b. All banks, brokerage and other financial institutions and other persons or entities which receive actual notice of this Order by personal service or otherwise, including facsimile transmissions, electronic mail, or overnight delivery service, holding any funds or other assets in the name, for the direct or indirect benefit, or under the direct or indirect control of Winners Church or over which Winners Church exercises actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located, including but not limited to all such funds held in the account listed in Paragraph "a" above, shall hold and retain within their control and prohibit the withdrawal, removal, sale, payment (including, but not limited to, any charges on any credit card or draws on any other credit arrangement), transfer, dissipation, assignment, pledge, alienation, encumbrance, diminution in value, or other disposal of any such funds or other assets; and that such funds and assets are hereby frozen.

c. This asset freeze is limited at this time to $1,249,000 and remains in effect until further order of this Court.

B. Asset Freeze As To Relief Defendant Frederick Shipman

IT IS FURTHER ORDERED that:

a. Relief Defendant Frederick Shipman and each of his officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, electronic mail, or overnight delivery service, shall hold and retain funds and other assets of defendants and presently held by him, for his direct or indirect benefit, under his direct

or indirect control or over which he exercises actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located, and shall prevent any withdrawal, sale, payment (including, but not limited to, any charges on any credit card or draws on any other credit arrangement), transfer, dissipation, assignment, pledge, alienation, encumbrance, disposal, or diminution in value of any such funds or other assets, which are hereby frozen.

b. All banks, brokerage and other financial institutions and other persons or entities which receive actual notice of this Order by personal service or otherwise, including facsimile transmissions, electronic mail, or overnight delivery service, holding any funds or other assets in the name, for the direct or indirect benefit, or under the direct or indirect control of Frederick Shipman or over which Frederick Shipman exercises actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located, shall hold and retain within their control and prohibit the withdrawal, removal, sale, payment (including, but not limited to, any charges on any credit card or draws on any other credit arrangement), transfer, dissipation, assignment, pledge, alienation, encumbrance, diminution in value, or other disposal of any such funds or other assets; and that such funds and assets are hereby frozen.

c. This asset freeze as to Frederick Shipman is limited at this time to $729,000, and remains in effect until further order of this Court.

C. Asset Freeze As To Relief Defendant Whitney Shipman

IT IS FURTHER ORDERED that:

a. Relief Defendant Whitney Shipman and each of his officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile

transmission, electronic mail, or overnight delivery service, shall hold and retain funds and other assets of defendants and presently held by him, for his direct or indirect benefit, under his direct or indirect control or over which he exercises actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located, and shall prevent any withdrawal, sale, payment (including, but not limited to, any charges on any credit card or draws on any other credit arrangement), transfer, dissipation, assignment, pledge, alienation, encumbrance, disposal, or diminution in value of any such funds or other assets, which are hereby frozen.

b. All banks, brokerage and other financial institutions and other persons or entities which receive actual notice of this Order by personal service or otherwise, including facsimile transmissions, electronic mail, or overnight delivery service, holding any funds or other assets in the name, for the direct or indirect benefit, or under the direct or indirect control of Frederick Shipman or over which Whitney Shipman exercises actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located, shall hold and retain within their control and prohibit the withdrawal, removal, sale, payment (including, but not limited to, any charges on any credit card or draws on any other credit arrangement), transfer, dissipation, assignment, pledge, alienation, encumbrance, diminution in value, or other disposal of any such funds or other assets; and that such funds and assets are hereby frozen.

c. This asset freeze as to Whitney Shipman is limited at this time to $41,000, and remains in effect until further order of this Court.

D. Records Preservation

IT IS FURTHER ORDERED that Relief Defendants Winners Church, Frederick Shipman, and Whitney Shipman, their directors, officers, agents, servants, employees, attorneys,

depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, be and they hereby are enjoined from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible in any manner, any of the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files and other property of or pertaining to Relief Defendants Winners Church, Frederick Shipman, and Whitney Shipman, wherever located and in whatever form, electronic or otherwise, until further Order of this Court.

DONE AND ORDERED in Chambers, West Palm Beach, Florida, this 10th day of June, 2019.

ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Copies furnished to Counsel of Record