

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO.: 19-CV-80633

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,
ET AL.,

Relief Defendants.

DEFENDANTS H. SEIGEL, J. SEIGEL AND RELIEF DEFENDANT, H.S.
MANAGEMENT'S OPPOSITION AND OBJECTION TO RECEIVER'S MOTION TO
EMPLOY LEGAL COUNSEL AND MEMORANDUM

I. INTRODUCTION

THIS CAUSE is before the Court on Receiver, Jeffrey Schneider's ("Receiver" or "Schneider"), Motion to Employ Legal Counsel (the "Motion"); specifically, seeking both the Sallah firm and Silver firm to represent Schneider in his role as Receiver in this action [D.E. 101]. In ¶2 of his Motion, Schneider, as Receiver, states that "while he would typically engage his own firm to represent him in a case such as this one", he contends the Sallah and Silver firms have 'institutional knowledge' given that they [the Sallah and Silver firms] had '*commenced*' a related action before the Honorable Donald Middlebrooks styled as *Rounds v Natural Diamonds Investment Co., 18-CV-81151 (S.D.F.L.)*, litigating against many of the same Defendants involved in this case, including H. Seigel and J. Seigel, and had conducted the very discovery leading to Attorney Schneider having been appointed in the *Rounds* case to serve as Corporate Monitor, summarizing that employing these two firms will save the receivership tens of thousands of dollars in legal fees enuring to the benefit '*of the victims*'. Additionally, Schneider, in his capacity as Receiver in this SEC matter contends the Sallah and Silver firms are '*intimately familiar*' with the facts underlying '*this complicated multilevel Ponzi*

scheme and various parties involved in the scheme’ and that engaging them would eliminate any learning curve associated with engaging new counsel.¹ In his Motion to Employ Counsel, the Receiver, having conferred with counsel of record prior to filing his Motion, apprised the Court of the SEC’s concern with the Receiver employing the Sallah and Silver firms to represent the Receiver in this SEC action and, likewise apprised the Court of Defendants’, H. Seigel, J. Seigel and Relief Defendant, H.S. Management’s opposition to the retention of these firms to represent the Receiver. In response to the Receiver’s Motion to Employ Counsel and in accord with this Court’s Show Cause Order [D.E.], Defendants, H. Seigel, J. Seigel and Relief Defendant, H.S. Management submit the following response and Memorandum:

II. BACKGROUND

1. On March 28, 2019, Schneider was appointed as Corporate Monitor over Natural Diamonds and Eagle in the related action of: *Round v. Natural Diamonds Investment Co.*, Case No. 18-cv-81151 (S.D. Fla.); a case previously commenced by both the Sallah and Silver firms on behalf of their specific clients, the Plaintiffs in that action, the Rounds² against several defendants, including two of the current SEC Defendants, H. Seigel and J. Seigel.

2. On an unspecified date, the related *Rounds* case was dismissed with the Honorable Judge Middlebrooks retaining jurisdiction over the Corporate Monitorship indefinitely [*Rounds*, D.E. 40].

3. In the case before this Court, the SEC has solely asserted claims of Fraud and Ponzi Scheme against Defendants, Jose Aman (“Aman”) and Argyle Coin, LLC. (“Argyle”) [D.E. 1].

¹ The claims of the Salah and Silver firms’ clients, in the *Rounds* case, have since been dismissed however in the Order dismissing the action [D.E. 40], Judge Middlebrooks reserved jurisdiction to oversee the Corporate Monitorship; same being reserved indefinitely.

² The Rounds are individual investors with NDIC, Eagle and/or Argyle, whom did not and do not represent the 300 or so claimed investors alleged to be victims in the subject Fraud and Ponzi Scheme solely raised by the SEC as against Defendants Aman and Argyle .

4. The claims of the SEC against Defendants, H. Seigel and J. Seigel, rest solely in the contention that H. Seigel and J. Seigel participated in the acquisition of unsecured/ unregistered investment contracts. [D.E. 1].

5. On May 16, 2019, this Court entered an unopposed Order granting the SEC Motion to Appoint Receiver (“Appointment Order”) naming Attorney, Jeffery Schneider, as Court appointed Receiver over Defendant, Argyle Coin, LLC. [D.E. 20]

6. On July 11, 2019, the Receiver has, without opposition, acquired an Order [D.E. 104] Consolidating from his Corporate Monitorship in the *Rounds* case and Expanding, in all respects, his Receivership over Argyle, to include Natural Diamonds Investment Co (“Natural Diamonds”) and Eagle Financial Diamond Group, a/k/a Diamonte Atelier (“Eagle”). According to the assertions of the Receiver set forth in ¶4 of the subject Motion [D.E. 101], the Receiver sought to expand the Receivership over Argyle [D.E. 20] to include Natural Diamond and Eagle entities ‘for the benefit of the investors and receivership estate’.

7. The Appointment Orders [D.E. 20 and D.E. 104] confers upon the Receiver an unbiased, fiduciary responsibility and obligation, with full and exclusive power, duty and authority to administer and manage business affairs, funds, assets, causes in action and any other property of Argyle, Natural Diamonds and Eagle; marshal and safeguard all of their assets; and take whatever actions are necessary for the protection of [all] investors. (emphasis added).

8. The Appointment Order [D.E. 20, ¶ 50] further obligated the Receiver to seek and acquire a Court Order before engaging “Retained Personnel” to assist him in effectuating his obligations and duties under the Appointment Order.

9. On July 10, 2019, the Receiver filed his Motion to Employ both the Salah and Silver law firms to serve as counsel to the Receiver in this action. [D.E. 101]. The Receiver’s Motion

makes specific mention that the Sallah and Silver Firms were Plaintiffs' counsel, commencing the related action on behalf of the *Rounds*; individual claimants against the same or similar parties for the same or similar causes of action/damages now brought by the SEC on behalf of *all* investors for which the Receiver has been appointed to protect, and whom were instrumental in having Schneider appointed as Corporate Monitor in their [the *Rounds*] case. [see, D.E. 101, ¶ 3]

10. In his Motion, the Receiver cites to his specific interest in retaining the Sallah and Silver law firms to represent him as Receiver in the SEC action, indicating a) the Sallah and Silver Firms were his counsel in his capacity and were instrumental in having him appointed to serve as Corporate Monitor in the *Rounds* case [see ¶3 D.E. 101] ; b) the Sallah and Silver Firms are “intimately familiar with the facts underlying this complicated multi-layer Ponzi scheme and the various parties involved in the scheme” [see ¶3 D.E. 101]; c) that while Schneider would typically engage his own firm to represent him in a case such as this one, the Sallah and Silver Firms have ‘institutional knowledge’ that Schneider contends will save the Receivership thousands of dollars in legal fees [see ¶2 D.E. 101]; and 4) that the Sallah and Silver Firms will eliminate any learning curve associated with engaging new counsel [see ¶4 D.E. 101].

11. The Receiver is specifically seeking an Order authorizing him to retain both the Sallah and Silver Firms to represent the Receivership. The Appointment Order, appointing Schneider as Receiver in the instant SEC matter sets forth the scope of his obligations and responsibility to protect the interests of *all* investors.

12. SEC Defendants, Harold Seigel and Jonathon Seigel, neither of whom are the subject of Fraud or Ponzi Scheme allegations otherwise raised against Defendants Aman and Argyle, contend they themselves are victims and as such, are investors entitled to the same protection by the Receiver as the *Rounds*.

13. The Salah and Silver firms are the attorneys that commenced the related *Rounds* case wherein they represented 2 of the over 250 investors of the Receivership. The Receiver doesn't step into the shoes of the entity. The Receiver owes a fiduciary duty to all investors and victims and is to be impartial there is a substantial risk and not advocate for any particular investor or victim.

14. Per FRPC 4-1.7(a)(1) the representation of the Rounds will be directly adverse to the interests of the Receiver in protecting all investors and (a)(2) there is a substantial risk that the representation of the client will be materially limited by the lawyers responsibility to another client.

15. Receiver's claim that he would ordinarily retain counsel of his own firm but for the knowledge of the Salah and Silver Firms or that there will be a learning curve is belied by the Rounds docket wherein Stephanie Reed Traband, a partner with Schneider's firm served as counsel and signed the Report of Corporate Monitor in the Rounds case. [see, D.E. 33 of the Rounds case.]

16. SEC Defendants, Harold Seigel and Jonathon Seigel, and Relief Defendant, H.S. Management, LLC., oppose the Receiver's Motion to Employ the Salah Firm and/or the Silver Firm to represent the Receiver on the grounds that: a) there exists a conflict of interest in the Salah and/or Silver firms representing the Receivership in violation of the Florida Bar Rules of Professional Conduct, Rule 4-1.7 ; b) engagement of the Salah and/or Silver firms as 'retained personnel' to the Receivership impermissibly violates and conflicts with the Receiver's scope of duties and obligations to all the investors where, as here, the Salah and Silver firm represented the interests of two of the now many SEC investors, raising the question of their loyalties to their clients over the other investors and particularly where, as here, their representation of the two Round investors in their action against Harold and Jonathon Seigel is adverse to SEC Defendants,

Harold Seigel, Jonathon Seigel and HS Management, LLC., whom themselves claim to be victims of the alleged fraud and Ponzi scheme alleged by SEC to have been perpetrated by Aman and Argyle; thereby making them investors whose interests the Receivership has an obligation to protect equal to all other investors, including the Rounds Plaintiffs. Further, these Defendants do not waive the conflict and vehemently object to and do not consent to the Salah or Silver firms becoming 'retained personnel' to serve as counsel to the Receiver in this action; and, c) in addition to the above mentioned indications, these Defendants contend hiring these firms would not enure a benefit but rather would create an unnecessary added expense to the investors, including themselves, particularly where, as here, the Receivership asserts there are extremely limited funds, at best, in the Receivership and, further where, as here, an attorney from the Receiver's own firm can represented the interests of the Receiver as was the case in the *Rounds* matter.

WHEREFORE, and for the reasons above stated, Defendants, Harold Seigel, Jonathon Seigel and Relief Defendants, H.S. Management, LLC., respectfully request this Honorable Court DENY the Receiver's Motion to Employ the Salah and/or Silver firms to serve as Counsel to the Receiver in the SEC claim.