

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 AMENDED RESPONSE IN OPPOSITION 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, surmising that employing these two firms will save the receivership tens of thousands of dollars in legal fees inuring 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 requiring Response, 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 Monitor-ship 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 Monitor-ship; 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 Monitor-ship 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 Diamante 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 Sallah 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.

14. Specifically, the Florida Rules of Professional Conduct, Rule 4-1.7 (July 19, 2019), states:

RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS

(a) Representing Adverse Interests.

Except as provided in subdivision (b), a lawyer must not represent a client if:

- (1) the representation of 1 client will be directly adverse to another client; or
- (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Informed Consent.

Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

15. Conflicts in litigation under sub paragraph (a)(1) prohibit representation of opposing parties in litigation or representation of parties whose interests in litigation may conflict. An impermissible conflict arises out of incompatibility in positions in relation to the parties, interests or substantially different possibilities of settlement of claims and liabilities in question. Ordinarily, lawyers may not advocate against a client the lawyer represents in some other matter

or can a lawyer represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other.

16. Given the fact that the SEC has solely alleged claims of fraud against Aman and Argyle, and not H. Seigel or J. Seigel, both H. and J. Seigel submit their position and relationship to the Sallah and Silver Firms is adverse to their interests. These SEC Defendants, which were Defendants in the Rounds case brought against them by the Sallah and Silver Firms, are in fact claimed victims of the SEC's claims of fraud and Ponzi scheme against Aman and Argyle. As investors and/or victims of Aman and/or Argyle's Fraud and Ponzi scheme, they are individuals to whom the Receiver owes a duty as contemplated by the Appointment Order. As such, not only would it be a conflict of interest for the Sallah and/or Silver Firms to represent and serve as counsel to the Receiver, but same would be impermissible under the Appointment Order as these firms are inherently biased against these Defendants and, any representation by them of the Receiver in the SEC action would certainly raise questions pertaining to the required impartiality as it relates to these Defendants to whom it is claimed the Receiver owes a duty. Rule 4-1.7 (a)(1), Professional Rules of Ethics, July 19, 2019.

17. Additionally, Defendants submit there is a substantial risk that the Sallah and Silver Firms representation of the Receiver in this SEC claim will be limited by the lawyer's responsibility to their former client, the *Rounds*, or by the personal interest of the lawyer. Defendants herein are not privy to the fee arrangement by and between the Sallah and Silver Firms with their former client, the *Rounds*, or whether they are relying on the Receivership, in any manner, to assist them in acquiring or recouping fees for services in the now dismissed *Rounds'* matter. That said, this information, along with the claim of distribution of assets relating to the Receivership will necessarily involve these Defendants whose claim is subject to impartiality and

bias should the sought firm, as former plaintiffs' counsel against the in the Rounds matter now be employed by the Receiver in this SEC claim. In accord with Appointment Order, ¶51 §XIII of D.E. 20, payment of attorney's fees will not occur until filing and receipt of Order granting any such application at the conclusion of the SEC case. Defendants herein are concerned, at such late date that distribution of Receiver assets will commence, any prior actions inuring to the interests of the Sallah and Silver Firm's former clients, the Rounds', to the exclusion of these Defendants or any other of the myriad of investors, during the pendency of any proposed representation of Receiver in the SEC case, will create a harm that will not be able to be later remedied on appeal. Rule 4-1.7 (a)(2), Professional Rules of Ethics, July 19, 2019.

18. Moreover, the former clients of the Sallah and Silver Firms are but two of the many investors whose interests the Receiver is obligated to protect. Defendants submit that should the Receiver seek to hire the Sallah and/or Silver Firms to serve as counsel to the Receiver, the Receiver would have had to obtain the release or informed consent of all the investors; an action which the Receiver has not undertaken. Rule 4-1.7 (b), Professional Rules of Ethics, July 19, 2019.

19. To further reiterate, the SEC has themselves expressed its mutual concern that the firms sought to be Appointed to represent the Receiver in the SEC action, was the same firm used to represent the limited and specific investors in the Corporate Monitor [*Rounds*] action. While Mr. Schneider may rebut by stating these Firms no longer represent the investors (The Rounds) in the Corporate Monitor action and that the Rounds are not parties to the SEC action, as stated above, the Judge Middlebrooks, in dismissing the Rounds claim, specifically retained indefinite jurisdiction over the Corporate Monitor-ship and, more importantly, at some point in the future

this Receiver will be filing a distribution claim on behalf of his would be attorneys former clients for whom he served as Corporate Monitor.

20. While Mr. Schneider additionally attempts to bolster the need for employment of these specific Firms, as opposed to his ordinary retention of counsel from his own firm, claiming their exceptional knowledge of these type matters and this claim in particular would function to eliminate an otherwise obligatory learning curve associated with hiring new counsel, said argument is clearly belied by the fact that a Partner from his own firm, Ms. Stephanie Reed Traband, Esquire, whose bio of their Firm's webpage lists her specific areas of experience to include Receiverships, Securities Enforcement actions and commercial litigation, served as listed counsel to Mr. Schneider in his role as Corporate Monitor in the Rounds case whom had knowledge as evidenced by her having executed and filed the Corporate Monitor Report in the *Round* case, D.E. 33.

21. For all the reasons above stated, SEC Defendants, Harold Seigel and Jonathon Seigel, and Relief Defendant, H.S. Management, LLC., oppose the Receiver's Motion to Employ the Sallah 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 Sallah 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. Further, the Receiver has never sought the consent of these Defendants to waive the conflict, nor had they sought the consent of any other investor whose interests may be affected by the retention of the Sallah and/or Silver Firms whose initial and continued obligation remains with the Rounds Plaintiffs whom are two of the many investors whose interests the Receivership owes a unbiased, neutral obligation to protect. These Defendants maintain that they do not now nor would they otherwise consent to the waiver of any conflict in hiring either the Sallah or Silver Firms. Additionally, these Defendants contend hiring these Firms would not inure a benefit to them, but rather, would create an unnecessary added expense to them as well as the many other investors, particularly where this Receiver asserts there are extremely limited funds, at best, in the Receivership and, where, as here, an attorney from the Receiver's own firm has the knowledge and experience and is otherwise familiar with the parties and claims to equally represent the Receiver as she had in the related *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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice has been eserved via CM/ECF on all counsel of record listed below this 26th day of July 2019.

Respectfully submitted,

_____/EK/_____

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