UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Palm Beach Division)

Case No. 9:19-CV-80633-ROSENBERG

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,
et al.,

Defendants,

H.S. MANAGEMENT GROUP LLC, et al.,

Relief Defendants.
____/

RECEIVER'S REPLY IN SUPPORT OF
MOTION TO EMPLOY LEGAL COUNSEL

Jeffrey C. Schneider, not individually, but solely in his capacity as Receiver (the "Receiver") for Natural Diamonds Investment Co. ("NDIC"), Eagle Financial Diamond Group, Inc. ("EFDG"), and Argyle Coin, LLC ("Argyle") (collectively, the "Receivership Entities"), files this Reply in support of his Motion to Employ Legal Counsel [DE 101].

A. There Is No Conflict of Interest with the Seigel Defendants

Defendants Harold and Jonathan Seigel and Relief Defendant H.S. Management Group LLC (collectively, the "Seigel Defendants") argue that the Receiver's requested attorneys (and the Receiver) somehow owe duties to the Seigel Defendants under the Florida Bar's professional conflict of interest and client rules, including Florida Rule of Professional Conduct 4-1.7 entitled "Conflict of Interest; Current Clients." The Seigel Defendants are incorrect. Florida Rule of Professional Conduct 4-1.7 only applies to clients. The Seigel Defendants are not the Receiver's

clients. They are not clients of the Sallah or Silver Firms. Florida Rule of Professional Conduct 4-1.7 has no application here.

The Seigel Defendants argue that the Receiver and his requested attorneys owe fiduciary duties to the Seigel Defendants. Again, the Seigel Defendants are incorrect. The Receiver is an agent of this Court. He was appointed to marshal, safeguard, recover, and eventually distribute assets to investors who sent money to the Receivership Entities, which operated as a Ponzi scheme, and to other creditors with allowed claims. The Seigel Defendants were not investors. They did not send money to the Receivership Entities. Defendants Harold and Jonathan Seigel were principals, officers, agents, and shareholders of the Receivership Entities; Relief Defendant H.S. Management Group LLC received millions of dollars *from* the Receivership Entities.

The Seigel Defendants argue that the SEC's allegations against them in this action are different than the Rounds' allegations against them in the Corporate Monitor Action before Judge Middlebrooks (*Rounds v. Natural Diamonds Investment Co., et al.*, Case No. 18-cv-81151). This is of no moment. The claims by the SEC against the Seigel Defendants are going to be adjudicated by this Court, not the Receiver or the Receiver's counsel. The claims by the Rounds in the Corporate Monitor Action have been dismissed, given the filing of *this* action and the Receiver's duties for *all* investors. And multiple cases have been filed against Defendants Harold and Jonathan Seigel (and Defendant Jose Aman) alleging wrongdoing. The allegations do not impact the Receiver's duties and responsibilities. The Receiver's job, again, is not to decide who did what; it is to safeguard and recover assets, and the Receiver wishes to perform these functions as quickly and efficiently as possible given the limited assets in this receivership compared to the expected claims against the Receivership Entities (which are expected to exceed $30 million).

B. There Is No Conflict of Interest with the Investors

The Seigel Defendants argue that the Receiver's requested attorneys have a conflict with

the hundreds of other investors. Again, the Seigel Defendants are incorrect. As stated above, and as the Court was advised in connection with the motion to expand the receivership, the Rounds' claims in the Corporate Monitor Action have been dismissed, given the existence of *this* action and the Receiver's work for *all* investors. More to the point, representing two investors among a class of 200 to 300 does not create a conflict. It is precisely what happens in class actions, in which putative class counsel first represent class representatives and then seek to represent the entire class. This is essentially what happened here. The Sallah and Silver Firms' work in the Corporate Monitor Action led to the Receiver's appointment as Corporate Monitor – for the benefit of all investors – and then the Receiver's appointment in this case. And, again, the claims of the Rounds in the Corporate Monitor Action have since been dismissed, ***which is why the SEC has no objection to the Receiver's request***.

The Seigel Defendants argue, again citing Florida Rule of Professional Conduct 4-1.7, that the Receiver needs to obtain the consent of all investors. Again, this is not so. Florida Rule of Professional Conduct 4-1.7 has no application here. The only consent that was needed was, indeed, obtained by the requested attorneys when they previously obtained a written conflict waiver from the Rounds to act as the Receiver's counsel.

The Seigel Defendants argue that "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." With all due respect, the Seigel Defendants' counsel should be admonished against making irresponsible accusations in filings before this Court. As stated repeatedly, the Receiver's requested attorneys no longer represent the Rounds. The Rounds' claims have been dismissed. The entities in the Corporate Monitorship (*i.e.*, NDIC and EFDG) have been consolidated with this proceeding, the Receivership has been extended over them, and the Corporate Monitor Action will be closed

shortly. Distributions to investors will be made in *this action*, not the Corporate Monitor Action, through a Court-approved claims procedure and Court-approved distributions. In other words, the Seigel Defendants will have the ability to review and object to any of the Receiver's recommendations regarding allowance or disallowance of claims. Requests for compensation of fees will likewise be fully transparent, because Court approval is required. There is absolutely no "risk" of anything sinister by the requested attorneys.

C. Employing the Receiver's Firm Will Cost the Estate More Money

As the Receiver stated in his motion, most Receivers typically engage their own law firms to act as their counsel. But this case is not typical. In this case, there was a prior proceeding which led to the Receiver's appointment (albeit, in a slightly different capacity) and there were prior attorneys who already obtained discovery, interviewed witnesses, and knew many of the intricate details of this eight-figure fraud. So in this case, it made sense – for the benefit of all investors – to continue working with those attorneys and obtain the benefit of that institutional knowledge.

The Receiver asked them to reduce their rates. They did. The Receiver asked them to lock those rates in during the duration of the case. They did. And, as stated above, they obtained waivers from their clients. In fact, their clients dismissed their claims. Yet for some reason, the Seigel Defendants argue that the Receiver's law partner, Stephanie Traband, should instead be counsel to the Receiver, because she has receivership experience and she filed a report in the Corporate Monitor Action. Ms. Traband is an excellent attorney. She has represented the Receiver in several other cases. But it simply did not make sense in this particular case given these particular circumstances.

D. The Seigel Defendants Did Not Initially Object to the Requested Attorneys

As a final note, it is worth mentioning that the Seigel Defendants and their counsel met with the Receiver for a proffer session approximately two months ago, on May 28, 2019. One of

the requested attorneys was there. He was introduced as the Receiver's counsel. No objection was made. After that meeting, a number of emails were exchanged. Again, no objection was made.

E. Conclusion

The Receiver has been appointed by a number of state and federal courts in Florida, Alabama, and Illinois. The Receiver has represented a number of other receivers. The Receiver cannot remember there ever being a challenge to something as uncontroversial as the Receiver seeking to engage counsel of his or her own choosing.

The Receiver fully appreciates that this case is atypical, but the Receiver carefully considered this decision and believes that this decision makes the most sense for all of the investors in this case.

The Receiver respectfully requests that this Court enter the proposed Order, attached as Exhibit B to the Motion to Employ, approving the Receiver's choice of counsel *nunc pro tunc*.

Dated: July 26, 2019

Respectfully submitted,

Jeffrey C. Schneider, P.A.
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By: /s/ Jeffrey C. Schneider
JEFFREY C. SCHNEIDER, P.A.

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Jeffrey C. Schneider
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