

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 H.S. MANAGEMENT'S
MOTION FOR LEAVE TO FILE SUR RESPONSE PER LOCAL RULE 7.1C**

COMES NOW, Ellen M Kaplan, Esquire, on behalf of and as counsel for Defendants, Harold Seigel and Jonathon Seigel and Relief Defendant, H.S. Management and, pursuant to Local Rule, 7.1C, files this, their Motion Seeking Leave to File Sur Response to Receiver's Reply in Support of Its Motion To Employ Legal Counsel in that, while Local Rule, 7.1C strictly limited Receiver to rebuttal of matters raised in opposition without re-argument , Receiver's Reply exceeds this limitation by raising a new argument, which is factually incorrect, warranting explanation to be sure the record is clear. Receiver specifically argues the undersigned met with one of the 'requested attorneys' and knew said attorney was 'representing' the Receiver during 'a proffer session' and made no objection at that time. This is factually inaccurate and clearly *underscores* the concern over the alleged Conflict of Interest in Receiver retaining the specific requested counsel to represent him in this SEC action. The undersigned was never introduced to the 'requested attorney' as him being counsel to the Receiver and further, not until the filing of Receiver's Motion to Employ Counsel did the undersigned learn for the first time that 'requested counsel' *represented* the *Rounds* (Plaintiffs) in a case where the

allegations, in that case against my clients, *are clearly adverse to and specifically exceeding* that which has been alleged against them by the SEC *in this case* (as has been more fully set forth in the attached Memorandum). The undersigned, newly retained counsel for the Defendants, Harold and Jonathon Seigel and HS Management, introduced to the Receiver as such by SEC counsel, Amie Berlin, Esquire, requested and solely presented to the office of Mr. Schneider for the purpose of her clients providing assistance in Receiver's recovery of assets relating to Argyle coin, against which entity the SEC claimed fraud and Ponzi scheme. The meeting was scheduled to commence between the undersigned, her clients and Mr. Schneider. Upon the undersigned's arrival, and outside the undersigned's client's presence, the undersigned greeted Mr. Schneider in the presence of another attorney. It was assumed said attorney was an associate or attorney with Mr. Schneider's office as Mr. Schneider merely said, "he's an attorney with me". There was absolutely no transparency offered by either attorney as to whom he was or whom he represented. It was not until after the meeting that the undersigned realize said attorney was not associated with Mr. Schneider's firm and, ot until the Motion Seeking to Employ Counsel had the undetrsigned learn said attorney had represented the Plaintiffs in the Rounds case. Mr. Schneider's current Motion seeking to employ these firms does not even remotely pass the sniff test. Had the facts been known to the undersigned at the time of the proffer session, the undersigned would have absolutely objected to that attorney's attendance and, moreover, had Receiver actually introduced the 'requested attorney' as attorney for the Receiver, the undersigned would certainly have objected as a violation of this Court's Appointment Order requiring the Receiver first seek Court approval for the retention of said counsel.

WHEREFORE, For these reasons and more, as set forth in the attached Motion, the undersigned requests this Honorable Court grant the undersigned leave to file the attached Sur

Response for consideration in ruling on 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 30th day of July 2019.

Respectfully submitted,

_____/EK/_____

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,
ET AL.,

Relief Defendants.

**DEFENDANTS, H. SEIGEL, J. SEIGEL AND H.S. MANAGEMENT'S
SUR RESPONSE MEMORANDUM TO RECEIVER'S REPLY (IN SUPPORT OF HIS
MOTION TO EMPLOY THE SALLAH AND SILVER FIRMS AS COUNSEL)**

COMES NOW, Ellen M Kaplan, Esquire, on behalf of and as counsel for Defendants, Harold Seigel and Jonathon Seigel and Relief Defendant, H.S. Management and files this Memorandum seeking leave to file Sur Response Memorandum, pursuant to Local Rule, 7.1C, to Receiver's Reply in Support of Its Motion To Employ Legal Counsel and das grounds therefore states:

1. Local Rule 7.1C strictly limits the Reply to a Memorandum in Opposition to rebuttal of matters raised in opposition without re-argument. Receiver's Reply exceeds this limitation by raising a new argument, which is factually incorrect, warranting explanation to be sure the record is clear.

2. Receiver specifically argues in his Reply Memorandum, raising for first time, the contention undersigned met with one of the 'requested attorneys' and knew said attorney was 'representing' the Receiver during 'a proffer session' and made no objection at that time. This is factually inaccurate and clearly *underscores* the concern over the alleged Conflict of Interest in Receiver retaining the specific requested counsel to represent him in this SEC action.

3. The undersigned, newly retained counsel for the Defendants in the SEC claim, was introduced to the SEC Receiver over Argyle Coin, Jeffrey Schneider, Esquire, by Amie Berlin, Esquire, counsel for SEC, for the specific purpose of what became the mentioned proffer session.

4. The undersigned sought to meet solely with Mr. Schneider in an effort for the clients to provide the Receiver with information believed helpful to retrieve assets against Argyle; an entity which the SEC has claimed committed Fraud and Ponzi Scheme.

5. Upon presentation to Mr. Schneider's office, and outside the presence of clients, the undersigned met Mr Schneider who was accompanied by a gentleman whom Mr Schneider introduced as, "an attorney with me". From that, the undersigned assumed the attorney was an associate counsel of Mr. Schneider's firm.

6. This attorney was never introduced to the undersigned as being "the Receiver's counsel" as asserted by Mr. Schneider in Paragraph D of his Reply Memorandum [D.E. 110].

7. Additionally, the undersigned represents, not until the filing of Receiver's Motion to Employ the Sallah and Silver Firm had the undersigned learned that said attorney had in fact *represented the Rounds*, as Plaintiff's counsel, where the allegations and position taken by Plaintiff's and their counsel in that case, *are not only adverse to my client's interests, but specifically exceed* that which has been claimed against them by the SEC *in this case*.

8. Specifically, the Rounds, through their counsel, have alleged Harold and Jonathon Seigel ("Clients") themselves perpetrated a fraud and scheme to defraud against the Rounds and other investors.

9. While the SEC has brought their claim alleging Fraud and Scheme to Defraud against Defendants, Aman and Argyle Coin, the SEC case before this Court and upon which the Receiver has been appointed, ***DOES NOT*** implicate either Harold or Johnathon Seigel as perpetrating a

Fraud nor a Scheme to Defraud. [D.E. 1] The Receiver asserts this distinction is moot given the Rounds case has been dismissed and claims that while the Rounds Court maintains indefinite jurisdiction over the Corporate Monitor-ship in that case, same will be dissolved and somehow merge into this SEC case for the benefit of all investors as if this were a class action suit.

Theoretically and procedurally, this cannot be further from accurate. The cases don't merge, the Rounds are not an assigned class.

10. The Rounds brought a claim against my clients alleging they engaged in fraudulent conduct; which is not what the SEC has claimed against them. The Rounds interests are/were diverse to my clients, whom claim, they too have been defrauded by SEC Defendants, Aman and Argyle Coin, which allegation have been asserted against them by the SEC. The Rounds contention that my clients defrauded them is irrelevant in this SEC case. The bigger problem is the SEC Receiver hiring an attorney that had brought a claim against my clients asserting under the same set of facts that my clients were part of the Fraud and Ponzi Scheme. The Rounds case is not the SEC case. The Round attorneys and Receiver's preconceived idea about my clients has nothing to do with what's alleged against them in this case. The Rounds Plaintiff's attorneys are biased and said bias is being furthered by the SEC Receiver's continued assertion that my clients were a part of the Scheme to Defraud or otherwise Defrauded the investors where there is no SEC allegation alleging they were part of the Fraud or Scheme. The fact that the Rounds case has been dismissed is not a lynch pin upon which Receiver should rest its laurels. The inherent bias underscores the entirety of the conflict. While the distribution of the recovered assets will happen down the line, as we sit here today, we don't know what will happen. There can end up being more litigation on the distribution level and, as previously stated, the best way to prevent a situation where the bell cannot later be un-rung, it's best to remedy any conflict from the outset.

11. This fact is a significant distinction we ask this Court to give the necessary weight when addressing the alleged conflict in Mr. Schneider's Motion to Employ both the Sallah and Silver Firm to represent the Receiver; a distinction upon which SEC *expressed concern* over these Firms serving as counsel to the Receiver.

12. The fact that the Rounds case has been dismissed does not render the objection moot. Receiver raised for the first time in his Reply [D.E. 110, paragraph D] that the undersigned knew whom the other attorney was and whom that attorney represented and failed to object at that time. Undersigned counsel needs to respond to said contentions and make a clear record in this case. There was absolutely no transparency offered by either the Receiver or the other attorney attending the proffer session. Has the undersigned been aware said attorney was the Plaintiff's attorney for the Rounds, the undersigned would have objected to his attendance and participation. In fact, the subsequent eluded to by Mr Schneider involved the undersigned's concerns for that attorneys aggressive behavior toward both myself and my clients which as almost the basis for disruption of the meeting.

13. Mr. Schneider's current Motion seeking to employ these firms as counsel to the SEC Receiver does not even remotely pass the sniff test. Had the facts been known to the undersigned at the time of the proffer session, the undersigned would have absolutely objected to that attorney's attendance and, moreover, had Receiver actually introduced the 'requested attorney' as attorney for the Receiver, the undersigned would certainly have objected as a violation of this Court's Appointment Order requiring the Receiver first seek Court approval for the retention of said counsel.

WHEREFORE, For these reasons and more, as set forth in the attached Motion, the undersigned requests this Honorable Court grant the undersigned leave to file this Sur Response and

Deny 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 30th day of July 2019.

Respectfully submitted,

_____/EK/_____

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