

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
ANSWER, AFFIRMATIVE DEFENSES AND MOTIO TO DISMISS THE SEC
COMPLAINT FOR INJUNCTIVE AND OTER RELIEF**

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 hereby files this, their Answer, Affirmative Defenses and Motion to Dismiss and resp0onds to each allegation as follows:

1. Inasmuch as the SEC contends H. Seigel and J. Seigel were owners of Natural, Eagle and Argyle or that they personally have or continue to defraud investors through the sale of securities in violation of the anti-fraud and registration provisions of the federal securities laws, same is denied;

2. To the extent SEC claims H. Seigel and J. Seigel “raised” \$30 million” from approximately 300 “investors” through “the sale of securities” in the form of “promissory notes” and “investment contracts” in Argyle, Natural Diamonds and Eagle, same is denied;

3. Denied;

4. Denied;

5. As to Natural, H. Seigel and J. Seigel deny engaging in the unregistered offering of securities in the form of investment contracts or otherwise. The remainder is denied as phrased;

6. Unknown and therefore denied. Neither H. Seigel or J. Seigel were signatories on the accounts of Natural, nor did they have access to, dominion or control over the funds, accounts or accountings of Natural;

7. H. Seigel and J. Seigel deny they engaged in unregistered offering of securities on behalf of Eagle in the form of investment contracts or otherwise. The remainder of the allegations are denied;

8. Harold Seigel did not receive monies directly from Aman, Natural or Eagle. Harold Seigel's companies however did receive monies from Aman through bank wires transferred from the accounts of Eagle. The exact amount is unknown but believed to be between 2-3 million over a three-year period. The remainder of the allegations are unknown and therefore denied;

9. Upon information and belief, H. Seigel and J. Seigel became aware, solely through their clients, family member and associates, that Natural was in default on certain of their loan payments and Eagle was in default on certain of their partnership agreements. H. Seigel and J. Seigel deny knowledge of Natural or Eagle having been operated as a Ponzi Scheme. It is believed that Argyle was solely created by Aman, however H. Seigel and J. Seigel deny learning of the existence of said venture until on or about February of 2018. Neither H. Seigel or J. Seigel were officers, directors or partners in Argyle. The remainder of the allegations are unknown and therefore denied.

10. Upon information and belief, Argyle Coin is in receivership. J. Seigel is aware that Aman and Argyle represented that Argyle was offering the first investment in cryptocurrency backed by fancy colored diamonds. The remainder of the allegations are denied.

11. Unknown and therefore denied. However, upon information and belief, Aman represented the monies raised through initial Argyle coin offerings was being used to purchase the lots of fancy colored diamonds held by Eagle and other diamonds held by Natural. Upon further information and belief, Aman further claimed the fancy colored diamonds backing Argyle Coin were secured by a performance bond held by Malca Amit in the amount of 25 million.

12. Unknown and therefore denied.

13. Unknown and therefore denied.

14. Unknown and therefore denied.

15. H. Seigel and J. Seigel deny violating the registration provisions of the federal securities laws. The remainder is unknown and therefore denied.

16. As to H. Seigel and J. Seigel these allegations are denied. H. Seigel and J. Seigel disengaged their relationship with Aman, Natural and Eagle long before the initiation of this suit. Without knowledge as to the remainder and therefore denied.

17. Admit that Natural Diamond was a Florida Corporation in the business of buying and selling *rough* white diamonds. H. Seigel and J. Seigel deny that diamonds or the buying or selling of diamonds are a security requiring registration with the Commission. By virtue of Appointment Order of this Court, Natural is under Receivership and the Rounds case since dismissed. The remainder is denied.

18. Admit that Eagle is a Florida Corporation. Admit that Aman owned 100% of Eagle. Upon information and belief, Eagle was in the business of buying certain identified lots of rough colored diamonds, cut and polish the rough diamonds and then resell them to jewelers and dealers for a profit. H. Seigel and J. Seigel each invested their own monies into the purchase of certain identified lots of rough colored diamonds through Eagle and, further invested their own profits

acquired from the sale of colored diamonds acquired through their prior purchased lots in order to purchase additional identified lots of rough colored diamonds from Eagle. In this regard, and to the extent SEC claims Aman, Natural and Eagle perpetrated a Fraud and Ponzi scheme, H. Seigel and J. Seigel claim themselves to be victims entitled to assets from the disgorgement of assets marshaled by the Receiver. H. Seigel and J. Seigel were enlisted by Aman to share this prospect with their personal business clientele, family and friends. Thereafter, Aman engaged his attorney, Ernesto Cespedes, to draft contracts and other documents creating what was to be a partnership with Eagle for the purchase of specific identified lots of rare colored diamonds that were to be cut and polished and sold. H. Seigel's corporation received a percentage of profits from Eagle for their investments of principal and reinvestment of principal in the purchase of lots as well as a percentage of profits from the sale of cut and polished diamonds from the lots of those they helped partner with Eagle. In this capacity, H. Seigel and J. Seigel were not engaged in the sale of unregistered securities and seek this case be dismissed against them.

19. Believed as true.

20. Upon information and belief, at one point Aman's ex-wife, Rosa Mariana, was president of Eagle. The remainder is believed to be true.

21. Harold Seigel is a resident of Parkland, Broward County, Florida; not West Palm Beach, Palm Beach County, Florida. Together with his son, J. Seigel, they own 55% of Natural. Neither H. Seigel or J. Seigel own any part of Eagle and to the extent alleged otherwise, same is denied. To the extent H. Seigel is listed on Sunbiz.org to be the President of Eagle, same is admitted however, H. Seigel asserts for all times material, Aman merely listed him as President of Eagle in an effort to benefit from his credit and ability to secure funds and credit using his name. To this extent, H. Seigel against asserts he, himself, is a victim of the fraud and scheme alleged to have

been perpetrated by Aman as alleged by the SEC. The remainder is admitted however, H. Seigel asserts the radio show and podcast has since been voluntarily discontinued pending the outcome of these matters.

22. J. Seigel denies any ownership interest whatsoever in Eagle. The remainder is admitted.

23. H.S. Management admits it is an active Florida limited liability company formed by H. Seigel with a principal place of business in Broward County, Florida, with H. Seigel being its sole managing member. Relief Defendant, H.S. Management, admits it received proceeds from Eagle, the exact total of which is unknown, but denies it ever received or knowingly received any proceeds from ill-gotten gains or without legitimate basis. Relief Defendant, H.S. Management, denies ever receiving funds emanating from Natural or Argyle.

24. Without knowledge therefore denied.

25. Without knowledge therefore denied.

26. Without knowledge therefore denied.

27. Without knowledge and therefore denied.

28. Admitted.

29. Admitted.

30. Unknown and therefore denied requiring strict proof thereof

31. Denied.

32. H. Seigel and J. Seigel admit the documents [Ex 1] they signed, were signed on behalf of Natural Diamonds, the balance of the allegations is denied and require strict proof thereof.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Unknown and therefore denied.

39. Unknown and therefore denied.

40. Denied as phrased.

41. Denied as phrased.

42. Denied as phrased.

43. Denied as phrased.

44. Denied.

45. Denied.

46. Admit that the Veterinarian, after making repeated calls and inquiry over a five-year period, made his own decision to loan funds to Natural Diamonds. The balance of the allegations is denied.

47. Admitted the Veterinarian had contacted H. Seigel to report he was not receiving funds he was promised on the loan he issued to Natural. H. Seigel admits he assured the Veterinarian, after communicating with Aman, that he would receive the return of his principal.

48. Denied.

49. Admit J. Seigel told R.B. that the Natural Diamond program was backed by a valuable diamond. The balance of the allegation is denied as phrased.

50. J. Seigel admits he may have emailed the bus driver however, J. Seigel is currently without information as to the allegations and demands strict proof thereof.

51. J. Seigel admits he may have sent the bus driver a document which he may have signed on behalf of Natural, however, J. Seigel denies authoring the document. J. Seigel is without information as to the remainder of the allegation and therefore demands strict proof thereof.

52. Unknown and therefore denied.

53. Denied and without waiving any defenses, assuming paragraph 51 is proven, same would disprove the allegations set forth in paragraph 53. Further, H. Seigel and J. Seigel assert that Natural was in the business of solely buying and selling rough white colored diamonds and did not involve the cutting or polishing. The remainder is denied.

54. Unknown as to the amount and manner and to whom funds were sent by the bus driver. The balance is denied and demand for strict proof required.

55. Unknown and therefore denied. Strict proof required

56. Unknown and therefore denied.

57. J. Seigel admits the bus driver contacted him seeking return of his principal. The balance is denied as phrased.

58. Denied.

59. Denied.

60. Denied.

61. Unknown and therefore denied.

62. Unknown and therefore denied. Strict proof requested.

63. Unknown and therefore denied. H. Seigel and J. Seigel assert, inn their capacity as part owners of Natural, that they themselves did not engage in fraudulent conduct.

64. Without knowledge and therefore denied.

65. Denied to the extent that Natural never cut or polished rough diamonds for profit or otherwise. The remainder is unknown and therefore denied.

66. Unknown and therefore denied. Neither H. Seigel nor J. Seigel were signatories on the account of Natural, much less, Eagle or Argyle, nor did they have access to the bank accounts or dominion or control over the accounts or accounting of Natural, much less Eagle or Argyle.

67. Without knowledge.

68. Without knowledge

69. Without knowledge

70. Without knowledge

71. Without knowledge

72. Without knowledge

73. Without knowledge

74. To the best of H. Seigel and J. Seigel's knowledge and belief, no registration statement was filed with the Commission relating to Eagle. Both H. Seigel and J. Seigel deny selling Eagle investment contracts to the public.

75. Denied as phrased.

76. Denied as phrased.

77. It is believed Aman had specialized education training, knowledge and experience to pick the best quality parcels available in hopes of maximizing the best profit potential. Aman selected the lots of rough colored diamonds to purchase and Eagle offered partnership opportunities for individuals to purchase an identified lot of rough diamonds. The remainder is denied.

78. Denied. Many of the purchasers of the lots had knowledge and experience in the value of and in purchasing diamonds and, they themselves, had full discretion over which specific

identified lot of rough diamonds they would partner to purchase. While there was a general understanding as to the potential profit margin from rough to later cut and polished diamonds, there was no telling whether or which lots would amass a particularly rare cut and polished colored diamond. The Seigel's deny purchase partners relied on them to make all decisions that would affect the profitability of the purchase and, further deny they had any discretion, dominion or control over which parcels the purchasers chose to purchase in partnership with Eagle. The Seigel's merely told their clientele, friends and family about the opportunity.

79. Unknown, therefore denied.

80. Unknown, therefore denied.

81. Denied as phrased.

82. Denied as phrased.

83. H. Seigel admits that he was a radio show host wherein he spoke of diamond investments along with other precious metals and currencies and additionally admits contact information was provided for listeners to call in and ask questions. The Seigels are without knowledge as to the remainder of this allegation and, therefore denies same.

84. J. Seigel admits it's likely he would have told this individual that Eagle was in the business of locating and purchasing rough colored diamond parcels to cut and resell for a profit and, upon sale of the cut and polished diamonds, the purchaser would derive proceeds. The remainder is denied.

85. Denied. J. Seigel denies the Eagle purchase partners were investors within the meaning of the SEC. Without knowledge as to the remainder and therefore denied.

86. Unknown and therefore denied.

87. Denied as a phrased.

88. Denied.

89. Denied.

90. Unknown and therefore denied and strict proof demanded.

91. Unknown and therefore denied. Eagle was owned 100% by Aman. The Seigels deny dominion or control over the actions of Aman or Eagle.

92. Without Knowledge therefore denied

93. Without Knowledge therefore denied

94. Without Knowledge and therefore denied.

95. Without Knowledge and therefore denied

96. Without Knowledge and therefore denied

97. Without Knowledge and therefore denied.

98. Without Knowledge and therefore denied

99. Without Knowledge and therefore denied

100. Without knowledge and therefore denied

101. Without knowledge and therefore denied

102. Without knowledge and therefore denied

103. It is admitted that, over a three-year period, Eagle transferred funds to H.S. Management, LLC, the exact amount of which is unknown. The remainder is unknown and therefore denied about which strict proof is required

104. Without knowledge and therefore denied

105. Without knowledge and therefore denied

106. J. Seigel admits that he was solicited by Aman to offer cryptocurrency tokens to friends and family as well as existing clients that Eagle and Natural owed money to. Specifically,

Aman told J. Seigel to offer Eagle and Natural clients the opportunity to use their owed proceeds to acquire “tokens” – a presale item before the Argyle Cryptocurrency goes to the initial offering. H. Seigel denies any involvement in Argyle Coin, its ICO (initial coin offering), or its pre-ICO offering of tokens. The Seigels are without knowledge as to the remainder of this allegation and therefore deny same.

107. Without knowledge and therefore denied

108. Unknown

109. Unknown

110. Unknown

111. Unknown

112. Unknown

113. Unknown

114. J. Seigel denies that he had directly solicited Argyle investors, including M.U. The balance of the allegation is likewise denied, and strict proof is required.

115. Denied

116. Denied

117. Without knowledge and therefore denied

118. Without knowledge and therefore denied

119. Without knowledge and therefore denied

120. Without knowledge and therefore denied

121. Without knowledge and therefore denied

122. Without knowledge and therefore denied

123. Without knowledge and therefore denied

124. Without knowledge and therefore denied

125. Without knowledge and therefore denied

126. Without knowledge and therefore denied

127. Without knowledge and therefore denied

128. Without knowledge and therefore denied

129. Without knowledge and therefore denied

130. Without knowledge and therefore denied

131. As to H.S. Management, this defendant is without knowledge as to the contentions lodged against it in this paragraph and therefor denied. Without knowledge as to the balance of the paragraph and therefore denied.

132. Without knowledge and therefore denied

133. Without knowledge and therefore denied

134. Without knowledge and therefore denied

135. Without knowledge and therefore denied

136. Without knowledge and therefore denied

137. Without knowledge and therefore denied

138. Without knowledge and therefore denied

139. Without knowledge and therefore denied

140. Without knowledge and therefore denied

141. Without knowledge and therefore denied

142. Without knowledge and therefore denied

143. Without knowledge and therefore denied

144. Without knowledge and therefore denied

145. Without knowledge and therefore denied

146. Without knowledge and therefore denied

147. Without knowledge and therefore denied

148. Without knowledge and therefore denied

149. Without knowledge and therefore denied

150. Without knowledge and therefore denied

151. Without knowledge and therefore denied

152. Without knowledge and therefore denied

153. Without knowledge and therefore denied

154. Without knowledge and therefore denied

155. Without knowledge and therefore denied

156. Without knowledge and therefore denied

157. To the best of their knowledge and belief, no registration statement was filed with the Commission pursuant to the Securities Act as it relates to Natural or Eagle. H. Seigel and J. Seigel deny they personally engaged in the sale of unregistered securities in violation of Sections 5(a) and 5(c) of the Securities Act and Move to Dismiss these allegations as against them or otherwise reserve their right to raise said defenses through summary judgment motion. Further, to the extent this Court deems Natural or Eagle to have engaged in the sale of unregistered securities, H. Seigel and J. Seigel deny their involvement or extent of their involvement warrants a finding that they personally engaged in the sale of unregistered securities in violation of Sections 5(a) and 5(c) of the Securities Act.

158. H. Seigel and J. Seigel are without knowledge as to Aman, Natural Diamonds or

Eagle and therefore same is denied. H. Seigel and J. Seigel deny subsections (a-c) as it relates to them personally.

159. H. Seigel and J. Seigel are without knowledge as to Aman, Natural Diamonds or Eagle and therefore same is denied. H. Seigel and J. Seigel deny this allegation to the extent it pertains to them personally.

Affirmative Defenses

160. First Affirmative Defense/ Motion to Dismiss

To the extent this Court had previously found the SEC made a prima facie case for a violation of Section 5 by H. Seigel and J. Seigel, having proffered: (1) no registration statement was in effect as to the securities; (2) the defendant directly or indirectly offered to sell or sold the securities; and (3) the offer or sale was made in connection with the use of interstate transportation, communication, or the mails, both H. Seigel and J. Seigel were not privy to the arguments raised by SEC and seeks an opportunity to show unto the Court that they personally did not, either directly or indirectly, offer to sell or sold securities within the meaning of the Securities Act; that said contracts were not 'investment contracts', but, rather, as to Natural, the alleged investors were providing Natural a loan for Natural to purchase assets and, as to Eagle, the alleged investors engaged in a partnership with Eagle to purchase a particular lot of diamonds- both of which business dealings or situations are distinguishable from the investment contract securities test set forth in *SEC v. Howey*, 328 U.S. 293 (1943). However, where this Court is presented with and relies on the unilateral showing by the SEC as to the allegations and Defendant does not have the opportunity to respond or challenge said showings, Defendant is prejudiced. Defendants hereby moves to dismiss the allegations lodged against it by the SEC upon which this Court found a primie facie case existed upon which the SEC is proceeding.

161. Second Affirmative Defense:

Neither H. Seigel nor J. Seigel are liable for allegations they engaged in the sale of unregistered securities. The SEC claim against them should be barred in whole or in part where, as here, these defendants reasonably and in good faith relied on Ernesto Cespedes, Esquire, counsel for Aman, Natural and Eagle, where said attorney drafted the very contracts the SEC claims are investment contracts, accepted in trust funds paid to the businesses under the alleged scheme asserted against Aman and the entities involved, and otherwise held out, leading these Defendants to believe the particular business dealings were in accord with the law; negating the need or requirement to have registered with the SEC. Further, H. Seigel and J. Seigel contend the gains they received were proper and consistent with their own purchases, investments and work. H. Seigel and J. Seigel acted at all times in good faith, lacked culpable state of mind, never acting with intent to deceive, manipulate or defraud anyone, never acted with intent to disregard regulatory requirements, and otherwise acted in reasonable reliance upon the advice of others, including the work, advice, professional judgment and opinion of others, including the above named attorney, upon whose advice and drafting of the very documents the SEC is relying on to support its claims against these defendants, they were entitled to rely. H. Seigel and J. Seigel had no reasonable grounds to believe nor did they believe the statements of Aman or the risk statement and other legal documents (contracts and promissory notes) were untrue or contained material omissions or fraudulent information. The alleged misrepresentations or allegedly false or misleading statement or omissions referenced in the Complaint were based upon information supplied by other sources, which information Defendants reasonably believed to be true. Further, H. Seigel and J. Seigel's actions were ministerial tasks performed in reliance of an attorney and the principal, Aman. Seigel and J. Seigel maintain further they were not necessary participants nor substantial factors in the alleged

securities violation enough to impose liability. *SEC v. CMKM Diamonds*, 729 F. 3d 1248, 1256-57 (9th Cir. 2013). While the imposition of a Section 5 violation does not require nor rest on a claim of scienter, Defendants submits the refusal to consider a claim of lack of scienter, in all cases, unfairly and unjustly amounts to the imposition of strict liability. While the lack of required mental state may be in accord with the majority of circuit courts that have considered the question, the D.C Circuit has not definitively decided the question. See, e.g., *SEC v. E-Smart Techs., Inc.*, 74 F. Supp. 3d 306, 324 (D.D.C. 2014) (citing *Zacharias v. SEC*, 569 F.3d 458, 466 (D.C. Cir. 2009)). Defendants submit that the SEC will not suffer prejudice necessitate striking this affirmative defense.

162. Third Affirmative Defense

H. Seigel and J. Seigel submit the SEC's claims against them are barred because all of the allegations in the Complaint, and all of the injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom these Defendants had no control. Although it is conceded the Complaint does not seek redress for injuries or damages and the SEC need not prove causation or damages in order to prove Sec 5 liability, Defendants contend generally that striking this affirmative defense would risks unfairly punishing them as a victim of fraud. Further, Defendants maintain this defense is relevant to the extent that it claims that someone other than them, who was not acting at their behest, is responsible for the alleged conduct and harm.

163. Fourth Affirmative Defense

H. Seigel and J. Seigel's actions were isolated, inadvertent, and undertaken without culpable mental state. Again, it is understood the number of violations and the mental state with which they were undertaken by the Defendants are irrelevant to liability, Defendant submits this

defense does not pertain to liability per se, but to the SEC's requested remedies against them, which include a freeze on their assets, enjoining future Section 5 violations, civil penalties, and the disgorgement of ill-gotten gains. It is believed the parties can agree that the number of violations and the Defendant's mental state/scienter are relevant to determining the appropriate remedies, even for a non-scienter violation. See *SEC v. Spencer Pharm.*, 2015 WL 5749436, at *6–9 (D. Mass. Sept. 30, 2015) (imposing penny stock bar, disgorgement, and other remedies when company founder “orchestrated a complex and long-lasting fraud” and engaged in an “egregious pattern of behavior”); *SEC v. Converge Glob., Inc.*, No. 04–80841, 2006 WL 907567, at *6 (S.D. Fla. Mar. 10, 2006) (noting that courts have considered, when imposing fines, “egregiousness of the violation, the isolated or repeated nature of the violations, [and] the degree of scienter involved”); *SEC v. Lybrand*, 281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003), *aff'd sub nom. SEC v. Kern*, 425 F.3d 143 (2d Cir. 2005) (listing similar factors). If the SEC proves that H. Seigel and J. Seigel are liable, issues surrounding the number of their violations and their mental state/scienter are virtually certain to arise.

164. Defendants herein reserve the right to amend and supplement its Answer and defenses or pleadings and assert any and all defenses under the law or as discovery indicates ay be appropriate.

WHEREFORE, Defendants herein pray that judgment be entered in their favor, with the Complaint, as to them, be dismissed with prejudice and relief sought against them by the SEC be denied and this Court award such other relief as this Court deems just.

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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 1st day of August 2019.

Respectfully submitted,

_____/EK/_____

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FBN 0875228

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