

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case Number: 19-CV-80633-RLR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO. et al.,

Defendants, and

GOLD 7 OF MIAMI, LLC, et. al,

Relief Defendants.

DISCOVERY ORDER

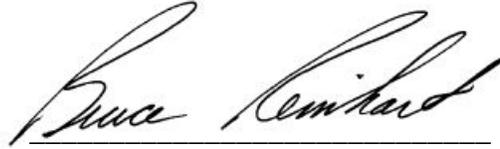
This matter came before the Court on a request for a discovery hearing pursuant to the Standing Discovery Order. The parties filed a Joint Discovery Memorandum (DE 167). A hearing was held on December 23, 2019. Two issues were presented for decision. First, whether Defendant Jose Aman had waived his fifth amendment privilege. Second, whether Mr. Aman should be compelled to produce additional documents in response to Relief Defendant Gold 7 of Miami, LLC's ("Gold 7") Request for Production of Documents.

In response to Gold 7's First Request for Admissions and First Set of Interrogatories, Mr. Aman invoked his fifth amendment right against compelled self-incrimination. Gold 7 argues that Mr. Aman waived this right in two ways. First, by signing pre-litigation, out-of-court sworn declarations concerning certain diamonds that are the subject of Gold 7's discovery requests. Second, by providing a voluntary proffer (through counsel) to the Receiver concerning these same

diamonds. Neither action waived Mr. Aman's fifth amendment privilege. Gold 7 has cited numerous cases where a witness at trial or in a deposition was found to have waived the fifth amendment privilege by first giving testimony without invoking the privilege but then later during the same testimony attempted to invoke it. That is not the situation here. The fifth amendment is only implicated by *compelled* statements. If the privilege is not invoked in the face of compulsion, it can be waived. Here, none of Mr. Aman's actions were compelled. Gold 7 has not cited any cases where a pre-litigation, out-of-court voluntary statement was found to waive the fifth amendment. No waiver has occurred.

Gold 7 also objects that Mr. Aman has not provided any documents in response to its First Request for Production. Mr. Aman states that he provided any responsive documents to the Corporate Monitor and did not retain copies. Gold 7 admits that it has received responsive documents from the Corporate Monitor, but believes that Mr. Aman has copies or could easily obtain copies. Gold 7 asserts that it needs the additional documents to make sure it has obtained everything it seeks. Given that Gold 7 has obtained the documents from the Corporate Monitor, requiring Mr. Aman to obtain the same documents from the same source and produce them again is cumulative and disproportionate to the needs of the case. Fed. R. Civ. P. 26(b)(1). If Gold 7 has evidence that Mr. Aman otherwise has possession, custody, or control over documents that are responsive to the First Request for Production but have not been produced, it may file a motion to compel.

DONE AND ORDERED in Chambers this 26th day of December, 2019, at West Palm Beach in the Southern District of Florida.

A handwritten signature in black ink, appearing to read "Bruce Reinhart", written over a horizontal line.

BRUCE REINHART
UNITED STATES MAGISTRATE JUDGE