

**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 COMBINED REPLY IN SUPORT OF RENEWED MOTION
TO COMPEL AND RESPONSE TO MOTION FOR PROTECTIVE ORDER**

Jeffrey C. Schneider, not individually, but solely in his capacity as the Court-appointed receiver (the “Receiver”), hereby replies in support of his Renewed Motion to Compel [DE 219] and in opposition to the Seigels’ Motion for Protective Order [the “Response,” DE 227].

Introduction

The proverbial molehill has become a mountain. The Receiver was tasked by this Court to try to locate, marshal, and preserve assets derived from the three entities in receivership.¹ (*See* Order Granting Motion for Appointment of Receiver [DE 20] (the “Receivership Order”) at ¶

¹ The three entities in receivership are Natural Diamonds Investment Co., Eagle Financial Diamond Group, Inc., and Argyle Coin, LLC. They will be referred to as the “Receivership Entities.”

4.)² And that is exactly what he has been doing. This included asking certain questions and requesting documents from the Seigels. This should have been a routine exchange between a court-appointed receiver and defendants. It has become something entirely different. The Seigels have not complied with their accounting obligations under this Court's Order Granting Temporary Restraining Order, Asset Freeze, and Other Emergency Relief [DE 12] (the "TRO"), nor have they complied with their separate and independent obligations to respond to questions and document requests put to them by the Receiver under the Receivership Order.

It is undisputed that the Seigels³ received \$4.4 million from the receivership entities. The Seigels were not defrauded investors. They were not the landlord. They were not a vendor. It is undisputed that they were involved in the activities of the Receivership entities, having signed documents on behalf of those entities, having solicited investors, and having made representations to investors both before and after they invested. It is not for the Receiver to say the level of their involvement, their knowledge, or their complicity, and it does not affect the job the Receiver was tasked to do. The Receiver is simply trying to follow the trail, as he was tasked to do, to determine whether there are any assets to marshal for the benefit of the defrauded victims or claims to bring.

The money was paid to H.S. Management, Inc. and that is where the trail ends now, because the Seigels have not fully accounted for the money received from the Receivership

² The Receiver shall "use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Entity, including, but not limited to, monies, funds ... and other assets, together with all ... other income attributable thereto, of whatever kind, which the Receivership Entity own, possess, have a beneficial interest in, or control directly or indirectly...."

³ The Seigels that are the focus of this dispute are Harold Seigel and his company, H.S. Management Group LLC.

Entities and their assets, as they were required to do more than a year ago pursuant to the TRO. They have not answered questions under oath regarding diamonds being marketed under a new company operated out of Harold Seigel's home. They have not answered questions about what is being sold by other companies operated by Harold Seigel. They have not fully answered the questions put to them by the Receiver as part of his investigation into the assets and potential claims under the Receivership Order. Instead, they have launched an improper *ad hominem* smear campaign against the Receiver.⁴ Contrary to the accusations by the Seigels, this is not at all personal; the Receiver is simply trying to perform the task for which he was appointed for the benefit of the Receivership estate and, ultimately, its hundreds of defrauded investors. It is not the least bit surprising that a receiver over a \$30 million dollar fraud would question one of the principals about the millions of dollars that he received from the Receivership Entities.

The Task Before this Court

The task before this Court is simple: this Court must determine whether the Seigels have fully complied with this Court's directive to them in the TRO and with regard to the inquiries and document requests the Receiver has made under the Receivership Order. It will either (1) decide that the Seigels have not fully complied with their obligations and direct them to do so; (2) decide that the Seigels have not fully complied, but elect not to order that additional information be provided; or (3) decide that Seigels have complied. There is no need for this Court to otherwise consider any of the red herrings advanced by the Seigels in their Response.

⁴ In just one pleading, the Seigels accuse the Receiver of being "shocking," "appalling," "preposterous," "concerning," "alarming," "outrageous," "defamatory," "libelous," "totally reprehensible," and "unable to function." (See DE 227 at ¶¶ 2, 10, 11, 15, 17, and 22.) The Receiver may be right and additional information is needed. The Receiver may be wrong. In either event, these personal attacks are inappropriate.

When the Receiver initially encountered the Seigels' resistance to his inquiries and request that they comply with their Court-ordered obligations, he filed his original motion to compel. Before the Court could rule substantively on the motion, the Seigels provided some additional information, and filed a notice of production [DE 214], which intimated that the Seigels had, in fact, fully complied, leading this Court to deny the motion as moot, but to invite the Receiver to renew his motion to compel after reviewing the supplemental information provided by the Seigels. Despite the claim by the Seigels that this Court somehow substantively made a determination on the merits of the motion to compel, that is simply not accurate. The Receiver reviewed the scant information provided by the Seigels, and again determined that it was insufficient, so he complied with the Court's invitation and renewed his motion. In response, the Seigels continued their refusal to provide additional information and purported to seek a protective order preventing the Receiver from making the inquiries he was tasked with doing by the Receivership Order.

The Court Orders

In the TRO, this Court ordered Harold Seigel to do three things to account for the millions of dollars that he received from the Receivership Entities:

(a) make a sworn accounting to this Court and the Commission of all funds, whether in the form of compensation, commissions, income (including payments for assets, shares or property of any kind), and other benefits (including the provision of services of a personal or mixed business and personal nature) received, directly or indirectly, by [Seigel];

(b) make a sworn accounting to this Court and the Commission of all assets, funds, or other properties, whether real or personal, held by [Seigel], jointly or individually, or for its direct or indirect beneficial interest, or over which it maintains control, wherever situated, stating the location, value, and disposition of each such asset, fund, and other property; and

(c) provide to the Court and the Commission a sworn identification of all accounts (including, but not limited to, bank accounts, savings accounts, securities accounts and deposits of any kind and wherever situated) in which he (whether solely or jointly), directly or indirectly (including through a corporation, partnership, relative, friend or nominee), either has an interest or over which he has the power or right to exercise control.

(TRO at 19.)

Similar to the requirements imposed on Harold Seigel, this Court ordered H.S.

Management to:

(a) make a sworn accounting to this Court and the Commission of all funds, whether in the form of compensation, commissions, income (including payments for assets, shares or property of any kind), and other benefits (including the provision of services of a personal or mixed business and personal nature) received by H.S. Management directly or indirectly;

(b) make a sworn accounting to this Court and the Commission of all assets, funds, or other properties, whether real or personal, held by H.S. Management, jointly or individually, or for [its] direct or indirect beneficial interest, or over which it maintains control, wherever situated, stating the location, value, and disposition of each such asset, fund, and other property; and

(c) provide to the Court and the Commission a sworn identification of all accounts (including, but not limited to, bank accounts, savings accounts, securities accounts and deposits of any kind and wherever situated) in which it (whether solely or jointly), directly or indirectly (including through a corporation, partnership, relative, friend or nominee), either has an interest or over which he has the power or right to exercise control.

(TRO at 15-16.)

The Receivership Order tasks the Receiver with locating, marshaling and preserving the assets of the estate. Paragraph 9 specifically provides:

The individual Receivership Entity and the entity Receivership Entity's past and/or present *officers*, directors, *agents*, attorneys, managers, shareholders, employees, accountants, debtors, creditors,

managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Entity, or any other matter relevant to the operation or administration of the receivership

(Receivership Order at 6, ¶ 9, emphasis added.) The Receivership Order further orders that no person or entity with actual notice of the receivership (including Harold Seigel and his company) shall: “[h]inder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information,” and shall not “[i]nterfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estates.”

(Receivership Order at ¶24(b) and (d).)

The TRO and the Receivership Order work in tandem, but the Receiver has separate, additional obligations. The TRO requires defendants to account about their assets, and the funds that they received from the Receivership Entities, so as to facilitate the determination as to what constitutes Receivership assets, determine where assets may have been placed, and to determine whether and what types of claims may be brought to recover them. The TRO was designed to capture assets transferred to nominees, family members, and other third parties. The TRO was designed to capture assets over which defendants have a beneficial interest or over which they have control.

The Receivership Order empowers the Receiver to continue that inquiry: he is tasked with investigating, locating, collecting, and preserving assets derived from the Receivership Entities. The SEC has the power to seek disgorgement (which it did here). However, the Receiver has separate obligations and is empowered to bring separate claims should his investigations lead him there. The Receiver is merely attempting to do what the Court ordered

him to do: investigate what the assets are, locate where they may be, and determine what the Seigels did with the money they received from the Receivership Entities.

It is unclear why the Seigels are not willing to provide this basic information. It is also unclear why the Seigels look to the SEC for cover, asserting that the SEC has declined to ask the Receiver to perform an investigation for it. The Receiver derives his authority from the Receivership Order, not the SEC, and he is separate from the SEC. Obviously, as noted above, he will work with the SEC for the benefit of the victims, but his obligations are separate and distinct. Importantly, this is not an extraordinary request by a Receiver and not one where a Receiver is overstepping his bounds. The only extraordinary thing here is the vehemence of the Seigels' refusal to comply.

As detailed below, the Receiver submits that the Seigels' continued refusal to fully account under the TRO and their refusal to provide the answers and documentation requested by the Receiver under the Receivership Order, constitute violations of the TRO and the Receivership Orders.

Harold Seigel's accounting deficiencies

As noted in the Motion, there were two typographical errors in the TRO that Harold Seigel tries to capitalize on to try to avoid providing a full accounting.⁵ In the paragraph referenced above that pertains to Harold Seigel, the Court inadvertently referred to "Aman" rather than "Harold Seigel" in subparagraphs (a) and (b) above. However, in reading the Court's TRO as a whole, it is clear that the Court's intent was for Harold Seigel to make an accounting about the funds and assets that *he* received and that *he* currently has.

⁵ This is not at all an indictment of the Court or the drafters of the TRO for the typographical errors. Typographical errors happen all the time to all practitioners. What should not happen is a party capitalizing on an obvious mistake.

It is helpful to take a step back and analyze both the motion that requested the TRO and the TRO itself to view that typographical error in context. In the Emergency Ex Parte Motion and Memorandum of Law for Temporary Restraining Order, Asset Freeze, and Other Relief [DE 4], the SEC stated clearly that: “The Commission requests the following relief against Argyle Coin, Aman, *H. Seigel*, and all Relief Defendants: . . . an Order Requiring Sworn Accountings.” [DE 4 at 3-4, emphasis added.] The SEC further explained that, “In its Complaint, the Commission seeks disgorgement orders against all of the Defendants. Sworn accountings are necessary to enable the Commission and the Court to determine the amounts the Defendants have raised and spent in perpetration of their fraud, and to enable the Court to determine the proper amount of disgorgement.” (*Id.* at 37.) Attached to that motion was a proposed order granting that relief. [DE 4-1.] These accounting obligations were not linked to a defendant’s culpability or lack thereof. Both Defendants and Relief Defendants (that were not accused of wrongdoing, but were accused of receiving monies from the Receivership Entities) were held to this obligation. It was to track the money that flowed from the Receivership Entities.

But the TRO contained a few typographical errors in the portion addressing the accounting requirements:

- Although the motion for TRO carved out Receivership Entity Natural Diamonds (“NDIC”) from the accountings, in the TRO, under the section addressing the accounting required by Aman, the TRO reads “Defendant NDIC shall make a sworn accounting” (TRO at 11).
- In the section addressing the accounting required by Relief Defendant Winners Church, Winners Church was inadvertently ordered to “make a sworn accounting. . . of all funds . . . received by G-7” (TRO at 14.) It was obvious that this was a

typographical error, as Winners Church could not possibly account for what was received by G-7, another unrelated Relief Defendant. And it did not: Winners Church, without attempting to obfuscate, accounted for what *it* received. [DE 23, 26].

- And, as noted above, the TRO inadvertently referred to “Aman” in the accounting sections pertaining to Harold Seigel.

It is clear that an accounting was required by all of the defendants of what they received and what they have (other than Jonathan Seigel and NDIC, which were specifically carved out). And it is clear that there were a few typographical errors in the TRO that should not have mattered.

Harold Seigel, however, attempts to capitalize on the typographical errors by focusing on what was received *by Aman* and on what assets are held *by Aman*. [See, e.g., DE 214.] Harold Seigel provided no details about what *he* received and did not account for *his* disposition of any funds or otherwise fully account for his assets. Harold Seigel has, to date, failed to account for the monies that *he* received—which flowed through his company, H.S. Management Group. Harold Seigel has also failed to account for any assets he holds, directly or indirectly, or in which he has a beneficial interest or control. And Harold Seigel has failed to account for the disposition and value of such assets.

Notably, Harold Seigel has not supplied information about two potential assets that are glaringly under the Receiver’s and investors’ noses: a multi-million unencumbered house in Colorado and Lavish Auctions. It may be that Harold can provide information sufficient to enable the Receiver to determine whether he controls those assets, or has a beneficial interest in them, but right now, the Receiver and this Court cannot make that determination.

- **The Colorado house**

The Seigels claim that the fact that the property is titled in Harold Seigel's wife's name ends the inquiry. It does not. No information has been provided, under penalty of perjury, to enable the Receiver to determine whether Harold Seigel has a beneficial interest in the property. No information has been provided, under penalty of perjury, to enable the Receiver to determine or whether any of the monies received from the Receivership entities were used to maintain or improve the property. No information has been provided, under penalty of perjury, to enable the Receiver to determine whether Harold Seigel has any control over the property (such as the power to encumber or sell).

- **Lavish Auctions**

The Seigels take issue with the Receiver's focus on Lavish Auctions' marketing of a 50 carat white diamond. However, again, they have provided no information to confirm that the diamond being marketed there is not the same as the diamond advertised to investors through the Receivership Entities. They also provide no information as to the beneficial ownership or control of the company. Instead, they filed *unsworn* communications to the SEC (not the Receiver). And they attached an exchange with the Receiver's counsel regarding inquiries about diamonds sent by investors to the Seigels for sale, but those inquiries did *not* involve the 50 carat white diamond currently located on the Lavish Auctions website. They have also not fully answered the Receiver's inquiries about the activities currently being undertaken by two other of Harold Seigel's companies: H. Seigel Fine Auctions and Rare Colored Diamonds.

The Seigels claim that Harold Seigel sat for a deposition about these issues. He did not.

The SEC noticed his deposition, and the Seigels objected to the Receiver's cross-notice of

deposition. The deposition of Harold Seigel started late and finished hours early because of other commitments of Harold Seigel's counsel, leaving no time for a deep dive into Harold Seigel's assets. Harold Seigel's counsel offered to provide information about some of the inquiries by the Receiver referenced above (the locations of certain diamonds) without the need for questioning on that topic at the deposition, but that information has not been provided to date.

H.S. Management's accounting deficiencies

Like Harold Seigel, HS Management has not fully accounted for the disposition of the millions of dollars that it received. While it has done more than Harold Seigel did individually, because it provided very basic information about allocations, it did not even detail how much of those monies were paid to Harold Seigel. It has not provided information related to an insurance policy that could provide coverage for missing diamonds. Accordingly, it, too, should be required to fully comply with its Court-ordered obligations.

Cooperation with the Receiver

Although the Receiver believes that the Seigels' compliance with their obligations under the TRO were lacking, this Court does not even have to consider that in order to determine that the Seigels have not satisfied their Court-ordered obligations. This Court need look no further than the Receivership Order. As noted above, the Receivership Order requires all officers, *agents, and other appropriate persons* related to the Receivership Entities⁶ to cooperate with the Receiver and to provide sworn information and documentation requested by the Receiver. As

⁶ Although he was held out publicly to be an officer of the Receivership Entities, and signed binding documents on its behalf, and although this Court made findings that Harold Seigel was an officer of the Receivership Entities, Harold Seigel maintains that he was not an officer. Be that as it may, he cannot dispute that he was an agent and otherwise related to the Receivership Entities, as his role entitled him to receive \$4.4 million from the Receivership Entities for his efforts. Thus, for purposes of this inquiry, his ownership or officer status is of no moment.

detailed in both the Receiver's original motion to compel [DE 212] and in this Motion, the Seigels have stated their unequivocal refusal to cooperate with the Receiver. Instead, they have launched *ad hominem* attacks against him.⁷

The Receiver has asked the Seigels questions about what they received from the Receivership Entities and their assets and to produce documents to support their responses. Again, there is nothing unusual, atypical, or extraordinary about those requests. By way of example only, the Receiver's questions about Lavish Auctions (the 50-carat white diamond) are directly related and relevant to particular assets that were supposed to be part of the Receivership Estate but are missing. The Seigels are refusing to respond to the questions posed by the Receiver, and the Court should require them to do so—whether via a deposition or other submission under oath.

As was required under the Receivership Order, the Receiver consulted with the counsel for the SEC about the Seigel's noncompliance. In an email—in which counsel for the Seigels was copied—the SEC confirmed that the Receiver is separate from the SEC and derives his duties and obligations from the Receivership Order, which sets forth the ways in which the Receiver is permitted to obtain information from the Seigels. The Receiver has noted above how the Receivership Order permits the Receiver to make such inquiries of the Seigels and how it governs the Seigels' obligations in response to such questions. Further, prior to the filing of this pleading, the Receiver very specifically detailed⁸ what information he was seeking and how the Receivership Order authorized the inquiry. He advised that he was seeking:

⁷ See DE 227 at ¶¶ 2, 10, 11, 15, 17, and 22.

⁸ The Receiver has spent a great deal of time on the phone with the Seigels' counsel on this topic, and has sent several emails, including as recently as August 7, 2020, all to no avail.

1. Information about the 50-carat white diamond auctioned by Lavish Auction. This inquiry was authorized by the Receivership Order at paragraph 9.
2. Information about Lavish Auctions, Rare Colored Diamonds, and H. Seigel Fine Auctions. This inquiry was authorized by the Receivership Order at paragraph 9.
3. Information about missing diamonds. This inquiry was authorized by the Receivership Order at paragraph 9.
4. Information as to what money was received by Harold Seigel from the Receivership Entities (flowing through H.S. Management Group, LLC) and where it went and how it was used. This inquiry was authorized by the Receivership Order at paragraph 9, and required under the TRO.

The Seigels have refused to provide this information.

The Receiver is merely seeking the Court's assistance in obtaining the information that this Court has already empowered the Receiver to investigate and has already directed the Seigels to produce. There is no need or basis for a protective order. There is a need for compliance by the Seigels and, unfortunately, there is now a need for the Court to assist in compelling that compliance.

WHEREFORE, the Receiver requests that this Court enter an order compelling the Seigels to fully comply with the accounting requirements contained in the TRO and to respond to the Receiver's inquiries under the Receivership Order, compelling them to produce all documents that support the Seigels' accounting, including bank statements for the accounts identified therein and information related to the website/auction companies and the diamonds marketed thereon, and granting such other and further relief as this Court deems just and proper.

Dated August 11, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on August 11, 2020, the foregoing document was electronically filed 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 in the manner specified in the service list below.

By: /s/ Stephanie Reed Traband
Stephanie Reed Traband, Esq.

SERVICE LIST

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