

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,
EAGLE FINANCIAL DIAMOND GROUP INC.
a/k/a DIAMANTE ATELIER,
ARGYLE COIN, LLC,
JOSE ANGEL AMAN,
HAROLD SEIGEL, &
JONATHON H. SEIGEL,

Defendants,

H.S. MANAGEMENT GROUP LLC,
GOLD 7 OF MIAMI, LLC,
WINNERS CHURCH INTERNATIONAL INC.
OF WEST PALM BEACH, FLORIDA,
FREDERICK D. SHIPMAN, &
WHITNEY SHIPMAN,

Relief Defendants.

_____/

**DEFENDANT, HAROLD SEIGEL'S, AND RELIEF DEFENDANT, HS
MANAGEMENT'S, REPLY TO RECEIVER'S "COMBINED REPLY TO ITS
RENEWED MOTION TO COMPEL AND RESPONSE TO DEFEDANTS' MOTION
FOR PROTECTIVE ORDER" [DE 237]**

COMES NOW, Defendants, HAROLD SEIGEL, by and through undersigned counsel,
and hereby files this, his Reply to Receiver's Combined Reply to Its Renewed Motion to Compel
and Response to Defendants' Motion for Protective Order filed in response to Receiver's
"Renewed" Motion [DE 237] and in Reply states:

1. This is the last pleading filed in a series of filings relating to this "Discovery"
issue upon which Defendants' seek relief, in the form of a denial, striking the Receiver's

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

“Renewed Motion to Compel” and enter an Order of Protection in accord with F.R.P., Rule, § 26(c) and 37, finding: 1) This Court’s Order holding the Original Motion to Compel as Moot to be affirmed; 2) Defendant’s Response to the TRO, Asset Freeze and Other Emergency Relief [DE 12] *was substantially justified*, (*SafeCard Services, Inc. v. SEC*, 926 F. 2d 1197, 1200-1201 (D.C. 1991)); 3) find Receiver’s grounds for renewal of its Motion to Compel to be pure conjecture with ultimate use of improper procedure/mechanism (asking this Court to impute words altering the meaning and intent of the Order as the basis for its’ Renewed Motion to Compel, as opposed to filing a timely motion seeking clarification from the Court; 4) find improper justification and reliance upon the SEC acquired Order Appointing Receiver [D.E. 20] to assert: a) entitlement to otherwise objectionable documents and information (not reasonably calculated to lead to admissible evidence in the SEC action); b) entitlement to documents and information not otherwise sought by the Receiver through the proper channels of discovery, about which he failed to avail himself; c) entitlement to documents and information from a party Defendant under ‘the duty to cooperate clause’¹ as a means of materially circumventing this Court’s Pre-Trial Discovery Cut-Off Order [D.E.], attempting to render said Order meaningless in the SEC action; and, 4) find Receiver has exceeded its role under the Appointment Order wherein it is seeking to usurp the role of the SEC collections unit in an attempt to vet out the assets of the Defendant where the SEC Plaintiff has negotiated its own full and comprehensive

¹ Receiver erroneously and without regard for the truth, asserts through pleadings and caused to have published false contentions that these Defendants “were involved in and played a role in the fraud”, have not only been uncooperative, but referred to them as defiant (**using needless reputational harm as a bully tactic, about which these Defendants, through its Motion for Protective Order, seeks this Court address through injunction, restraint and sanctions, finding same to be unbecoming an officer of this Court.**) when, in fact, these defendants have been the only defendants cooperating in this case and, along with their undersigned counsel, has spent numerous hours in the company of the Receiver and his co-counsel and attorney pouring over and reviewing documents and other production, providing information and leads resulting in recovery of assets for the benefit of the investors, recommending experts for the benefit of and use by the Receiver; having literally exceeded all accounts of cooperation- which the undersigned seeks this Court confirm through the attestation of SEC counsel.

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

settlement² with these Defendants, collection of which anticipated consent final judgment **has not delegated** to the Receiver which, by the Receiver's Appointment Order, must be specifically delegated as a condition precedent to acquiring that role and responsibility. In fact, not only has the SEC not delegated that duty to the Receiver, but has specifically communicated to the Receiver of its reliance upon its own collections unit to vet out the assets of the Defendants to satisfy its own judgment (at no cost to the investors). Hence, there is no legitimate basis for the Receiver to assert any obligation to locate, marshal or recover anything from these Defendants³.

2. Further, these Defendant, having entered settlement with the SEC has the right to rely on the settlement (assessing disgorgement and penalties) as being the negotiated and legitimate end to this proceeding and not otherwise fear retaliation, humiliation, or reprisal relating to false innuendos and assertions by the Receiver⁴, who by all accounts is supposed to remain "neutral and has been anything but. These Defendants lacked scienter and were not

² the SEC negotiated a full and final settlement with these Defendants [HAROLD SEIGEL and Relief Defendant, HS MANAGEMENT] for the recovery of monies claimed, investigated, and vetted by the SEC to have 'unjustly enriched' them, having participated- through sales and promotion of Defendant, Aman, and the Defendant, Receivership entities' unregistered investment/security (a per-se offense despite reliance on Defendant, Aman, and Defendant', Aman's attorney- both of whom have asserted, through these proceedings, their 5th Amendment Rights to self-incrimination- as being a legitimate enterprise) **which, unbeknownst to these Defendants, formed the basis of the 'illegally' fraudulent Ponzi Scheme alleged to have been perpetrated of Defendant, Aman and the Receiver entities, EAGLE, NATURAL and ARGYLE,** the collection of which SEC settlement has not been delegated to the Receiver to collect.

³ The Receivers mention of the Colorado home is pure *Dicta*: Receivers are prohibited from taking custody of property in the possession of strangers to the suit unless the property is in the possession of the debtor or is subject to his control. *See, Davis v. Bayless*, 70 F.3d 367 (5th Cir. 1995). Further, the authority to preserve assets does not equate to the authority to pursue claims belonging to the creditors/investors/victims. *Javitch v. First Union Securities*, 315 F. 3d 619 (6th Cir.2003).

⁴ The SEC had not alleged nor contended these Defendants perpetrated the fraud or participated in the alleged fraud. Such reference and inuendo by Receiver that these Defendants had a "role in the fraud" is preposterous and downright contentious. This Receiver knows that neither Defendants, HAROLD or JONATHAN SEIGEL were ever charged by the SEC with Fraud or participation in the alleged Fraudulent scheme, nor were they ever charged with negligence for their involvement with the EAGLE or NATURAL "unregistered Investments". Had there been evidence of either, particularly after full discovery by the SEC, the SEC would have certainly amended its Complaint to assert such claims.

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

participants in the fraud or Ponzi Scheme. (See, *SEC v. Ross*, 504 F.3d 1130 (9th Cir 2007)(The defendants had no legitimate claim to the commission because the sale/services provided by the agents stemmed from the sale of unregistered securities; the law does not permit them to benefit from the sale of unregistered securities. It's one thing for Receiver to assert Defendants had no legitimate claim to receivership assets improperly or fraudulently conveyed; it's quite another thing to assert Defendants had no legitimate claim to commissions earned for services rendered, as alleged by the SEC which, only in hindsight, was caused by Defendant Aman and the Receiver entities failed to register the investment with the SEC.

3. This Receiver knew or should have known Defendants were not holding funds in trust for the benefit of Aman or the Receiver entities and, did not receive fraudulent transfers from Receiver entities. In fact, the Receiver is aware these Defendants legitimately paid taxes on the commissions received believing them to be legitimate income from the performance of their services. This Receiver should be chided for filing papers with accusations of wrongdoing that is not germane to the legal theories being advanced by the SEC. *Id.* Nonetheless, these Defendants have entered settlement with SEC (without set-off for the taxes they paid) for the disgorgement amount of commissions, along with penalties, attributable to the unregistered security. Further, where there is an underlying securities action, the Receiver is not permitted to obtain duplicative relief through proceedings ancillary to the same action.

4. The powers of an SEC Receiver are not without bounds. *Esbitt*, 335 F. 2d 141, 143 (2nd. Cir 1964), citing *Lankenau v. Coggshall & Hicks*, 350 F. 2d 61, 63 (2nd Cir. 1965) (strong reservations expressed as to the propriety of Receiver to liquidate property). More fundamentally the authority of the Receiver is defined by the entity or entities in the Receivership. Neither Defendant, HAROLD SEIGEL, or RDef, HS MANAGEMENT, LLC, or

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

their personal assets are/were part of the Receivership. The Receiver has no greater rights/powers than the corporation would have had. The Receiver may commence suit but stands in the shoes of the corporation and can assert only those claims which the corporation could assert. *See, Lank v. NY Stock Exchange*, 548 F. 2d 61, 67 (2nd Cir. 1977). Because the Receiver stands in the shoes of the entity in the receivership, Receivers have been found to lack standing to bring suit unless receivership entity could have brought same action. *See, Goodman v. FCC*, 182 F.3d 987, 991-992 (D.C. Cir 1999). The Receiver has no standing to sue on behalf of the customers, victims, or defrauded investors of the entity in the Receivership. *See, Scholes v. Lehman*, 56 F. 3d 750, 753-55 (7th Cir. 1995) (Receiver could not bring suit on behalf of defrauded investors); *Scholes v. Schroeder*, 744 F. Supp 1419, 1422-23 (N.D. III. 1990) Although objective of receivership is to preserve the estate for the benefit of the creditor, that does not equate to the grant of authority to pursue claims belonging to the creditors. *See, Jarrett v. Kassel*, 972 F. 2d 1415, 1426 (6th Cir. 1992) (customers cannot rely on actions taken by Receiver despite authority to protect their interests in receivership property). The Receiver has no implied power to contract or authority to act unless the authority is specifically approved by the appointing order. It can be said the Receiver, in disposing of its duties and functions, is acting at the direction and on behalf of the judiciary. Here, Receiver has stepped and continues to step outside his authority granted by the Court. Derivative judicial immunity, however, is not a bar to prospective injunctive relief against the Receiver.

5. Defendants request this Court, in deciding the merits of Receiver's Renewed Motion to Compel and Defendant's Motion for Order of Protection, take Notice of the following Court Orders and other filings incorporated herein:

- a) The SEC Complaint allegations against these Defendants. [DE]
- b) TRO, Asset Freeze and Other Emergency Relief [DE 12]

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

- c) Order Granting SEC Motion for Appointment of Receiver Order [DE 20]
- d) Pre-Trial Order on discovery [DE]
- e) Receiver filed a Motion to Compel compliance with TRO [DE 212].
- f) Defendants Verified Amended Notice of Compliance [DE 214],
- g) July 1, 2020 Order deeming Receiver's Motion to Compel as Moot. [DE 215 relating to DE 212]
- h) July 6, 2020- Defendant's Notice of Settlement Status [DE 216]
- i) Court Order requiring Receiver respond to Defendant's Notice by July 8, 2020 [DE 217 relating to DE 216].
- j) July 8, 2020- Receiver's Court Ordered Response to Defendant's Notice of Settlement Status incorporating Receiver's "renewed" motion to Compel [DE 219]
- k) Defendant's Reply on Receiver's Response to Defendant's Notice of Settlement Status [DE 226 relating to DE 216 and 219]
- l) Defendants' Response to Receiver's Renewed Motion to Compel seeking Order of Protection [DE 227]
- m) Receiver's Combined Reply in support of renewed Motion to Compel and Defendants' Motion for Protective Order [DE 237 relating to DE 219 and 227]

6. The undersigned does not wish to REPEAT here, all of its prior assertions laid out in DE 227 but asks this Court to re-read DE 227 directly after reviewing Receiver's DE 237 so as to be re-directed to the real issue in controversy and legitimate need for an Order of Protection.

7. Any claim that these Defendants failed to comply with or otherwise violated the TRO lacks merit. These Defendants responded fully and accurately to the TRO. The SEC is satisfied with the cooperation of these Defendants in providing their testimony and documentary evidence requested of the SEC sufficient for them to come to a resolution of the claim brought against them for failing to register the investment with the SEC. Upon entry of final judgement, the SEC shall be referring this matter to the SEC collections unit to vet the assets of the

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

Defendants to satisfy the judgment and collection thereof without additional cost or expense to the Investors. As such, any further discovery is irrelevant to the resolution of the SEC claim and not reasonably calculated to lead to admissible evidence as the amount of disgorgement, civil penalties and pre judgement interest has already been assessed by the SEC.

8. WHEREFORE, and for all the forgoing reasons, Defendants, HAROLD SEIGEL, JONATHAN SEIGEL and Relief Defendant, HS MANAGEMENT, LLC., seek the entry of an Order declaring the Receiver's "Renewed" Motion to Compel to be legally insufficient and otherwise denied as Moot and enter an Order of Protection gagging the Receiver from further defaming and maligning the Defendants, either through pleadings or the media, contending Defendants violated a court order, played a role in the Fraud or Ponzi scheme, intentionally sought to conceal assets from the Receiver and prohibit Receiver from taking further action in any attempt to usurp the role of the SEC collections unit causing unnecessary fees and costs to the Investors.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply has been e-served via CM/ECF on all counsel of record listed below this 4th day of September 2020.

Respectfully submitted,

/EK/

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

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