

**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, et. Al.

Relief Defendants.

**DEFENDANT, HAROLD SEIGEL, AND RELIEF DEFENDANT, HS MANAGEMENT
GROUP, LLC 's OBJECTIONS TO MAGISTRATE JUDGE'S ORDER
MEMORIALIZING RULINGS DATED 9/17/2020**

Pursuant to 28 U.S.C. § 636(b)(1), U.S. District Court Magistrate Rules, 4, 5 and 12 (A), and Federal Rules of Civil Procedure, Rule 72, Defendant, HAROLD SEIGEL, and Relief Defendant, HS MANAGEMENT GROUP, LLC, respectfully makes the following objections to the Magistrate Judge's Order Memorializing Rulings entered in this matter on September 17, 2020 [See DE 244, attached as Exhibit "A"] regarding Receiver's non-dispositive 'Renewed Motion to Compel' and Defendant's dispositive 'Motion for Protective Order' heard by the Magistrate Judge on September 8, 2020 [hearing transcript attached as Exhibit "B"]¹.

¹ Upon referral by the Honorable Robin L. Rosenberg [DE 236], the matters brought before the Magistrate Judge for hearing were Receiver's "Renewed" Motion to Compel [DE 219] and Defendant Harold Seigel and Relief Defendant H.S. Management Group, LLC's Motion for Protective Order [DE 217] resulting in the Magistrate

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The Defendants herein request review and appeal this Honorable District Court *set aside as clearly erroneous or contrary to law*, the Magistrate Judge's Order on Receiver's *non-dispositive* 'Renewed Motion To Compel' finding:

1) SEC Defendant, HAROLD SEIGEL, individually, to be a person covered by paragraph 9 of the Receivership Order [DE 20, ¶ 9];

2) that as "persons or entities" covered by ¶ 9 of the Receivership Order [DE 20, ¶ 9] that SEC Defendant, HAROLD SEIGEL, individually and SEC Relief Defendant, HS MANAGEMENT GROUP, LLC, "must 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 or the collection of funds due to the Receivership entity"; and

3) the information Receiver seeks from SEC Defendant, HAROLD SEIGEL, individually, and Relief Defendant, HS MANAGEMENT GROUP, LLC., as set forth on Page 13 of Receiver's Reply [DE 237] relates to "the Receivership Entity" and is authorized by the Receivership Appointment Order [DE 20]. Emphasis added.

Relief is appropriate under the clearly erroneous prong if the District Judge finds that the Magistrate Judge abused his discretion or, if after viewing the record as a whole, the Court is left with a definite and firm conviction that a mistake has been made. *Pigott v. Sanibel Dev., LLC.*, 2008 WL 2937804, *5 (S.D. Ala. Jul. 23, 2008). A ruling is contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of procedure. *Id.*

Judge's Order Memorializing Rulings entered 17 September 2020 [DE 244] upon which Ruling the forgoing objections are raised and appeal taken.

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Notwithstanding, Defendants additionally object to the portion of the magistrate Judge's Ruling which failed to set forth any written recommendations or findings of fact with regard to Defendant's dispositive Motion For Protective Order seeking injunctive relief. Motions seeking Injunctive relief are dispositive motions entitled to *de novo review* upon which Defendants seek the District Judge enter its own Findings and Order of Protection, as opposed to recommitting the matter of Defendant's *dispositive* "Motion for Protective Order" back to the Magistrate Judge for reconsideration.

At the conclusion of the Review and Appeal, Defendants seek to leave the District Judge with a definite and firm conviction that the Magistrate Judge made a mistake or failed to apply (or misapplied) the correct law, procedural rule and/or existing orders applicable to "the Petitioner/SEC's case" against Defendant, HAROLD SEIGEL, and Relief Defendant, HS MANAGEMENT GROUP, LLC., culminating in the Magistrate Judge's Granting of "Receiver's" Renewed Motion to Compel mandating Defendant Harold Seigel individually and HS Management Group, LLC., answer prospective "pre-trial discovery" requests where these Defendants have already entered a full and complete Consent Judgement with the Petitioner/SEC in settlement of all claims brought against them by the SEC. In fact, the Magistrate Judge's ruling was so incorrect that no reasonable judge applying the correct law, rule or existing orders to the evidentiary facts deduced through discovery and upon which the SEC and these Defendants negotiated settlement (Consent Judgement), could have or would have arrived at the same decision.

Additionally, at the conclusion of this Review and Appeal, Defendant, HAROLD SEIGEL, seeks the District Judge find the Ruling on Defendant, HAROLD SEIGEL's Motion For Protective Order seeking Injunctive relief against Receiver, Jeffery Schneider, Esquire,

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facially deficient, subject to *de novo review* of the entire relevant record from which this Court shall make its own determination of the correct outcome, finding SEC requested appointed Receiver, Jefferey Schneider, Esquire, failed to serve as a neutral party, abused and exceeded his position, role, and power as Receiver, improperly and unprofessionally causing to be published- whether through pleadings, newspaper articles, Receiver website or other communication with victims- erroneous factual statements, maligning inferences of negligence and allegations of fraudulent conduct and participation in the alleged Fraud/Ponzi scheme- by Defendant, HAROLD SEIGEL, when Receiver knew there was no basis in fact for the comments; same never having been asserted by the SEC against Defendant, HAROLD SEIGEL, after full and thorough investigation. Although considered an arm of the court entitled to judicial immunity, said immunity is not without bounds. Upon conclusion of this appeal, the District Court should find Receiver, Jeffrey Schneider, Esquire enjoined from continuing to make such spurious comments, be otherwise removed as Receiver in this case, and otherwise be caused to make restitution to Defendant in a manner this Court deems just and proper as requested in Defendant's Motion for Protective Order.

STANDARD OF REVIEW

The relevant provision of the Federal Magistrates Act, 28 U.S.C. § 636(b)(1)(A), implemented through Federal Rule of Civil Procedure 72(a), permits a district judge to assign certain "*non-dispositive*" *pretrial matters* to a magistrate judge to "hear and *decide*." Fed. R. Civ. P., Rule 72(a) (emphasis added); Rule 4(a) Review and Appeal: Appeal of Non-Dispositive Matters (The District Judge *may* also reconsider, *sua sponte*, any matter determined by a Magistrate Judge under this rule. *Id.* The procedure for filing objections to the recommendations of a magistrate judge on a "*dispositive*" or other matters follows Fed. R. Civ. P., Rule 72(b). The

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District Judge must determine de novo any part of the Magistrate Judge's disposition that has been properly objected to. Fed. R. Civ. P., Rule 72(b)(3). The term "de novo" signifies that the Magistrate's findings or lack thereof are not protected by the clearly erroneous doctrine, but does not indicate that a secondary evidentiary hearing is required. *See, United States v. Raddatz*, 417 U.S. 667 (1980).

After a magistrate judge rules (on a non-dispositive matter) or makes a report and recommendation (on a dispositive matter), either party may object within fourteen (14) days. Fed.R.Civ.P., Rule 72. Upon objection, the district judge must review the relevant part of the magistrate judge's decision, but the standard of review varies depending on whether the matter was dispositive. *Compare*, Fed.R.Civ.P. 72(a) (requiring the judge, for non-dispositive matters, to "set aside any part of the order that is clearly erroneous or is contrary to law"), *with* Fed.R.Civ.P. 72(b) (requiring the judge, for dispositive matters, to "determine de novo any part of the magistrate judge's disposition that has been properly objected to"). If no party objects to the magistrate judge's action, the district judge may simply accept it. But the district judge remains the final authority in the case and may reconsider *sua sponte* any matter determined by a magistrate judge. Thus, although the district judge *must* make an independent determination of a magistrate judge's order upon objection, the district judge is not *precluded* from reviewing a magistrate judge's order to which a party did not object. *See, Allen v. Sybase, Inc.*, 468 F.3d 642, 658 (10th Cir.2006) ("[A] party's failure to seek timely review does not strip a district court of its power to revisit the issue."); *Phillips v. Raymond Corp.*, 213 F.R.D. 521, 525 (ND Ill 2003) (noting that if a district judge has authority to reconsider its *own* non-dispositive discovery rulings, the district judge should have the same authority to review a magistrate judge's ruling).

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The District Court Judge has jurisdiction to review Defendant's objections and appeal from the Magistrate Judge's order [DE 244].

BACKGROUND FACTS

By way of background, the SEC brought a claim against, Defendant, JOSE AMAN, individually, who operated through his corporate entities, Defendants, EAGLE, NATURAL and ARGYLE COIN to devise and perpetrate a Fraudulent Ponzi scheme where it was alleged he defrauded investors out of thirty million dollars. It is these Defendant Corporate Entities- EAGLE, NATURAL and ARGYLE COIN, which now make up the Receivership Entities. In and around the year 2014, Defendant, AMAN, approached, Defendant, HAROLD SEIGEL, telling him about an Investment opportunity through Defendant, AMAN'S company involving the purchase of lots of rough white diamonds which can be sold for profit as well as fractional rare colored diamond ownership opportunities expected to render huge returns for those who buy in. Knowing Defendant, HAROLD SEIGEL, was in the business of buying and selling rare colored diamonds, had a large book of business and a radio show discussing investments in diamonds and precious metals, Defendant, AMAN, sought SEIGEL market and refer potential purchasers in the alleged investment opportunities offered by Defendant, AMAN, through his corporations, EAGLE and NATURAL. These Defendant corporations, now under Receivership, were run by Defendant, AMAN, through his leased storefront, d/b/a Diamonte Atelier on Worth Avenue, Palm Beach County. At all times material, Defendant, AMAN, had full and sole control of the corporate books, ledgers, banking accounts, merchandising, purchase/sale and monetary disbursement of dividends, business expenses and salaries paid to employees or agents of the now Receivership corporations. At all times material, the Receivership entities, EAGLE and/or NATURAL, solely paid Relief Defendant, HS MANAGEMENT GROUP, LLC, for the

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marketing and referral services performed by Defendant, HAROLD SEIGEL. At no time had Defendant, AMAN, or the Receivership entities paid Defendant, HAROLD SEIGEL directly. At no time had Defendant, HAROLD SEIGEL, held funds or collected funds for the benefit of or otherwise due Defendant, AMAN, or the Receivership Entities. At no time had Defendant, HAROLD SEIGEL, had or gained access to the Corporate books or banking accounts of the Receivership Entities nor had he managed, operated or controlled the Receivership entities. While Defendant, HAROLD SEIGEL's name appears as a signatory on some of the subject investment contracts² and his name later listed as an officer of a Receiver entity³ with the Florida Division of Corporations. As a matter of fact, and based upon the unrefuted testimony of Defendant, HAROLD SEIGEL, he [Defendant, HAROLD SEIGEL] never had nor exercised any decision making authority, management or control involving the business , operation or administration of the Receivership entities. After thorough investigation brought before the Commission prior to filing suit, the only charges brought against Defendant, HAROLD SEIGEL, was for his participation in what the SEC claimed was an unregistered investment. At no time was Defendant, HAROLD SEIGEL, alleged to have committed fraud or participated in the Fraud or Ponzi scheme alleged to have been committed by Defendant, AMAN, by and through his Defendant corporate [now Receivership] entities, nor was Defendant, HAROLD SEIGEL, alleged to have committed negligence or a breach of any fiduciary duty. The only Petitioner in this action against Defendant, HAROLD SEIGEL, individually, is the SEC. Upon motion of the

² The unrefuted deposition testimony of Harold Seigel was that he was directed to sign the documents by Aman. Additional documents/emails were produced through the case showing then counsel for the Defendant corporation, Ernesto Cespedes, had admonished the Defendant Corporation for having Harold Seigel sign the investment agreements on behalf of the corporate entity where Seigel "was not" an officer or director of the company. Throughout his entire deposition, Ernesto Cespedes asserted his 5th Amendment right against incrimination. This and other documents supporting this assertion was produced to the Receiver, Jeffery Schneider.

³ The unrefuted deposition testimony, Harold Seigel indicated he merely lent his name as an officer of the corporation so that Defendant, Aman, could use Seigel's good credit where Aman had none.

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SEC, the Receiver, Jeffery Schneider, Esquire, was appointed; his job, duties, role, responsibilities, and limitations, as Receiver, necessarily set forth in the Order Appointing Receiver [DE 20]. The Trial procedures and Scheduling Orders, including pre-trial motion practice and discovery cut off for all parties relative to the SEC's claim is set forth in DE 95 and DE 96. Defendant, HAROLD SEIGEL, and Relief Defendant, HS MANAGEMENT GROUP, LLC., without admitting or denying their participation in the alleged unregistered security, negotiated a full settlement of all claims with the SEC, including disgorgement of all monies SEC attributed to payments made by the Receivership entities to Relief Defendant, HS MANAGEMENT GROUP, LLC., with Defendant, HAROLD SEIGEL, agreeing to be jointly and severally liable to SEC for the full settlement amount of disgorgement, penalties and interest, despite Defendant, HAROLD SEIGEL, individually, and Relief Defendant, HS MANAGEMENT GROUP, LLC., having paid the IRS taxes on the income, believing same to have been legitimate payment for services and the costs of doing business. This being a full and complete resolve, there are no other claims or monetary judgements to be acquired from these Defendants. Upon the entry of the Judgment, the only remaining job will be for the SEC to collect on its judgement against Defendant, HAROLD SEIGEL, and Relief Defendant, HS MANAGEMENT GROUP, LLC. While the role of the Receiver is to marshal assets "of the Receivership", that role is not synonymous with the job or duty to collect against these Defendants to satisfy the SEC's judgement. In order for the Receiver to acquire that duty, it must be specifically delegated to it by the SEC. In this case, the SEC has specifically refused to delegate to the Receiver the job, role or responsibility "to collect" against these Defendants the SEC's judgement against them, indicating the SEC's own collections unit will undertake that role at no cost to the investors. There being a negotiated full settlement through consent

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judgement with the SEC. The entirety of this matter has been stayed, by agreement of all parties, including the Receiver, pending the Commission's acceptance of the settlement.

OBJECTIONS

1. THE RECEIVER'S NON-DISPOSITIVE PRETRIAL DISCOVERY REQUEST SET FORTH WITHIN ITS' RENEWED MOTION TO COMPEL SHOULD BE DENIED AS IT RELATES TO DEFENDANT, HAROLD SEIGEL, INDIVIDUALLY. THE MAGISTRATE JUDGES RULING CALLING FOR THE DISCOVERY OF PERSONAL AND PRIVATE INFORMATION RELATING TO THE ASSETS AND PROPERTY OF HAROLD SEIGEL INDIVIDUALLY AND THAT OF HIS NON DEFEDANTS SPOUSE MUST BE SET ASIDE AS CLEARLY ERRONEOUS AND/OR CONTRARY TO THE LAW

Defendant, HAROLD SEIGEL, contends his due process right to proper notice was violated where the Magistrate Judge handled the Receiver's Motion to Compel as a Motion to Enforce a Court Order. Despite Defendant seeking the Magistrate Judge review all docketed entries related to the Receiver's original Motion to Compel the private/personal asset and property information of Defendant, HAROLD SEIGEL, based upon the TRO [DE 12] and the OAR [DE 20], the District Judge Order declaring Receiver's Motion to Compel Moot, the Defendant's Notice of Settlement, Receiver's court ordered response to the Notice of Settlement, the Trial Court procedure and Scheduling Order [DE 95 and DE 96] and other material documents, the Magistrate Judge merely focused on the Receiver's "Renewed" Motion to Compel and Defendants' Response and Motion for Protective Order and the respective replies thereto. The matter brought before the Magistrate Judge was a Motion to Compel production of documents and answers to inquiries; not a Motion to Enforce or Modify a Court Order. Support for this contention rests in the Magistrate Judge verbally stating that neither Rule 26 or Rule 37 applied as asserted by Defendant to the within matters before the Court.

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Despite there not having been any formal discovery requests propounded by the Receiver and the Receiver not otherwise taking advantage of its ability to conduct discovery upon Defendant or otherwise set the Defendant for deposition during the pre-trial discovery period, the Magistrate Judge incorrectly and improperly focused instead on the Appointment of Receivership order ¶9 of DE 20 to assert that HAROLD SEIGEL, *individually*, “as an agent or officer of the Receivership” (as proffered by Receiver in his Renewed Motion to Compel to be an evidentiary finding of fact set forth in this court’s TRO order [DE 12] despite the fact that this Defendant solely agreed to the asset freeze without waiving any defense he had to the allegations asserted, was unrepresented at the time and otherwise refuted those allegations through his sworn unrefuted deposition testimony) erred in finding Defendant, HAROLD SEIGEL, to be a person to whom ¶9 of DE 20 applied and further erred by ordering Defendant HAROLD SEIGEL, *individually*, answer, under oath, to the Receiver, all questions put to him and produce all documents requested by the Receiver without making the requisite inquiry of Receiver as to whether or if any of the inquiries and documents requested met the second prong ¶ 9 of the Receivership Order calling only for inquiries and documents “regarding the business of the Receivership entity” or “other matter relevant to the operation or administration of the receivership” or “collection of funds due the receivership entity”. This Magistrate Judge correctly ruled that the TRO [DE 12] did not apply however, Defendant, HAROLD SEIGEL, individually, in the true sense of the word facially, by application of legal definition or through any refuted testimony, an “officer” of the Receivership Entities. Neither was Defendant, Harold Seigel was an officer, agent and/or employee of any Receivership Entity. In fact, Defendant, HAROLD SEIGEL, was an officer/agent/employee of Relief Defendant, HS MANAGEMENT, LLC., the only entity that received any funds from the Receivership entities.

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Should the District Judge find Defendant, HAROLD SEIGEL, to be either an officer or agent of the Receivership entities, Defendant asserts the Magistrate Judge erred in failing to scrutinize the specific requests made by the Receiver to determine whether the requests are specifically “regarding the business of the Receivership entity” or “other matter relevant to the operation or administration of the receivership” or “collection of funds due the receivership entity”. That was error.

Defendant, HAROLD SEIGEL further asserts the Magistrate Judge lacked discretion and jurisdiction to have failed to address or otherwise place weight on this Court’s Trial Order [DE 95, page 4, fn 2 “deadline for discovery motion practice will be governed by discovery deadlines entered by the Court”] and Scheduling Order [DE 96, page 2 “April 30, 2020 all discovery is to be completed”] when rendering its Ruling compelling Defendant cooperate with the Receiver by providing “discovery” or otherwise being called to respond to discovery requests yet to be propounded upon this Defendant when all justiciable matters brought by the SEC have been resolved with the Receiver failing to have an independent claim or “dog” in this fight. It was erroneous for the Magistrate Judge to conclude that ¶ 9 provides Receiver the unbridled right and ability to call other SEC Defendants to submit to any and all questions and requests of the Receiver where, as here, operation of said provision would otherwise circumvent or nullify this Courts imposed trial and scheduling order setting discovery deadlines imposed upon all parties to the SEC action, including the Receivership entities and these Defendants.

Moreover, it was erroneous for the Magistrate Judge to hold the Receiver’s inquires and requests of these Defendants (set forth on page 13 of the Receiver’s Reply [DE 237]) were sufficient merely on the basis that the inquiries and requests somehow “relates to the receivership entity” *and* “is authorized by the Receivership order” wherein the Receivership

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Appointment Order [DE 20] otherwise specifically required the Magistrate Judge make a finding that the requested information, if required to be answered under oath by either or both of these Defendants, be allowed to the extent they are inquiries and requests specifically “regarding the business of the Receivership entity” or “other matter relevant to the operation or administration of the receivership” or “collection of funds due the receivership entity

Defendant, HAROLD SEIGEL, and Defendant, HS MANAGEMENT GROUP, LLC, further objects to the Magistrate Judge’s order and seeks the District Judge set aside the portion of the Magistrate Judge’s order calling for the Defendant, HAROLD SEIGEL, individually, and Relief Defendant, HS MANAGEMENT GROUP, LLC “*shall* respond to Interrogatories and Request for Production (*to be*) propounded by Receiver” on the basis that same 1) is clearly erroneous or contrary to the law in direct contravention of this Court’s Orders Setting Trial and Scheduling Order [DE 95 and DE 96 respectively] specifically limiting all parties to the discovery deadlines entered by this Court which had long since passed on April 30, 2020 and about which the Receiver failed to timely or appropriately avail himself; and/or 2) clearly exceeds the Magistrate Judge’s jurisdiction, having ordered Defendant individually and Relief Defendant to respond to ‘prospective’ discovery requests that authorize Receiver expand on the requests originally sought through its Renewed Motion to Compel.

2. THE MAGISTRATE ORDER RELATING TO DEFEDANT’S MOTION FOR PROTECTIVE ORDER WAS FACIALLY DEFICIENT IN THAT IT FAILED TO ADDRESS OR OTHERWISE SET FORTH FINDINGS OF FACT AND RECOMMENDATIONS RELATING TO THE REQUEST FOR INJUCTION AGAINST, RECEIVER, JEFFREY SCHNEIDER, ESQ.

