

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-80633-CIV-ROSENBERG/REINHART

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO., et al.,

Defendants,

H.S. MANAGEMENT GROUP, LLC, et al.,

Relief Defendants.

ORDER DENYING MOTION TO STAY [ECF NO. 248]

Defendant Harold Seigel and Relief Defendant H.S. Management Group, LLC move to stay my Order compelling them, on or before October 8, 2020, to respond to questions propounded by the Receiver and to produce documents requested by the Receiver. This ruling was entered orally at a hearing on September 8, 2020 (ECF No. 243) and memorialized in a written Order entered on September 17, 2020. ECF No. 244. I found that Movants' obligation to provide information to the Receiver arose under paragraph 9 of this Court's prior Receivership Order. *See id;* ECF No. 20. On October 2, 2020, Mr. Seigel and H.S. Management filed an appeal of my Order with the District Court. ECF No. 247. They also moved to stay my Order pending a ruling on their appeal.

A party seeking a stay pending appeal must show (1) likelihood of success on the merits of the appeal, (2) irreparable injury to the appellant absent a stay, (3) lack of substantial prejudice to the appellee, and (4) the stay would serve the public interest. *Montgomery v. Risen*, 15-20782-

CIV, 2015 WL 5167628, at *2 (S.D. Fla. Sept. 3, 2015) (J. Goodman). “Even absent a showing of a likelihood of success on the merits, if there is a ‘substantial case on the merits’ presented by the appeal, a stay may be granted if the balance of the equities weighs heavily in favor of granting the stay.” *Matter of O’Keeffe*, 15-MC-80651, 2016 WL 5795121, at *1 (S.D. Fla. June 7, 2016) (J. Marra) (quoting *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986)). A stay will be denied if the party fails to establish any of these factors.

The Motion to Stay does not address any of the applicable factors. It merely, and summarily, states, “Defendants will be unduly burdened and significantly prejudiced should they be caused to respond to the discovery prior to review of the Magistrate Judge rulings by the District Judge herein.” ECF No. 248 ¶ 4. Nevertheless, I will address the stay factors.

Movants have not shown a likelihood of success on the merits of their appeal. A Magistrate Judge’s Order on a non-dispositive motion will be reversed only if it is “clearly erroneous or contrary to law.” *See* Fed. R. Civ. P. 72; 28 U.S.C. § 636(b)(1)(A); Local Magistrate Judge Rule 4(a)(1). This standard is “a very difficult one to meet.” *Manno v. Healthcare Revenue Recovery Grp., LLC*, No. 11-61357, 2012 WL 4192987, at *2 (S.D. Fla. Sept. 18, 2012) (J. Scola). “To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong; it must, as one member of this court recently stated during oral argument, strike us as wrong with the force of a five-week-old, unrefrigerated dead fish.” *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988) *quoted in* *Howzell v. Saul*, 20-80142-CIV, 2020 WL 5077029, at *1 (S.D. Fla. Aug. 27, 2020) (J. Altman). My Order in this case involves a straightforward application of the Receivership Order’s grant of broad authority to investigate matters relevant to the Receivership Entities, including tracing funds that went out of those entities. It is not clearly

erroneous or contrary to law. Therefore, there is no likelihood of success on the merits of the appeal.

Independently, the appeal may lack merit because it is untimely. When a non-dispositive matter is referred to a Magistrate Judge, the Magistrate Judge must “promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to.” Fed. R. Civ. P. 72(a). “An oral order read into the record” is sufficient. *Id.* Advisory Committee Note (1983). Here, I orally pronounced my ruling on September 8, 2020, at a hearing attended by Movants’ counsel. The appeal was not filed until October 2, which is more than 14 days after the oral ruling. The written Order dated September 17 clearly notes that it is merely memorializing the prior oral ruling.

Additionally, Movants have not shown how they will suffer irreparable injury from having to provide information to the Receiver about funds and assets that may be traceable to the Receivership Entities. I will assume without deciding that a stay would not substantially prejudice the Receiver. A stay is not in the public interest, nor do the equities strongly favor a stay. This case arises from a multi-million dollar investment fraud for which one individual has already pleaded guilty. The Receiver was appointed in May 2019, almost 18 months ago. The public interest is best served by quickly and efficiently winding down the operations of the Receivership Entities, recovering whatever funds can be recovered, reimbursing victims, and closing this litigation. Further delaying the Movants’ providing information in furtherance of these objectives does not serve the public interest. The burden on Movants to promptly provide the requested information does not outweigh the public interest.

WHEREFORE, the Motion for Stay (ECF No. 248) is **DENIED**.

DONE AND ORDERED, in Chambers at West Palm Beach, Florida this 2nd day of
October, 2020.

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

BRUCE REINHART
UNITED STATES MAGISTRATE JUDGE