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 RESPONSE TO HAROLD SIEGEL'S AND HIS ENTITY'S OBJECTIONS TO MAGISTRATE JUDGE'S ORDER

Jeffrey C. Schneider, not individually, but solely in his capacity as the Court-appointed receiver (the "Receiver"), responds to Defendant Harold Seigel's and Relief Defendant H.S. Management Group, LLC's (together, the "Seigels") Objections (the "Objection") to the Magistrate Judge's Order entered orally at a hearing on September 8, 2020 and memorialized in a written Order entered on September 17, 2020 (the "Magistrate's Order").

INTRODUCTION

We do not know why, but the Seigels are continuing their relentless quest to avoid answering the Receiver's questions or producing any documents in this case.

As the Magistrate held in his Order Denying the Seigels' Motion to Stay [ECF No. 249], the Magistrate's Order "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." [DE 249 at 2.] For this reason, the Magistrate denied the Seigels' Motion to Stay and concluded, clearly and unambiguously, that "there is no likelihood of success on the merits of the appeal." [*Id.* at 3.]

Nevertheless, the Seigels persist. And their Objection, like so many of their previous filings on this issue and in this case, was untimely, demonstrates a desperate and fundamental misunderstanding of the facts and receivership law, and in fact misstates and omits admissions made by the Seigels' counsel to the Magistrate.

After careful consideration of the parties' submission and the docket, the Magistrate Judge determined that the Seigels obviously fell within the scope of the persons required by the Receivership Order [DE 20] to answer questions posed by the Receiver about the administration of the Receivership. The Magistrate Judge further determined that the categories of information the Receiver was seeking from the Seigels were properly related to the administration of the receivership. The Magistrate's Order was well-reasoned and issued after extensive briefing and a lengthy oral argument.

This latest Objection by the Seigels is simply another brick in the wall they have attempted to build to avoid answering what should be basic questions to aid the Receiver in doing his job. It is a sad and desperate effort to stonewall by someone who was presented as an owner of the Receivership Entities, an officer of the Receivership Entities, and who helped to market to many of the victims of the Receivership Entities, for which he received over $4 million from the Receivership Entities. It is nothing short of ludicrous for the Seigels to now suggest that they were not even "agents" and need not respond to any of the Receiver's questions or document requests.

The Receiver respectfully requests that the Court put a stop to the madness once and for all. The Seigels have managed to make simple and straightforward requests a very expensive undertaking.

STANDARD OF REVIEW

The obligations of the Magistrate and of this Court are set forth in Rule 72(a):

> (a) **Nondispositive Matters.** When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, 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. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

Fed. R. Civ. P. 72(a); *see also* Local Magistrate Judge Rule 4(a)(1).

The Receiver's Renewed Motion to Compel was not dispositive of a party's claim or defense. As such, this Court can only set aside the Magistrate's Order if it is "clearly erroneous or contrary to law." And that standard is "a very difficult one to meet." *Manno v. Healthcare Rev. Recovery Grp., LLC*, No. 11-61357, 2012 WL 4192987, at *2 (S.D. Fla. Sept. 18, 2012)(J. Scola.) As quoted by the Magistrate in denying the Seigels' Motion to Stay [DE 249], "[t]o 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." [DE 249 at 2, quoting *Howell v. Saul*, 20-80142-CIV, 2020 WL 5077029, at *1 (S.D. Fla. Aug. 27, 2020)(J. Altman), quoting *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988).]

The Seigels argue that their request to enjoin or to gag the Receiver—an odd request given his obligations as a court-appointed fiduciary and his need to apprise the Court and the victims of his activities—was dispositive. It clearly was not. The random sentence or two in the

rambling and sometimes incoherent was not styled as a request for injunctive relief, nor did it identify any of the applicable factors. It was styled as a discovery motion under Rule 26 and it was treated as such.

"[D]iscovery sanctions are generally viewed as non-dispositive matters committed to the discretion of the magistrate unless a party's claim is being dismissed." *Point Blank Sol'ns, Inc. v. Toyobo America, Inc.*, NO. 09-61166-CIV, 2011 WL 1456029, *2 (S.D. Fla. 2011)(J. Goodman)(citing Practice Before Federal Magistrates, § 16.06A (Matthew Bender 2010)). In that case, Magistrate Goodman noted that "[i]n determining between dispositive and non-dispositive discovery sanctions, the critical factor is what sanction the magistrate judge actually imposes, rather than the one requested by the party seeking sanctions." *Id.* (quoting *Gomez v. Martin Marietta Corp.*, 50 F.3d 1511, 1519-20 (10th Cir. 1995)). In *Gomez*, the Tenth Circuit noted that, while the movant had requested a dispositive discovery sanction in the form of a default judgment, the magistrate had not entered one, which meant that the order had been treated as a non-dispositive one under Rule 72(a). *Id.* Here, because no dispositive sanctions were awarded—indeed, no sanctions at all were awarded—the Magistrate's Order falls squarly within the "clearly erroneous standard" referenced above. The Magistrate Judge did not deem it dispositive (and he stated at the hearing) and did not enter a Report and Recommendation to be considered under the Rule 72(b) *de novo* standard of review.

BACKGROUND AND PROCEDURAL POSTURE

1. The Receivership Order

On March 18, 2019, this Court entered an Order Granting Motion for Appointment of Receiver ("Receivership Order") [DE 20]. The Receiver was tasked to locate, marshal, and

preserve assets derived from the three entities in receivership (the "Receivership Entities").[1] That Receivership Order also provided that:

> 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 admonishes that no person or entity with actual notice of the receivership (including the Seigels) 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." [*Id.* at ¶24(b) and (d).]

2. The Receiver's Pursuit of Information from the Seigels

Consistent with his obligations under the Receivership Order and the manner in which he regularly approaches his receivership appointments, the Receiver set about making inquiries of many individuals and entities associated with the Receivership Entities, including the Seigels. These inquiries included attempts to locate missing diamonds, insurance policies that could provide coverage for missing diamonds, and information about the millions of dollars that were diverted from the Receivership Entities to the Seigels. When the Receiver initially encountered the Seigels' resistance to what he considered to be basic questions related to the administration

[1] Eagle Financial Diamond Group, Inc. ("Eagle"); Natural Diamonds Investment Co. ("Natural Diamonds"), and Argyle Coin, LLC.

of the receivership, he filed his original motion to compel. [DE 212.] Before the Court could rule substantively on the motion, the Seigels provided some additional information, and filed a pleading that intimated that the Seigels had fully complied with the requests, leading this Court to deny the motion as moot. [DE 214.] But the Court invited the Receiver to renew his motion to compel after reviewing the supplemental information provided. [DE 215.] The Receiver reviewed the scant information provided and accepted the Court's invitation to file a Renewed Motion to Compel. [DE 219.]

In response, the Seigels continued their dogmatic refusal to provide the information sought by the Receiver. They sought a protective order preventing the Receiver from making the inquiries he was tasked with doing by the Receivership Order. [DE 227.] They further asked, without any legal support, that the Receiver be gagged from making any public comments about the Seigels.[2] [*Id.*] This Court referred the dispute to the Magistrate Judge, who conducted a hearing on September 8, 2020, made oral rulings at the conclusion of the hearing, and thereafter memorialized the rulings in a written Order entered on September 17, 2020.

3. The Seigels *Admitted* They Were Agents of the Receivership Entities

There can be no question that the Seigels were owners and officers of the Receivership Entities. At the very least, they were "agents," as they admitted to the Magistrate Judge. Yet here they are challenging a finding which they themselves admitted.

In this Court's May 28, 2019 Preliminary Injunction Order Against All Defendants and Relief Defendant H.S. Management Group LLC [DE 40, the "Preliminary Injunction"], this Court

[2] The Receiver maintains a website through which he communicates with the victims and other affected parties (www.naturaldiamondsreceivership.com). It is the most efficient way to communicate with the hundreds of victims in this case. The Receiver posts relevant pleadings on the website, *including pleadings filed by the Seigels*.

found that Harold Seigel was an officer of both Eagle and Natural Diamonds, both of which are Receivership Entities. [DE 40 at 2, 3.] Indeed, as can be seen in the Receiver's Renewed Motion to Compel [DE 219], Harold Seigel signed investment contracts on behalf of Eagle as a "partner." [DE 219-1.] In their Objection, the Seigels acknowledged that Harold Seigel signed documents on behalf of the Receivership Entities, and he acknowledged that his name was "listed as an officer of a Receiver entity with the Florida Division of Corporations." [Objection at 7.] The Seigels further acknowledged that they received $4 million from the Receivership Entities "for the marketing and referral services performed by Defendant, Harold Seigel." [*Id.*]

At the hearing on September 8, 2020, the Seigels counsel even acknowledged that her clients were, at the very least, "agents" of the Receivership Entities:

> THE COURT: . . . Miss Kaplan, I'm looking at Paragraph 9 of the receivership order, which defines the scope of the powers of the receiver. Not who is subject to the receivership order, but the power of the receiver. Who the receiver can take actions against. And it says: "The receiver can make agents and, quote, other appropriate persons or entities affiliated with the receivership entities do things." So my first question is very simple. It is your position that your clients are not either the agent, or are not the agents of the receivership entity, or should not fall under the definition of, quote, other appropriate persons or entities, as that term is used in Paragraph 9 regardless of whether they are the direct subject of the receivership. Can you answer that question for me? Do your clients fall within Paragraph 9 of the receivership order?
>
> MS. KAPLAN: That they were serving as agents.

[Hr'g Tr. at 31:7-23, attached hereto as **Exhibit A**.] Later in the hearing, the Magistrate again noted that "The Seigels agree that they fall within the scope of the people to whom the receiver can propound discovery under Paragraph 9 of the receivership order." [Ex. A at 55:4-7.]

The Seigels did not receive $4 million from the Receivership Entities for no reason. They received those funds because they were presented as owners and officers and helped to bring

victims to the Receivership Entities ("marketing and referral services"), knowingly or unknowingly. But at the very least, there can be no question that the Seigels were "agents," as their counsel admitted to the Magistrate Judge. There is no good faith basis to challenge that admission or finding now.

4. The Receiver's Requests Related to Administration of the Receivership

The Magistrate Judge then turned to analyze whether the Receiver's requests were related to the administration of the receivership. He focused on the categories set forth by the Receiver in his Reply: information about a particular diamond being auctioned by a Seigel-related company; information about missing diamonds that were being held by Receivership Entities; information about the current activities of Seigel-related businesses; and information as to where monies paid by the Receivership Entities to the Seigels had gone. [*See* DE 237 at 13.] He made inquiry of the Seigels' counsel as to why those discrete areas did not fall within the scope of Paragraph 9 of the Receivership Order and even posed hypothetical situations to her to demonstrate how these inquiries could very well lead to information upon which the Receiver should act. [*See* Ex. A at 33:20-34:10.]

The Magistrate Judge determined that the inquiries related to the administration of the receivership. Indeed, he characterized it as "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." [DE 249 at 2.] There can be no question that inquiries about the disposition and location of diamonds related to the receivership, or insurance policies related thereto, relate to receivership administration. The only question remaining is why the Seigels are still—after all of this time and all of these pleadings—unwilling to provide this information.

5. The Gag Order

Lastly, at the hearing, the Magistrate inquired as to the legal authority the Seigels had for asking that the Receiver be gagged from making any public statements about the Seigels, considering the First Amendment protections and litigation privilege. (*See* Ex. A at 36:7-10.) The Seigels provided none. The Magistrate therefore determined that there was no legal basis for entry of a gag order. (Ex. A at 57:10-11.)

All of these rulings and determinations were first announced at the September 8, 2020 hearing and then memorialized in the September 17, 2020 Order [DE 244]. Accordingly, any objections to the Magistrate's Order should have been filed by September 22, 2020, 14 days after the rulings, or October 1, 2020, at the very latest, 14 days after the Magistrate's written Order. The Objection was filed on October 2, 2020 [DE 247].[3]

ARGUMENT

1. The Magistrate Judge's Finding That the Seigels Were Agents Was Not Clearly Erroneous. In Fact, it was Based on Their Own Counsel's Admission.

Under normal circumstances, it would go without saying that, when a party makes an admission in its papers or in argument presented to a court, that party cannot later recede from that admission and claim that the court was clearly erroneous in relying on that admission. But these are not normal circumstances. Unbelievably, in their Objection, the Seigels continue to deny that they had *any* relationship with the Receivership Entities. In doing so, they ignore prior findings and orders by this Court, documents presented to investors and to the State of Florida,

[3] The Magistrate Judge, in denying the Seigels' Motion to Stay, recognized that he "orally pronounced [his] ruling on September 8, 2020 at a hearing attended by [the Seigels'] counsel. The appeal was not filed until October 2, which is more than 14 days after the oral ruling." [DE 249 at 3.] The Advisory Committee note to Fed. R. Civ. P. 72(a) states that "an oral order read into the record" is sufficient to constitute a written order. [DE 249 at 3, citing Fed. R. Civ. P. 72(a), Advisory Note.]

and their counsel's own admission to the Magistrate Judge. It is nothing short of outrageous that they would again take the position in the Objection that they do not fall within the scope of Paragraph 9—either as "agents" or "appropriate parties," even if they now challenge that they were owners or officers.

Here, we have findings by this Court that the Seigels were officers of the Receivership Entities in the Preliminary Injunction. [DE 40 at 2, 3.] We have their own admission that the corporate filings referred to Harold Seigel as an officer of both Eagle and Natural Diamonds. [Objection at 7.] The Receiver has submitted at least one example of an investment contract in which Harold Seigel himself signed on behalf of Eagle as a "partner." [DE 219-1.] There are many other contracts like this one. And the Seigels, of course, acknowledge that they were paid literally millions of dollars for the "marketing" work done by Harold Seigel for the Receivership Entities. (Objection at 6-7.) And, if that was not enough, at the hearing, counsel for the Seigels actually admitted that the Seigels were agents of the Receivership Entities. (Ex. A at 31:7-23.) It would have been clearly erroneous if the Magistrate had determined that the Seigels *did not* fall within the ambit of Paragraph 9.

The Seigels did not have to be officers or have any control over the Receivership Entities to be deemed "agents" or appropriate parties who should have to answer the Receiver's questions. Under Florida law, an agency relationship requires the principal to acknowledge that the agent will act for it, the agent to manifest an acceptance of the undertaking, and control by the principal over the actions of the agent. *See, e.g., Dye v. Tamko Bldg. Prods., Inc.,* 908 F.3d 675 (11th Cir. 2018)(applying Florida law). Here, the Receivership Entities held Harold Seigel out to the world as an officer by virtue of their corporate filings and by allowing him to sign investment contracts with victims on behalf of the Receivership Entities. Harold Seigel

manifested acceptance of that undertaking by signing those contracts, knowing that he was binding the Receivership Entities. He claims he did so only at the direction of Defendant Jose Aman, but that is of no moment; the fact remains that he did it. In fact, in footnote 3 of the Objection, the Seigels claim that Harold Seigel's "unrefuted deposition testimony . . . 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." [DE 247 at 7, fn 3, emphasis added.]

Harold Seigel held himself out as someone with authority to act for the Receivership Entities, actually bound the Receivership Entities by signing investment contracts with victims, and received millions of dollars for these services. There simply is no question that—at the very least, and as his counsel admitted—he was an agent of the Receivership Entities. The Magistrate Judge's confirmation of that admission, and determination in that regard, certainly does not smell like a five-day-old unrefrigerated dead fish.

2. The Magistrate's Determination That the Receiver's Inquiries Fell Within the Ambit of Paragraph 9 Were Not Clearly Erroneous

In the Order, and in his earlier rulings at the conclusion of the hearing, the Magistrate did not give the Receiver free rein to ask any possible question of the Seigels. He carefully analyzed the discrete categories of information identified in the Receiver's Reply [DE 237 at 13]:

> 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….

[DE 237 at 13, cited in DE 244 at 2.] After considering the argument of counsel, and even the additional colloquy offered by counsel for the SEC, the Magistrate Judge determined that those four categories fell within the scope of Paragraph 9 of the Receivership Order because they relate to either "the business of the Receivership Entity, or any other matter relevant to the operation or administration of the Receivership." (Receivership Order at 6, ¶9.)

The Magistrate Judge, through his hypothetical presented to the Seigels' counsel, demonstrated that he understood how and why it was necessary for the Receiver to seek information related to the disposition of the funds paid to the Seigels. (Ex. A at 33-34.) The thrust of the Seigels' argument was largely that the requests were duplicative of the tasks to be carried out by the SEC after entry of the judgment against the Seigels. But rightly, the Magistrate Judge noted that that did not mean that the Receiver was relieved of his duty to the Court or to the victims to track assets derived from the Receivership Entities. In fact, the Magistrate stated, "Unless and until Judge Rosenberg dissolves [] the receivership, the receiver has legal obligations, and legal duties, and legal powers." (Ex. A at 35:18-20.) Even the SEC noted that it was not tracking assets like diamonds and was only looking at cash. (Ex. A at 46:3-8.)

The Magistrate Judge had broad latitude to determine the scope of what types of inquiries fall within Paragraph 9 of the Receivership Order, and he exercised his latitude carefully. He confirmed that the Receiver was not seeking more than those categories and he gave the parties an opportunity to explain why or how those categories did not fall within the scope of Paragraph 9. When given the opportunity to demonstrate why the Receiver's inquiries did not fall within the ambit of Paragraph 9, counsel for the Seigels instead simply argued that the Seigels had

already provided the information to the SEC, but that did not satisfy the analysis as to *whether* the categories fell within the scope of Paragraph 9 of the Receivership Order.

The only other basis, beyond duplication of efforts, offered by the Seigels at the hearing and in their Objection as to why the Seigels should not have to answer the Receiver's questions is their persistent misguided notion that the work of the Receiver is somehow bound by the trial order of this Court. This further demonstrates the Seigels' fundamental misunderstanding of Receivership law. As the Receiver has explained countless times to the Seigels, including in the Renewed Motion to Compel, the Receiver has not asserted claims against the Seigels in this case and he is not the Plaintiff in this case—bound by the discovery deadline or trial deadlines set by this Court. He has been tasked with different pursuits and his requests are separate from requests under the Federal Rules of Civil Procedure. As the Magistrate noted, he did not believe that the Seigels' motion for protective order to prevent "the Receiver's discovery" under Rule 26 was proper. (Ex. A at 53:15-17.)[4]

As with his determination that the Seigels were agents, the Magistrate's determination that the Receiver's inquiries fell within the scope of Paragraph 9 of the Receivership Order are not clearly erroneous and should not be disturbed.

3. The Magistrate's Determination That the Seigels Did Not Meet Their Burden for a Gag Order Was Not Clearly Erroneous

In the motion for protective order, the Seigels requested entry of a gag order to prevent the Receiver from speaking or writing publicly about the Seigels. [DE 227 at 10.] They claimed the Receiver had been too aggressive in his pursuit of information and had made the dispute

[4] The Magistrate Judge believed it would be better form for the Receiver to serve Interrogatories and Requests to Produce so there would be no misunderstanding about the information sought and so the Seigels would have a platform to respond under oath. The Receiver did so. The Seigels' answers are due today. As stated above, their Motion to Stay was denied. [DE 249.]

personal. Ironically, in their request for a gag order, the Seigels themselves launched *ad hominem* attacks that are inappropriate in any context against any participant, let alone, a Court-appointed fiduciary merely seeking information from an owner, officer, or agent that received millions of dollars. [DE 227 at ¶¶ 2, 10, 11, 15, 17, and 22.[5]] However, while focused on making their personal attacks, the Seigels failed to cite to any law that would justify issuance of a gag order. Indeed, they failed to even address the requirements for an injunction of any type and did not style their motion as a request for injunctive relief. Instead, they styled it only as a motion for protective order and the Magistrate properly treated it as such.

Despite the paucity of their argument, the Magistrate Judge gave the Seigels every opportunity at the hearing to prove why a gag order might be appropriate. The Magistrate Judge inquired why such an unusual request could possibly be warranted here, especially considering the protections afforded the Receiver by the First Amendment and the litigation privilege. (Ex. A at 36:7-11.) The Seigels again failed to cite to any legal authority. They merely said that the Magistrate could "impute an injunction." [Ex. A at 36:12.]

"A district court may issue a preliminary injunction when the moving party demonstrates (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered unless the injunction is issued; (3) the threatened injury to the moving party outweighs whatever damage the proposed injunction might cause the non-moving party; and (4) if issued, the injunction would not be adverse to the public interest." *See, e.g., BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Svcs., LLC*, 425 F.3d 964 (11th Cir. 2005). The scrutiny is even

[5] In the Motion for Protective Order, the Seigels accused the Receiver of being "shocking," "appalling," "preposterous," "concerning," "alarming," "outrageous," "defamatory," "libelous," "totally reprehensible," and "unable to function." In the Objection itself, the Seigels continue with the personal attacks and accuse the Receiver of abusing his position, being unprofessional, and making spurious comments. [Objection at 4.]

higher when the relief sought is a prior restraint on an individual's First Amendment-protected right of free expression. *See Pennekamp v. State of Florida,* 328 U.S. 331, 347 (1946) (". . . freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice."). The Seigels did not even try to demonstrate that they had a substantial likelihood of success on the merits of their claims, nor could they. They did not try to demonstrate irreparable injury, nor could they. They did not attempt to demonstrate how any injury would be outweighed by the damage caused by the prior restraint of the Receiver, nor could they. They admitted they were entering into a consent judgment with the SEC in which they would be agreeing publicly to pay back millions of dollars received from the Receivership Entities.

The issue here is simple: this is a dispute that occurs regularly when one party does not like another party's characterization of their action or inaction. In fact, the Seigels sought relief under Rule 26 (governing discovery disputes) solely because they felt the Receiver's pursuit of information was a discovery violation. The Magistrate advised the Seigels that he believed traveling under Rule 26 was inappropriate, but he would treat their Rule 26 for discovery sanctions as property made. But the Seigels did not demonstrate the need for prior restraint, nor could they.

Even in their Objection, the Seigels still do not cite to any authority that would justify a gag order. Indeed, after stating that they objected to the Magistrate's ruling on that topic, they did not even offer any argument at all. They simply asserted that the Magistrate's Order should have included findings of fact and recommendations to the Court. And then they abruptly ended their brief. [DE 247 at 12.]

By arguing that there should have been findings of fact and a recommendation, the Seigels purport to convert their request to gag the Receiver into an injunction (even though they did not ask for one in the Motion for Protective Order) in order to shoehorn a *de novo* review by this Court onto the Magistrate's findings.[6] However, as noted above, a motion for protective order is not case-determinative and a Magistrate's refusal to enter dispositive sanctions is likewise not case-determinative. *See Point Blank Sol'ns, Inc. v. Toyobo America, Inc.*, NO. 09-61166-CIV, 2011 WL 1456029, *2 (S.D. Fla. 2011). In fact, Rule 65(d) only requires findings of fact when an injunction is granted, not when it is denied. Fed. R. Civ. P. 65. The standard to be applied is clearly erroneous. And given the Seigels' failure to provide *any* support for their highly unusual request, the Magistrate Judge's refusal to grant the relief is not clearly erroneous.

Even if the standard was *de novo* review, there is nothing further to be done here. The Seigels have not demonstrated why prior restraint on the Receiver's ability to communicate within the confines of this case or beyond is warranted here, especially when portions of the Receiver's purportedly egregious behavior involved citing to the findings of this Court in its Preliminary Injunction. As stated by the United States Supreme Court, any prior restraint on an individual's right to free expression is examined with a heavy presumption against constitutional validity, and the moving party carries a heavy burden of showing the justification for imposition of such restraint. *See Capital Cities Media, Inc. v. Toole,* 463 U.S. 1303 (1983). The Seigels did not meet that heavy burden. They did not meet any burden. The Magistrate Judge's Order should not be disturbed.

[6] Indeed, generally, Courts of Appeal review a grant of injunction for abuse of discretion. *See, e.g., BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Svcs., LLC*, 425 F.3d 964 (11th Cir. 2005).

CONCLUSION

The Seigels have delayed this long enough. For all the foregoing reasons, the Receiver respectfully requests that this Court overrule the Objection, require the Seigels to immediately comply with the Receiver's inquiries, and grant the Receiver such other and further relief as this Court deems just and proper.

Dated: October 16, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2020, I electronically filed the foregoing document 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 or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who do not receive such.

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Exhibit A

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

WEST PALM BEACH DIVISION

CASE NO.: 19-cv-80633-RLR

SECURITIES EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT COMPANY, et al.,

Defendants.

September 8, 2020

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MOTION HEARING

(Receiver's Renewed Motion to Compel and Defendants' Motion for Protective Order)

BEFORE THE HONORABLE BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On behalf of the Plaintiff:

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Miami, FL 33131
BY: STEPHANIE R. TRABAND, ESQ.

APPEARANCES CONTINUED:

On behalf of the Defendants:

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(Thereupon, the following proceeding was held:)

THE COURT: This is Case Number 19-80633; SEC versus Natural Diamond Investment Company, Inc., et al.

Let me begin, if I could, with appearances. I will start with counsel for the receiver who is a party in interest in this matter.

MS. TRABAND: Good afternoon.

Stephanie Traband from the law firm of Levine Kellogg on behalf of the receiver Jeffery Schneider.

THE COURT: Good afternoon.

And counsel for Harold Seigel, Jonathan Seigel, and H.S. Management.

Someone just joined the call. Who just joined the call, please?

Miss Kaplan, are you back? I think we lost you there.

MS. BERLIN: I'm sorry. It is Amie Riggle Berlin from the SEC that just joined.

THE COURT: Hi, Miss Berlin.

I think we may have lost Miss Kaplan now.

MS. KAPLAN: Yeah, I just got back on. I got bumped off, Your Honor. I apologize.

THE COURT: No, no problem.

Not an issue, Miss Kaplan. We didn't do anything without you. Trust me. Miss Traband entered her appearance. So I will actually turn to you to make your appearance on

behalf of Mr. Seigel and the corporate entity, please.

MS. KAPLAN: Yes. My name is Ellen Kaplan with the Law Offices of Ellen M. Kaplan, P.A. And I represent Harold Seigel, who is a Defendant, and Jonathan Seigel, who is a Defendant, and H.S. Management LLC, which is a relief Defendant in the SEC case.

THE COURT: Thank you, Miss Kaplan.

And although I am not sure that the SEC is really a party to this dispute before me today, we will enter her formal appearance on behalf of SEC as well.

MS. BERLIN: Good afternoon.

Amie Riggle Berlin on behalf of the SEC. And we are not one of the litigants on the motion that is being heard today. I was just joining to observe.

THE COURT: Understood.

And you are perfectly welcome to do, but since you are a party, I figured I might as well have you make an appearance on the record.

Okay. So I had a chance to review the submissions from the parties. Including the motions, responses, and replies that were filed. I went back and refreshed my memory by looking at the complaint with the SEC file.

I looked at the receivership order, I looked at the temporary restraining order, and the preliminary injunction orders that were granted in this case as well.

It appears to me the issue that needs resolution by the Court today is a dispute about what, if any, additional production, in the nature of your document production or sworn statements, are required of Harold Seigel, Jonathan Seigel, and H.S. Management.

And as I read the pleadings, it seems like the receiver's position is that there is an obligation under both the temporary restraining order and the receivership order. When I say the receivership order, I am talking about Docket Entry 20; specifically, Paragraph 9 of Docket Entry 20.

My understanding of the receiver's position is that there is an obligation under the temporary restraining order to provide certain information. And there is an independent obligation under the receivership order, Paragraph 9, to provide the same information or maybe additional information.

And that I will just -- if it is okay, Mr. Seigel and Mr. Seigel, in the entity if I respond to you as the respondents plural. The respondents, the Seigels, object to having to provide additional information under either the TRO or the receivership order.

I will let you argue fully, but Miss Traband, have I at least framed the issues correctly from your perspective?

MS. KAPLAN: Yes. The only caveat I would make is that really the thrust of the motion has to do with Harold Seigel and H.S. Management and not Jonathan Seigel because he

was not ordered to individually account under the TRO.

THE COURT: Okay. So he was not a prior officer, director, et cetera, of the entities?

MS. TRABAND: Well, I'm not taking that position.

I'm just saying because the TRO did not separately ask him to make an accounting, we have not addressed our motion practice with regard to him.

It is focused only on Harold Seigel and H.S. Management because they were specifically ordered to account. And then, of course, we believe Mr. Seigel has separate obligations through the receivership order.

Jonathan Seigel may as well, but that's not really the thrust of the motion practice today.

THE COURT: Okay. So you are focused only on Harold Seigel and H.S. Management. All right. I understand, but generally in terms have I correctly framed the dispute here?

You think there is information that Mr. Seigel and the entity are obligated to give you under the TRO, or the receivership order, or both and they have so far not given you what you have asked for?

MS. TRABAND: Yes. Otherwise, you have framed it perfectly. Thank you.

THE COURT: Okay. And let me just turn to Miss Kaplan.

And again, I will let everybody argue the merits. I

just want to make sure that I am thinking about the correct issue.

Miss Kaplan, your position is you don't have to give the receiver whatever information it is that the receiver is asking for. And different arguments, but, again, have I properly framed the issues in that regard?

MS. KAPLAN: Well, yes. And with the caveat that Judge Rosenberg already ruled their motion to be moot on the basis that they have renewed their motion, I believe, has no legal merit and is continued to be moot.

THE COURT: Okay. I understand that position as well.

Okay. So let me turn to Miss Traband. It is your motion. So I will let you go first and last. And I have some specific questions, though.

As it relates to the temporary restraining order, and whatever obligations may arise from the temporary restraining order, why does the receiver have standing to try to enforce the temporary restraining order?

The temporary restraining order was a mechanism, at least the discovery provision, a mechanism to get information exchanged in advance of the preliminary injunction hearing.

Mr. Seigel, to the extent Mr. Seigel was ordered to do things and I understand you take the position that's a typo and the other side doesn't. We will get to that in a second.

But whatever he was ordered to do under the temporary

restraining order was to provide information to the Court and the SEC, not to the receiver.

So why do you have standing to enforce any obligation that Mr. Seigel may have under the TRO?

MS. TRABAND: The simple answer is that the receiver is an agent and a fiduciary of the Court and the accounting to be made was to be made to the Court.

Thus, that it would therefore be or should, in our estimation, be available to the receiver to use for the purposes of fulfilling his duties and responsibilities under the receivership order.

So because it was to be made to the Court, we take the position that it, therefore, flows also to be made available to the receiver. And therefore, we should be able to look at what should have been filed or made available to the Court.

And I will set that argument about the receivership order aside for the moment because I just wanted to answer your specific question.

THE COURT: Well, you've anticipated my next question.

Is there anything that you think that you are entitled to under the TRO that you can't otherwise get under the receivership order?

MS. TRABAND: No. And actually, you know, we wanted to point out that we do not believe that the Seigels have complied with their obligations. But, really, it is almost of

no moment what their obligations were under the TRO.

Because we believe, as the receiver, Mr. Schneider could ask for the same types of information that they were required to -- that the Seigels were required to give under the TRO. And thus, we have traveled under both and the Seigels have failed to provide that information.

THE COURT: Okay. Let me address also what you claim to be the typo that the other side says that it says what it says and it is not a typo.

MS. TRABAND: Sure.

THE COURT: Why haven't you -- if you believe that's material, why haven't you gone back to Judge Rosenberg and ask her to amend the TRO to correct what you believe to be a scrivener's error?

MS. TRABAND: Because, basically, it is our position that by the motion to compel, we sort of raised the issue with the Court.

Obviously, it has been referred to you as the Magistrate to resolve it, but for entities like Winners Church it was of no moment because it was obvious that Winners Church was not being asked to truly account for what was received by G7, even though that's what the document itself said.

So we raised the issue via the motion to compel. If you, today, deem that it is something that we should first go to Judge Rosenberg with, certainly we will. But, again, the

second part of our argument has to do with what they have to disclose to us under the receivership order and we may get to the same place at the end of the day anyway.

THE COURT: Okay. Thank you.

All right. I think you have answered the -- I am certainly not limiting you. I will let you address the specific -- or I guess more of the specific questions. And then, certainly, I will let you argue everything you want to argue, but if I don't ask you a point, I will forget what my questions were.

So, in terms of what it is as we sit here today, that you believe that you have requested that you have not gotten, it is the accounting -- and I will use my own phraseology. It is the money that flowed out from H.S. Management and Mr. Seigel to other things, right?

You've gotten -- well, I guess I take that back. In regard to the TRO that Mr. Seigel and the entity were required to provide three things, they were required to provide monies. Again my phraseology. Monies that flowed from the alleged Ponzi scheme to them. So the inflow to them.

An accounting of their current assets so you could see what they own and what they may have bought with the money that they got out of the alleged Ponzi scheme. And then, disclosure of all their financial accounts; bank accounts, brokerage accounts, and things like that. So, presumably, you could

trace money in and trace money out.

What of that have you not gotten?

MS. TRABAND: We have gotten a broad brush of what flowed into H.S. Management. We have generally gotten an accounting. We've gotten a list of H.S. Management accounts.

What we have not gotten -- and to a certain degree we have gotten what flowed out in very broad brush terms, but not satisfactorily what flowed out. So we have talked about the inflow and talking about the outflow from H.S. Management. We have not satisfactorily gotten information there.

For instance, there is a line item for $900,000 for salaries. We don't know how much of that was paid to Harold Seigel. We don't know how much of that was paid to Jonathan Seigel. We don't know how much of this $700,000 -- I think it was $735,000 that was used for marketing, what that was for.

So we don't have an explanation for these large ticket items that came in -- or I'm sorry -- that flowed out from H.S. Management. We don't also have backup for there was $18,000 paid for insurance policies insuring diamonds which, of course, is at issue in this case. We don't have the underlying policy that insured these diamonds.

With regard to Harold Seigel -- I'm sorry. Before I go on --

THE COURT: No, it's okay. Go ahead.

MS. TRABAND: We don't have a lot of the disposition,

the outflow or the disposition of the monies flowing from H.S. Management. We have next to nothing about inflow or outflow from Harold Seigel.

And that is really the stickiest part of what we're talking about here and that goes back to the typo because he has just refused, to date, to provide information to the receiver about what he individually received and what he did with what he received.

And whether he is deemed to be an officer or an agent of the receivership entities really doesn't matter because he was one or the other because he signed documents on behalf of the entities and he received -- his entity received four million dollars for his efforts. So he had a connection.

And as such, under Paragraph 9 of the receivership order, he is required to provide that information to the receiver. We also do not -- I guess I've gone a little bit beyond the requirements under the TRO as to what we have not received --

THE COURT: No, that's okay.

MS. TRABAND: And I will move on to the receivership.

THE COURT: No, no, that's fine. I don't think I limited you to the TRO. I guess I did, but you answered my next question which was --

MS. KAPLAN: Your Honor --

THE COURT: Yes.

MS. KAPLAN: Excuse me.

THE COURT: Yes.

MS. KAPLAN: I don't know and I've been reserved because I know you have asked the questions, but I do have objections relevant --

THE COURT: Miss Kaplan, you will get a chance to be heard fully. Trust me.

MS. KAPLAN: Okay. Thank you.

THE COURT: You will get a chance. I am not ruling on anything and I have some questions for you as well and everybody will have a full chance to be heard.

MS. KAPLAN: Thank you. Okay. I just didn't know if Your Honor wanted me to make my objections as they were being said. Okay. Thanks.

THE COURT: I don't know what you could be objecting to the Court in terms of the party answering the Court's questions about their position.

Okay. You can argue later that their position is not legally meritorious, but I don't understand what you would be objecting to in terms of me just asking her what her position is. So I will go back.

Miss Traband, I think you have answered my question globally of what you have asked for and under the receivership order or the TRO that you haven't gotten.

Is it your position that everything that you would

otherwise be entitled to under the TRO, you have also asked for under the receivership order?

MS. TRABAND: Yes. We've been traveling under both, essentially. So we have asked, or I should say Mr. Schneider has asked in his role as receiver for this type of information, which we believe he is entitled to under the receivership order. And I've outlined broad brush what specifically he hasn't gotten.

The one thing I didn't get to mention before we had that colloquy just now, it still falls into the category of outflow, but it ties more precisely into issues involving the administration of the estate and that you said that you had thoroughly reviewed.

And I could tell you have our papers, information with regard to the current options being operated out of Mr. Seigel's home by Lavish Auctions and the other entities. And we had a specific question that we pointed out about the 50 carat white diamond.

THE COURT: Yes.

MS. TRABAND: That clearly relates, in our mind, to being able to track missing diamonds and know that a diamond that was very much at issue and at the forefront of the representations made to investors, we want to confirm under oath that the same diamond is not now being marketed by Lavish Auctions.

THE COURT: Understood.

Yeah, I was going to ask you for your reply at Docket Entry 237 on Page 13. You had enumerated four product categories, which I think is what your prayer was. You wanted me to order that Seigels provide information about you listed four things; the 50 carat diamond, the Lavish Auctions, the missing diamonds and, then, monies received by Mr. Harold Seigel from the receivership entity.

So that is going to be my last question to you. Is that if I rule in your favor which, of course, I haven't decided yet, I could enter an order, you know, ordering Mr. Seigel and the entity to do something.

Is that what you're asking me to do is to order them to do is to provide the information --

MS. TRABAND: Yes.

THE COURT: -- listed on Page 13 of your pleading?

MS. TRABAND: Yes, that is our --

THE COURT: Okay.

MS. TRABAND: Yes, that is looking at them now that covers everything that we have discussed thus far.

THE COURT: Okay. All right. Very good. Thank you.

Anything further or any other points that you want to make at this point, Miss Traband.

I am going to hear from Miss Kaplan, but since it is your motion and your burden, and I know you responded to my

questions, but if you have any further arguments that you would like to make, feel free to make them at this time.

MS. TRABAND: Sure. The only other thing that I would like to add, because I really do not want to argue what has been set forth in our papers and you have clearly read and digested them is I do want to make two small points.

With regard to the argument that the receiver was somehow limited to the discovery timeframes and other --

THE COURT: I'm sorry, Miss Traband. Hold on a second.

Miss Kaplan, are you still on the call? Somebody dropped off and I just want to make sure that we haven't lost Miss Kaplan again.

Yeah, I think we lost Miss Kaplan again. So hold on.

MS. TRABAND: No problem.

THE COURT: Miss Kaplan, are you back now?

MS. KAPLAN: I am back.

The last thing that I heard, Your Honor, was you inquiring of Miss Traband about Page 13 about the four items.

THE COURT: And she responded that that is the scope of what she is asking the Court to produce through this motion.

And once she clarified that I asked if there was any other argument that she wanted to make and I don't think that she actually gotten anywhere because we heard the phone beep. And now that you had gotten off the line, I stopped her from

talking.

So, Miss Traband, why don't you proceed at this time.

MS. KAPLAN: Sure. The only point I wanted to raise was that the receiver operates separately from the discovery in trial timelines set forth with regard to the claims by the SEC against the Defendants.

The receiver was not bound by any discovery cutoff in that case because there are no claims pending against the receiver or by the receiver. So the argument that somehow the receiver is out of bounds in terms of the timeframe under the trial calendar is simply of no moment because the receiver would bring his own claims separately and not part of the SEC's claims.

THE COURT: Okay.

MS. TRABAND: And to that point, the receiver does operate separately. Although, obviously, in tandem and together with the SEC.

The receiver's request here absolutely do not in any way seek to usurp the power of the SEC and what the SEC intends to do after or if it enters into the consent judgment with the Seigels.

THE COURT: I understand.

MS. TRABAND: We are not seeking to step on their toes and we are not seeking to insert ourselves into the collection efforts by the SEC . What we're trying to do is do

receivership type tasks that we do all the time.

We need to search for the money and assets. We need to preserve those monies and assets. We need to determine if there are additional claims to be brought and the claims may not be brought against Mr. Seigel or even H.S. Management.

We may trace money, for instance, to his wife or that was poured into the Colorado home that would lead to different totally different claims like a constructive trust, like an equitable lien.

Things that wouldn't be flowing necessarily directly from judgment collection by the SEC, but claims that would be owned by the receivership entities and would be pursued by the receivership entities.

So it is of no moment that the Seigels may have settled with the SEC because the receiver's responsibilities are ongoing as are the Seigel's cooperation obligations under the receivership order.

So it is our position that the Seigels still should have to answer these questions regardless of the settlement posture with the SEC and regardless of whether they are still asking for a release.

Obviously, as you saw in our papers, that is how the issues sort of came to a head. But it still remains relevant because the receiver is still tasked with pursuing and investigating claims that the receivership entities have.

THE COURT: Okay.

MS. TRABAND: And with that, I will just reserve time to respond to the Court's additional questions or rebuttal after Miss Kaplan.

THE COURT: That's fine. Like I said, it's your motion to compel. It's your burden. You will go last, but let me turn to Miss Kaplan and allow Miss Kaplan to be heard.

I do have some questions, Miss Kaplan, but I am sure that you want to respond directly to the things that Miss Traband had said. So I would let you respond and if you haven't answered my questions, I will circle back to those.

MS. KAPLAN: Okay. Very well.

Okay. As far as the TRO and the receivership order is concerned my clients and myself, through certification to the Court, have complied and have complied fully.

The order states what it states. My clients complied with what it states. I have no reason to believe that there is any typographical error in there. The receiver may not like what it says, but it is very obvious to me that it is appropriate.

And just the same, as Your Honor pointed out, the receivership never sought to ask the Court to amend it or to have a hearing on that. I don't believe that -- and I might be incorrect, but I don't believe that Your Honor has the jurisdiction to amend the Judge's order.

So I believe that would be something that would have to be returned back to Judge Rosenberg for consideration, but that TRO was entered in May of 2019. That receivership order was entered in May of 2019.

When the receiver is first starting or requesting this information, it wasn't until more than a year later. And only after my clients entered into a settlement with the SEC for full and complete recovery of the monies that the SEC has vetted out and investigated that they believe were related to monies they received from either Aman or the receivership entities relating to what the SEC contended was there.

Those entities' participation and promulgation of a fraud and Ponzi scheme and the monies that flowed to my clients. The reason why the SEC has brought them in and the only claims that have been made against my clients was that they participated in an unregistered security.

My clients contest the issue with regard to them being officers of the corporation. Their names were added without their knowledge. And while they have signed off on certain documents, I have also provided -- and I do believe that I attached as exhibits to my motion -- correspondence from the receivership entities' attorney saying that my clients aren't officers and directors and that they should not be signing documents.

And additionally, there was some additional

correspondence indicating that information was to be withheld from my clients' personal information. I've given that information to the receiver. The receiver is the receiver over certain corporate entities. They are not the receiver over my clients.

Just because my clients -- my clients had done in this particular circumstantial situation was brought in to assist in selling what has been alleged to be an unregistered security. The monies that they received was compensation for the services that they performed.

This is the SEC's claim. The SEC has made their claim against my clients and they have negotiated and we have entered into a settlement with them for the disgorgement of the monies that they relate through their investigations, as well as prejudgment interest, and as well as civil penalties.

There is nothing more. There is nothing more for the receivership entities to get, or to claim, or to attempt to marshal, or to gather. They don't represent the investors in any way, shape, or form.

Anything that they report to them or relate to them, they are not held accountable for that in any respect and the victims have a right to bring their own claim.

The TRO, as Your Honor specifically mentioned was for my clients to provide information to the SEC and to the Court. The SEC has never moved to compel. The SEC has never indicated

a concern that we didn't provide all the information that was necessary to them in their particular case.

I believe that my clients, they have substantially complied. In fact, they completely complied. It is ludicrous to assume or insinuated that my clients should have known that the Court intended something else, or what was written wasn't supposed to be written.

When, in reality, the only way -- and mind you the order is very specific. It doesn't say that Harold Seigel was supposed to provide his personal information, or his personal accounts, or his personal property.

And rightfully so because he has only been charged with the failing to -- or actually for participating in an unregistered security. Something that he had no control over. That's a person violation.

And it is for those reasons that my clients agree that whatever monies that they did receive -- and mind you, without consideration for business expenses. And without consideration for the taxation that they spent on that money that they are not going to be able to recover. They have agreed and entered into a consent judgment to return those funds and those monies to the SEC.

The TRO says in provisions A, I believe, and B, it talks about Mr. Aman. Mr. Aman is the Defendant who the SEC has contended perpetrated the fraud and the Ponzi scheme. The

receivership entities paid money to H.S. Management LLC for the work that Mr. Seigel did.

H.S. Management spent those monies and brought the amount of monies. No matter how large or no matter how small is of no consequence. Those monies were spent and paid to H.S. Management, what my clients believe, to be legitimately.

They were not given to my clients to hold for the benefit of any third parties. They were not given to them for the benefit of them providing them back to the receivership entities. They were paid for services that they provided and they have agreed to pay those back.

The receiver only has claims over its receivership entities. They step into the shoes of those corporations. They can only bring claims that those corporations could bring.

And Miss Traband is right. They are not Plaintiffs in this action. They don't have an independent claim against my clients. They certainly could bring one if they wanted to, but they have not done that. I've asked them, if you have a claim, any kind of claim against my clients, please bring it. They have failed to do that.

And all the time that they had the opportunity to participate in discovery, they have failed to do that. In fact, Miss Traband sat through the depositions of my clients. She had an opportunity to ask questions.

It is important for this Court, although, you know,

only because Miss Traband raised these issues and indicated that my clients were uncooperative. In all respects, my clients have been excessively cooperative.

In fact, I believe this Court should hear from the SEC as to their knowledge about everything that has transpired. The amount of cooperation. The voluntary, the sheer voluntary number of voluntary hours that myself and my clients have spent at the receivership's office giving them information.

Giving them leads that has resulted in them acquiring assets for these investors. My clients have also given them the very expert, the name and the information to the very expert that they have used in this particular case.

Initially, the receiver was claiming that they need this information if they are going to be issuing a release to my clients.

My clients then abandoned that because upon my full review, the TRO and the receivership order, my clients fully complied with that. My clients have, you know, the receiver is only the receiver over those receivership entities. Not my clients. Not my clients' personal information and not their personal accounts.

And I have already expressed to them through affidavits that my clients have not disseminated the money through anybody else and nobody else is holding any money for the benefit of the receivership or anybody else.

At the depositions, Miss Traband had an opportunity to make inquiry of my clients on cross-examination. She had noticed them in an attempt to take direct of my clients the day before.

At their deposition, I objected saying there was insufficient notice, but I told Miss Traband that I would be more than happy to bring my clients back if she wanted to take direct deposition testimony and she failed to avail herself of that.

It is not until after my clients settled with the SEC that they are bringing and raising all these spurious claims. I had filed a notice. As soon as I made my settlement with the SEC, Mr. Schneider had inquired of me about the TRO.

I had told him, as I will tell this Court, at the time that the TRO was entered, my clients, they were not represented. They had agreed -- they voluntary agreed to enter into the TRO order reserving their right to come up with any defenses they may have.

I know that in some of the pleadings that have been made by Mr. Schneider, he has indicated that these are actual material evidentiary facts deduced by the Court, but they are not. There has been no summary proceedings and there has been no trial and my clients have not had an opportunity to defend on any of those.

And in fact, when they agreed to the temporary

restraining order, it was known to the SEC that they had every opportunity to raise any defenses that they would otherwise have when or if we reached any type of summary disposition, but my clients have since settled.

The SEC has taken their depositions. The SEC has acquired everything that they feel necessary for them to be able to enter into a settlement in their particular case. This is their case. This is not the receiver's case.

The receiver, you know, keeps bringing up about all these other issues and all these other aspects about the case and how they want to find this and they want to find that. This information has already been provided to them.

And that is why I am really concerned, Your Honor. I am really, really, really concerned because I communicated to Mr. Schneider that my clients abandoned any interest or any claim they have in entering into a settlement with them.

I did not want to hold up the settlement. They started asking for all these things after the settlement. Miss Traband said that I provided information with a broad brush and she is right. I provided information with a broad brush.

In fact, that information wasn't given in response to any discovery request. I had a communication with Mr. Schneider and Mr. Schneider said if I am going to settle with you, your clients, then I am going to need this information. I don't need it to the penny. I don't need any documents. I

don't need any followup.

With a broad brush -- and I have those e-mails -- with a broad brush just give me broad accounting. Okay. And then, I will decide if I have enough to settle with your clients.

Okay. And then, I gave him what he asked me for with a broad brush. And then, after that he said I still don't have enough information. I want this and I want that and I want this and I want that and it never seems to satisfy the receiver.

But his inquiries were not based on discovery requests and his inquiries were just merely responded to him on a voluntary basis in hopes that maybe, just maybe he will enter into a global settlement and he refused to do that. And after I gave him the information he started asking for more, and more, and more.

And I said to him I don't know when enough is enough and you are not entitled to this information. And then, he started claiming that I violated the Court's order and I didn't violate the Court's order.

And I filed a compliance and he told the Court and he moved to compel and he claimed that my compliance was too cursory and too broad. So I filed a --

THE COURT: I understand that.

But I have looked at the two compliance documents. Those all relate to the TRO, as far as I am concerned. Those

don't relate to the receivership order.

Okay. And what Judge Rosenberg said is it is moot until they have a chance to actually look at what they get. If they haven't gotten what they think they are entitled to, they can re-file their motion, which they have done, and that is what is before me today.

So I understand the history behind that, but unless it effects the issue that is before me today, I don't know that you can spend a whole lot of time on that.

MS. KAPLAN: Well, as far as --

THE COURT: So as far as I am concerned, the issue before me is this.

Does the Court have, A, the power and, B, the obligation to order your clients to produce what it is that the receiver wants. That is the only issue I am going to decide today.

Do I have the power and am I obligated to give orders that were previously entered by Judge Rosenberg to grant the relief that the receiver is asking for. So I hear you, but that is really the only issue that I am focused on right now.

So let me ask you. You said your clients and H.S. Management were not directors or officers of receiver entities. But clearly, they have some relationship to them because they were providing services to them.

MS. KAPLAN: Your Honor, only on paper. Only on paper

and unbeknownst to them. And in fact --

THE COURT: No, no, no. Let me ask you.

Forget what it says on paper. They were obviously providing some services and getting money for the services they were providing.

So maybe they weren't employees. Were they 1099 independent contractors? What was their legal relationship? what is your position as to what their legal relationship was with the receivership entities?

MS. KAPLAN: That they were performing, I guess, contracted services to bring in individuals and they got paid for their services.

And by the way, I think it is important for the Court to know that my clients never had access to the books, and no access to the accounts, and no handling of any monies, or how anything was done whatsoever with regard to any of that.

THE COURT: So, again, if I -- the receiver is entitled to the information that they are requesting, which I haven't ruled on yet and I haven't decided on yet.

If I rule that way, they may not get very satisfactory answers because the answer may be we don't know. We didn't have access to that. We didn't do that. We never got that money.

MS. KAPLAN: They haven't --

THE COURT: They may not like the answers they get,

but that may be the answer they get. I understand that, but that doesn't go to the question of whether they are entitled to at least ask for it which, again, is the only issue before me today.

So talk to me about the receivership order itself. Okay. I am looking at the language in Paragraph 9 of the receivership order and it says the entities. And then, it says:

"Officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers, general limited partners, quote, and other appropriate persons or entities."

Is it your position that your clients don't fall into any of those categories, including, quote, and any other appropriate persons or entities, closed quote?

MS. KAPLAN: That's not what I am asserting, Your Honor. What I am asserting is that my clients have provided the information. There was a TRO and my clients complied with it. They complied with it to the letter of the law.

As far as the receivership order is concerned, the receivership is only over certain corporate entities; Seigel, Natural, and Argyle.

Now, my clients, that does not give them only information as to their involvement with the corporate entities and to the extent that they received funds from those corporate

entities.

As the receiver, the receiver has all that information. He has the books from the corporation. He knows how much money went to my clients or anything else. My clients are not part of the receivership. It doesn't --

THE COURT: Again, Miss Kaplan, I'm sorry.

Miss Kaplan, I'm looking at Paragraph 9 of the receivership order, which defines the scope of the powers of the receiver. Not who is subject to the receivership order, but the power of the receiver. Who the receiver can take actions against. And it says:

"The receiver can make agents and, quote, other appropriate persons or entities affiliated with the receivership entities do things."

So my first question is very simple. It is your position that your clients are not either the agent, or are not the agents of the receivership entity, or should not fall under the definition of, quote, other appropriate persons or entities, as that term is used in Paragraph 9 regardless of whether they are the direct subject of the receivership.

Can you answer that question for me? Do your clients fall within Paragraph 9 of the receivership order?

MS. KAPLAN: That they were serving as agents.

THE COURT: Okay. So they fall within that paragraph.

Now, so that empowers the receiver to acquire them to

answer under oath questions regarding the business of the receivership entity -- I'm quoting.

Quote, the business of the receivership entity or any other matter relevant to the operation or administration of the receivership or collection of funds due to the receivership entity, closed quote.

Is it your position that what the receiver is asking for falls outside of that allowable scope of inquiry?

MS. KAPLAN: Exactly.

THE COURT: Okay.

MS. KAPLAN: That's what I'm arguing hold.

THE COURT: Hold on.

Are you arguing that because that is beyond what the receiver can ask for, or are you asking because it is essentially accumulative or disproportionate because they already have the information?

Because those are two different arguments. I want to make sure which one you are making.

MS. KAPLAN: I'm making both.

One, it is beyond. It is beyond because the power of the business of the receivership entity or other matters that is for the administration of the receivership entity. It goes beyond that.

My clients did not -- it goes beyond that and also it is disproportionate. And I think it is important, too, for the

Court to recognize that the receiver is claiming, you know, why the receiver is claiming they want this discovery.

Because they are trying to find out what links to my clients. That has already been done by the SEC and my clients agreed to pay back every penny.

So even if the receiver gets this document, it is not relevant. It does not go to anything. They can't possibly give rise to any claim. It would be duplicitous.

None of this makes sense. None of this makes sense under any of this. Plus, my clients have sat with them for hours and hours giving them information. It goes beyond the scope and it is disproportionate because my clients don't owe any money. My clients don't owe any money to the receivership entity. None.

So, if they were paid for services, I think there is a law that is very clear on this and I cited that case, but there is no money that is going to the receivership entity from my clients. This is a case brought by the SEC. My clients have agreed to pay back all the money that they received.

THE COURT: Okay. But let me give you a hypothetical.

Okay. Let's say your clients earned their money and they claimed they earned their money and they got paid and they took some of the money they got and they paid some -- I don't know. They took a vacation and they paid some resort somewhere for the stay on the vacation.

And what the receiver wants to figure out is did that resort actually give value? Did your client give value? Maybe the receiver has a clawback claim against the resort.

Okay. That is why they want the information from your clients. Not because your clients owe them anything, but because people who got money downstream from your clients might owe money back. They might have a valid legal argument that those people owe money back to the receivership.

Why doesn't Paragraph 9 of the receivership order empower them to do that?

MS. KAPLAN: I will tell you why.

Because it has already been included in the SEC settlement. It is not for the receiver to go marshal. It is not for the receiver to go collect.

It is for the SEC to collect and if you look at the receivership order, the receivership order is very, very clear that they have to work in tandem with the SEC.

In fact, I do know and I think it is important for this Court to hear from Miss Berlin. She is on the phone. She specifically had communications with Mr. Schneider telling Mr. Schneider, point blankly, that they have a collections unit. That their collections unit is tasked with going after all these assets, clawing anything back, collecting on its judgment.

They would have to give that authority over to the

receivership. And not only have they not given it, but they have also specifically refused to give it because that also would cost the investors money that they otherwise don't have to pay.

It is not the receiver's job to go collecting on the SEC's judgment. It is already included in the settlement. And you know, for all the monies they received, Your Honor, all of it, for all the monies they received that the SEC has already vetted out, it goes beyond. It goes beyond their scope. It goes beyond their job. It goes beyond the receivership order.

And I cited that particular order in there because they have to seek the SEC's cooperation. And the SEC is here and Miss Berlin can attest to that.

And Miss Berlin has told Mr. Schneider she doesn't want him marshaling these things. That this is something that the SEC is going to do and they have their own collection unit. And that is why I submit that they are trying to usurp the SEC.

THE COURT: Well, I hear that argument, but unless and until Judge Rosenberg dissolves of the receivership, the receiver has legal obligations, and legal duties, and legal powers.

So I am here to just simply adjudicate whether the receiver is acting within the receiver's powers as given to the receiver by Judge Rosenberg. Nobody has moved to dissolve the receivership. So unless and until that happens, the receiver

has the power that Judge Rosenberg gave them. So I hear you.

Let me ask you a different question, Miss Kaplan. In looking at your pleading, you asked for relief as of now. You asked for the a gag order. You asked for an order gagging the receiver from making accusations either in pleadings or in media against your clients and prohibiting them from -- okay.

Let me start with that one. How does that gag order comport with the First Amendment to the Constitution and the litigation privilege? What authority would I have to enter a gag order?

MS. KAPLAN: Well, I believe that Your Honor certainly has the authority to impute an injunction from having the receiver make statements that he knows is not totally the case. That the statements, the particular statements that are being made are (inaudible) knows are not part of the (inaudible).

THE COURT: Miss Kaplan, you are cutting out on us.

So I don't know what your issues are with your phone, but you cut out on us. So if you want to start that answer again. I want to make sure the record, that you have a chance to be heard on the record.

MS. KAPLAN: Yes. Even though the receiver is or particularly can be considered to be an officer of the Court, or an extension of the arm of this Court having been appointed the receivership, I believe that there is a portion in the receivership order that requires them to comport with the law

and to further, you know, whatever the issues are in this particular case.

And the fact that even if they have some type of immunity, it does not preclude this Court from entering into an injunction or gagging them from making comments and statements that are not in compliance with what is being brought before this Court and being brought against my clients and it is very, very, very, very clear in their pleadings.

It indicates that they are seeking this information to decipher the role my clients played in the Ponzi scheme and their participation in the fraud. They were never charged with any participation in the fraud. They were never charged with perpetrating a fraud. They were not even charged by the SEC with any negligence in this particular case.

And clearly, if there was any clue or indication that my clients did or were, then the SEC would have amended and they would have brought that against my clients. My clients have been extremely, extremely cooperative.

They don't deserve to be maligned in pleadings or in publications where investors are now believing that they are part of the fraud and starting to ask questions and more questions when they are not and they weren't.

And I think it is unbecoming of being officer of this court and particularly unbecoming of being a receiver to take those steps because the law is very clear that the receiver is

supposed to remain neutral. And by these actions and by these tasks the receiver has been anything but neutral.

THE COURT: Okay. I hear you. Thank you.

Let me turn back to Miss Traband so you can have the last word.

MS. TRABAND: Your Honor, I'm actually going to take this in reverse order because I want to address the request for a gag order. And I want to make it clear that this is purely professional. This is not personal on behalf of the receiver in any way. The receiver has said nothing that is inappropriate or otherwise.

If he said to a reporter that he found the Seigel defiant that is because we've had to go through this motion practice. If he referred to them in our motion papers as having played a role in the fraud, we don't care what role they had.

But if the Court asked questions of Miss Kaplan, obviously, they received four million dollars for having done something with regard and in connection with the receivership entities.

So it does not matter to us what role it was. We are simply trying to track the money. Nothing more than that. We are simply trying to track the money.

What is offensive is the language that has been used by the Seigels in their documents. And we mentioned we

actually outlined those documents and those allegations in Footnote 4 for Document 237, our combined response and reply.

Those are the *ad hominem* attacks that should be prevented and that are not becoming of an officer of the court. But, having said that, I want to focus on the argument that we are, again, trying to usurp the province of the SEC. That is simply not the case.

If we were merely trying to pursue fraudulent transfer claims against Mr. Seigel or H.S. Management, that might very well duplicate the consent judgments that these entities, these parties are entering into with the SEC. That is not what we are trying to do here.

As the Court indicated in the hypothetical, we are trying to find out what happened to that money once it was paid out. Is it money that the receiver, on behalf of the receivership entities, has the right to clawback?

Can we file a claim against, in your hypothetical, that hotel? Can we file a claim against, for instance, his wife, or the recipient of the marketing funds, or the recipient of whatever use the money was put for.

Those are claims that are not duplicative of the consent judgment with the SEC. Those are claims that rightfully belong to the receiver and rightfully are brought all the time by receivers in actions like this.

And I do want to clarify the distinction between

entering into a consent judgment and agreeing to pay back because we are looking at what recoveries are available to the SEC and the receiver.

The receiver is tracking down monies that can be compiled for the receivership estate. And thus, therefore afterwards be paid back to the investors. We are not looking to simply recoup dollar for dollar disgorgement amounts that would be paid to the SEC. Our claims and our damages fall under a different analysis.

And I don't believe, actually, that the Seigels are planning to write a check for the full amount of the disgorgement, but that is not really my focus today. That is not really the purpose of the argument. So I am not going to say more on that. I do want to briefly touch --

MS. BERLIN: Your Honor --

MS. TRABAND: I didn't interrupt Miss Kaplan and I would like the same courtesy.

THE COURT: Yes, go ahead.

MS. KAPLAN: I didn't say a word.

THE COURT: Stop. Stop.

MS. BERLIN: That was Miss Berlin and I apologize.

THE COURT: Yes, Miss Berlin, I will give you a chance to be heard. I will give you a chance to be heard as well if you would like. Let Miss Traband finish.

MS. TRABAND: I do want to make clear that the

receiver is not in any way trying to usurp whatever is being done with the SEC. We are happy that the SEC is getting the disgorgement judgment or presumably the disgorgement consent judgment. And we are simply trying to do what we are tasked to do, which is additional and not the same thing.

With regard to the timing -- well, before I move to that, the receiver did not ask the SEC if he could be responsible for collections. I do want to be clear on that because there was the statement made that the SEC told the receiver, no. That is not accurate. We did not try to insert ourselves in these proceedings. We see our role as separate.

Now, with regard to timing, the receiver, because he is not bound by the discovery timing imposed on the claims by the SEC against the Defendants, does things in his own time.

Yes, I attended those depositions. And yes, as Miss Kaplan admitted, she objected to my questioning. She, also, offered to provide information to me off the record so that we didn't tie up the use of that deposition, which was being cut off early because of time constraints of Miss Kaplan. She offered to give me information about certain matters involving the diamonds, which I haven't gotten.

Could we later take a deposition? Yes, we absolutely could, but we have a separate document authorizing the receiver to ask for documents and ask for information of the Seigels without having to actually take a deposition and that's why

we're here today.

The receiver has asked for documents and asked for information and they have not given it. Mr. Seigel has provided next to no information to the receiver and that is why we are here.

THE COURT: Okay.

MS. TRABAND: Therefore, we are just asking for information that the receiver believes he is entitled to under the receivership order.

We believe it is also required under the TRO, but it really doesn't matter because the Court could look to Paragraph 9 of the receivership order and determine that this information is related to the receivership. That the receiver is entitled to investigate and, therefore, order the production.

With that said, I will leave it to the Court for any followup questions or for Miss Berlin.

THE COURT: Thank you.

Miss Berlin, I will hear from you now. Thank you.

MS. BERLIN: Thank you so much, Your Honor.

And I apologize, Miss Traband. I didn't mean to interrupt you. There was a pause and I was over eager. So my apologies.

I wasn't planning on speaking today, but I did feel compelled after hearing the representations and references about the SEC to just make a few points. So thank you, Your

Honor, for giving me the floor for a few moments.

I just wanted to clarify a few things. There was some discussion about the disgorgement. The disgorgement amount that is paid by the Seigels and H.S. Management actually goes to the receivership for the return of those monies to the investors.

So it really is the same thing. I mean, it is called disgorgement and disgorgement is just a word that means, you know, any money that was received in connection with the conduct at issue. So that money will all go to the receivership to be returned to the investors through the receivership.

The law is that the disgorgement amount cannot be collected twice. So, you know, even before Lew (phonetic) that was the recent Supreme Court decision on that issue. That has been the law in the Eleventh Circuit that it cannot be received twice.

And here, just so the Court understands the settlement with the Seigels, the SEC did a financial analysis and got documents from -- oh, I'm sorry. Did I interrupt, Your Honor?

THE COURT: No, go ahead. No, you did not.

MS. BERLIN: The SEC did a financial analysis of all the monies of Seigels and H.S. Management received from the receivership entities and took discovery from them as well to confirm the amounts that we could see in the bank records.

And they have agreed to pay back all of that money. So all of the money that flowed from the receivership entities to Harold Seigel, Jonathan Seigel, or H.S. Management, which together totals more than three and-a-half million.

They have signed a consent to a judgment that we will be presenting to the Court soon. And the reason it hasn't been presented is that the SEC commissioners are currently voting on --

THE COURT: Understood.

MS. BERLIN: -- whether to authorize it.

And so, if the Court enters that judgment, which we anticipate will be occurring soon, then that figure, all of the money that they received from the company, the SEC's collections unit -- we have a separate unit that does nothing about this -- will trace where money went. Will bring any fraudulent transfer claims and will collect. That is part of the collection effort.

So, your example about the resort, well, the SEC if any money was given to a resort and it should be clawed back, the SEC does that. And one of the benefits of that is, especially in a case like this where there is not enough in the receivership to pay investors back their money, the SEC does its own collections unit and does its own collections on the judgment. And every penny that is collected goes to the receivership and that is the amount that is returned to the

investors.

Now, what we did not look at is, you know, for example I heard there was discussion about the diamond that is on a website and other things that, you know, maybe they are alleging -- I understand the allegation is that there is a diamond that looks like one of the diamonds that is missing from the inventory. We did not look at tangible items.

We looked at all of the dollars. All of money. Anything that was transferred to them we have agreed to a judgment of the full amount. And then, whatever and however they transferred it anywhere, that would be subject to a judgment that only the SEC can collect on.

And we would not be asking for any assistance in collecting it. And so I just want to make that clear because those efforts, you know, if there are efforts to do the same thing it would, I think, be duplicative because it is the same money that is at issue in the judgment.

They received -- there's a specific dollar amount. I don't have it in front of me. I wasn't planning to speak. It was let's say five million dollars. Every penny of that has been traced. And then, our collections unit will follow it and get it from wherever it should come from.

If there is a claim against the wife, they will bring it. If there is a claim against that resort, they will bring it. And every dollar that is collected, we have it paid into

the receivership and the receiver will transfer it out.

In this case, there's not much money at all in the receivership. There's not money to pay back investors. Like I said, the only thing that we haven't looked at is, you know, the tangible items that I think the receiver was alluding to that might have -- I'm not sure if they are claiming it was stolen or misappropriated like hard assets. Those are not at issue in our, you know, settlement.

So I just felt compelled to clarify a few of those points just so the Court understands, you know, the issues and what the SEC settlement is. And your hypothetical about the resort would be actually part of our judgment and our collections effort.

THE COURT: Understood. Okay. Thank you all very much. So --

MS. KAPLAN: Your Honor, excuse me.

THE COURT: Yes.

MS. KAPLAN: This is Ellen Kaplan.

I just wanted to, since Miss Berlin raised some issues with regard to the tangible items, I know that when I was responding, Your Honor had some specific questions for me and I did not have the opportunity to address those issues.

May I please address those issues?

THE COURT: Yes.

MS. KAPLAN: Okay. Thank you.

So there have been a couple of things that have been asked about, which are Lavish Auctions and that the receiver is asking for information about Lavish Auctions. That information, just so the Court is aware that during the pendency of this litigation, my clients have not been receiving any income whatsoever.

My client was in the auction business before any of this transpired or took place. And before he engaged or re-engaged in the auction business, I conferred with both Miss Berlin and Mr. Schneider with regard to his (inaudible) and there were parameters.

And my client has obliged by the (inaudible). Nobody had any objection to it whatsoever to him engaging in the performance of work. So long as it did not involve any of the investors or any of the investors' assets.

Mr. Schneider inquired of me. Does it involve any of the investors or does it involve any of the investors' assets? And I specifically told him already. He has this information. Nobody has been withholding anything from him.

In fact, he inquired about the white diamond. And that white diamond had been discussed very, very, very early on in these proceedings. I discussed it both with the SEC and with Mr. Schneider.

I also provided information about the difference. The very clear difference. The diamond that was involved in the

receivership entity was a rough diamond; a 50 carat rough diamond. But the one that is on auction is held by its owner in another country and it is a polished 50 carat diamond. It is clearly a different diamond.

And in fact, the receiver is and should be aware because they have all their own documents. My clients have provided information to the SEC and to the receiver about some entities in New York. For them to go to both of them to go look for certain diamonds that they believe were squandered by Mr. Aman.

And I believe that Miss Berlin has tracked that down and has been in communication with people in New York and that is through the efforts of my clients. My clients have given formidable information that has resulted or given an opportunity for them to locate certain diamonds.

And in fact, that white diamond, the rough white diamond was listed as part of what was sold or sent to New York. So they have that information. They already know that is a diamond and that is Lavish Auctions.

With regard to the Colorado home, I have already provided information. That home belongs to Mr. Seigel's wife. The monies, it was purchased long before any of these investment opportunities occurred.

I also informed the receiver that the monies that were used to pay for the home was paid for out of monies that Mrs.

Seigel received from an inheritance. And I provided all of that information. So there is absolutely nothing that my clients have withheld.

And as far as information that Miss Traband said that she asked me for, that information she did inquire about certain diamonds. My clients provided information as to whether they know about where those diamonds are or where those diamonds aren't. It has been responded to.

Every single question that they have ever asked has been responded to and I have e-mails about it. And the SEC is well aware because I have kept them informed about all this along the way. Nothing has been misappropriated.

There are diamonds that my clients sent to Mr. Aman to be re-certified. Mr. Aman can sign them over to G7. G7, all those diamonds, they have entered into an agreement in the settlement. They turned over all those diamonds to the receiver. He has them all. There is nothing more.

I have to tell Your Honor that I have spent no less than 25 hours, at least three full days at the corporate office of the receiver. My clients and I have piled through documents. We have given them leads. We've told them about information.

The receiver has acquired a whole bunch of diamonds from somebody that they would not have otherwise had access or information from because they got that from my clients. So to

the extent that there is anything tangible, there is nothing tangible.

And as an officer of the Court I am reporting that to --

THE COURT: That doesn't help me.

People say that all the time. Unless you are prepared to be a witness and be cross-examined and testify, you are not presenting any evidence. Okay. You are arguing a legal position.

MS. KAPLAN: Well, the documentation has been provided. There is nothing more to discover. And mind you, there has not been any formal discovery lodged by the receiver at all.

THE COURT: And by what mechanism is the receiver supposed to lodge formal discovery under the receivership order?

MS. KAPLAN: Under the receivership order it has anything to do with the receivership entities. This information doesn't have anything to do with the receivership entities. The clients' personal assets have nothing to do with the receivership entities and my clients have gone above and beyond.

THE COURT: Okay.

MS. KAPLAN: And I don't understand -- what I don't understand is, I mean, there is a trial order in the case

brought by the SEC. And there is discovery, formal discovery that takes place.

And at some point in time, I understand Your Honor says until they are discharged, but like I said, it exceeds -- what they are asking for exceeds their entitlement and it is not proportionate.

And as the SEC has already said that whatever they are seeking to do, what they are seeking is duplicitous. And if they were going to bring a separate action for --

THE COURT: You mean duplicative not duplicitous.

MS. KAPLAN: I'm sorry?

THE COURT: You mean duplicative. Not duplicitous. Duplicative means cumulative or repetitious. Duplicitous means fraudulent or misleading.

MS. KAPLAN: Oh, I apologize. Then, I mean duplicative.

THE COURT: Okay. Thank you. I just want to make sure.

MS. KAPLAN: I stand corrected. I didn't realize that duplicitous was something untoward. I thought it was duplicative.

THE COURT: Well, it can be construed that way. Duplicity can be, but duplicitous sometimes has a negative connotation.

I understand what you mean. You're saying, look,

you've made very clear that your position is the SEC already has this. You have already provided it and this is just unnecessary. So I hear you and I understand.

Okay. I'm prepared to rule. I'm prepared to rule. Thank you. Let me start by saying the following.

I am making no finding that the Seigels have done anything wrong or have been uncooperative. I am not making any finding that receiver is acting any sort of bad faith or with bad intent.

Okay. And I am not leaning on any issues or objections that may arise in the future in this case. Such as if somebody tries to double collect from the Seigels, they certainly have that argument.

And I have, you know, in a prior life been involved in similar cases where there was maybe some tension between the government agency and a bankruptcy trustee, or a receiver, or who should be taking the lead and whether who could do what for free and who was going to charge money. And therefore, dissipate the estate to their own benefit versus who was not going to do that. So I am familiar with that type of dynamic as well.

So anything I am ruling today is also not effecting and is without prejudice to any arguments later that the receiver is doing work that is not necessary or does not bring value to the receivership estate and, therefore, they should

not be compensated for it.

So I just want to be very clear. I am ruling on a very narrow issue today. And I understand that you all have perused a lot of issues around that issue, but I am sticking to the core issue that is before me.

And the core issue that is before me is a request that the Court enforce its own order. There is a TRO order and there is a receivership order. And the request is enforce your own order subject to penalties of contempt.

That is the procedural posture that this arises in front of me. This is not under Rule 26 of the Federal Rules of Civil Procedure. It is not under Rule 37 of the Federal Rules of Civil Procedure. Okay. This is a request for the Court to enforce its own order.

So it is not entirely clear to me that the Rule 26 standard for a protective order actually applies here. And that the Seigels are entitled to even ask for a protective order based on annoyance, embarrassment, oppressive, or undue burden, or expense because I don't know that the Federal Rules of Civil Procedure apply to the receivership order, but I am going to assume, for the sake of discussion, that they do.

Okay. And also, since this is not a case dispositive motion, I, as the Magistrate Judge, can enter an order and not a report and recommendation and that is my intention is to enter an order.

Okay. So, first of all, with regard to the temporary restraining order, I am going to deny the motion to compel based upon the temporary restraining order. I hear the receiver's argument that they are an arm of the Court. That their power derives from the Court.

And that, therefore, a TRO that requires certain information be provided to the Court should also inure to their benefit. I don't agree with that. I don't think they have standing to enforce the TRO.

Second of all, the TRO as currently written does not require Mr. Seigel to produce documentation relating to Mr. Seigel. It requires him to produce documentation with regard to Mr. Aman.

And the case law is abundant that in a contentiously contemptuous situation the order is strictly construed. The order must be clear and unambiguous. And it may be a typo, but Judge Rosenberg's order is clear and unambiguous.

It requires Mr. Seigel to provide information about Mr. Aman. It does not require him to provide information about himself and no one has bothered to correct that in a year and-a-half since it was entered. So I am not going beyond the four corners and the (inaudible) that are in it. And so to the extent that the receiver is seeking production based upon the TRO, I will deny that request.

Turning, then, to the competing motions relating to

the receivership order and specifically to the materials requested on Page 13 of the receivership order, which is what Miss Traband says they have limited that request to.

The Defense agree -- I should not say Defense. The Seigels agree that they fall within the scope of the people to whom the receiver can propound discovery under Paragraph 9 of the receivership order.

Their dispute is that they do not fall within the subject matter of Paragraph 9 because the materials that are being requested are not, quote, 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, closed quote.

I disagree. I think that the request do fall within the scope of Paragraph 9 of the receivership order. And so I will order the Seigels to comply with the receiver's requests under Paragraph 9 as listed on Page 13 of Docket Entry 237.

Now, when I say that, I want to be clear. All that Paragraph 9 empowers the receiver to do and, therefore, all that it requires the Seigels to do is to answer questions under oath and to produce documents.

So to the extent the answer to the questions is we already told you. Here's the document. We see that we told you and we're adopting it, again, that's a proper answer. If

the answer is we already gave you that document on this day and this time, here it is, I am adopting it, that may be a proper answer. So it may be duplicative. I don't know.

But to the extent that the Seigels take the position that we have already given this to the receiver -- not to the SEC -- to the receiver just point the receiver to where you gave it to them. Give them a sworn statement that says you don't have anything else and you will have, in my view, complied with Paragraph 9.

If there are more things that you haven't already given them or more questions that they ask that you have to answer under oath, then you have to answer under oath.

So, once again, I am denying the motion to compel to the extent it relates to the temporary restraining order. I am granting the motion to compel insofar as it relates to the request on Page 13 of Docket Entry 237. And I am granting the protective order as it pertains to the temporary restraining order and denying it as it pertains to the receivership order.

And again, lastly, any ruling I have made as to these specific requests is without prejudice, if the receiver makes additional requests in the future and the Seigels believe that those are outside the scope of Paragraph 9 of the receivership order, they can seek appropriate relief from the Court.

All right. No one waiving any objections you may have to the order that I have just entered and we will memorialize

it in writing, let me turn first to counsel for the receiver.

Are there any other matters that we need to take up this afternoon while we are altogether?

MS. TRABAND: Only two related to what the Court ordered. I presume with the denial of the motion for protective order extends to the request for a gag order. You didn't specifically mention that and I just wanted to --

THE COURT: Oh, yes. I'm sorry. Yes, I am denying that. I think that there is no legal basis for a gag order. Thank you for clarifying that.

And let me say, also, I need to give a deadline for either the sworn responses or the production of documents. So Miss Kaplan, how much time are you asking for that information?

MS. TRABAND: You actually anticipated the second question that I was going to ask with regard to timing. I can work with Miss Kaplan on whatever works.

I would say 20 days, but if she needs something different, I know that High Holy days are coming up. So if there is something else that is required in order for them to comply, I am flexible on that, but I would like to have a date certain in the order.

THE COURT: Okay. I understand that.

And let me turn to Miss Kaplan. Miss Kaplan, again, I'm assuming that you object to my order to the extent that I have overruled your objection and that objection is preserved.

But not waiving that objection, is there anything else you need me to take up this afternoon, or what your sense is on timing of how soon you can produce the sworn statements? And again, you may want to adopt what you have already said and produce the documents that you been requested.

MS. KAPLAN: So, Your Honor, 30 days would be okay with me if that's okay. It seems that Miss Traband was flexible with regard to that.

I do have a question because what was listed, I just want clarification, please. Just those items that were listed, right? I mean --

THE COURT: Yes. My order is limited only to the four items listed on Page 13 of their reply at Docket Entry 237.

MS. KAPLAN: And to that extent, is Your Honor extending that to the personal information of Mr. Seigel considering you denied the -- it is unclear to me because I think some of it was jumbled up in there, Your Honor.

THE COURT: Yes. To the extent that Mr. Seigel, individually and/or H.S. Management, is seeking relief not to have to respond to those four areas of inquiry, I am overruling that objection.

I am ordering both Mr. Seigel, individually and the corporate entity, to provide whatever responsive documents they have to any written document request that you receive from the receiver and I am ordering Mr. Seigel both individually and

through corporate entity, through a corporate officer, to provide sworn answers to any questions propounded about any of these four topics.

MS. KAPLAN: All right. So is this something that they have already given me or -- okay. That's what I'm trying to say, but there was nothing --

THE COURT: I understand.

Miss Traband, I think it would probably be the best practice if you would, essentially, rather than just give you broad categories, maybe a better way is to provide requests analogous to interrogatories and request for production, which specify and help frame for the Seigels and Miss Kaplan exactly what it is.

And again, as with interrogatories and a request for production, if they have already given you something and they want to point to what they have already given you, so you have a clear record that that's all they've got, I think you two should try to work out that kind of procedure. So that there is a clear record of what you asked for and what you got. So if you end up back in front of me, we can all look at it and know exactly what you asked for and what Miss Kaplan was responding to.

Is that doable, Miss Traband?

MS. TRABAND: Absolutely.

We have done it in e-mail fashion earlier and we can

absolutely re-do that pursuant to the Court's order and just to move of timing the 30 days requested is fine.

THE COURT: So --

MS. TRABAND: So once the Court issues the order, I can send another e-mail for a request as to specifically what we're asking for.

THE COURT: That would be great.

I'm not sure if November 8th is a -- hold on. Let me look at my calendar real quick. 30 days from today will be -- October the 8th is a Thursday.

So 5:00 on October the 8th to respond and that's without prejudice if the party can work out a more expanded timeframe that is acceptable to both sides, you don't need to come back to me. Okay. If you two agree to extend that you don't need to come back to me.

Yes, Miss Kaplan. Go ahead.

MS. KAPLAN: And to the extent that Miss Traband has represented to this Court that there are e-mail, can we limit the inquiries to whatever has been in the e-mails?

I just don't want there to be a no end in sight situation, which seems to keep happening. And I don't want to have to burden the Court with this over and over and over again.

THE COURT: No, I hear you.

Look, I haven't seen those e-mails. So I am not going

to order her to limit it to what she has already asked for. I have authorized her to ask for information in these four discreet categories. So I will let her frame it out.

And you two, I think, can work through this. It sounds like -- my gut impression is that you all are not that far apart. It sounds to me like the Seigels have provided a lot of information. It seems like the receiver has some gaps in their knowledge base that they want to fill in.

And my sense -- and I am certainly not ordering anybody to do anything, but my sense is once the receiver can plug those gaps in their knowledge base, the parties may be able to resolve this whole mess.

Again, you all do what you need to do, but I am not going to order her to limit the e-mails. I will let her craft the requests within the bounds of what I have ordered.

All right. Thank you very much.

MS. KAPLAN: And is Your Honor ordering the receiver to draft the proposed order or who is drafting it?

THE COURT: Oh, no, we do that. My staff will do that.

MS. KAPLAN: Oh, your staff. Thank you very much.

THE COURT: Thank you all very much. Have a good afternoon, everybody. We will be in recess. Thank you.

MS. TRABAND: Thank you Your Honor.

MS. KAPLAN: Thank you, Your Honor.

(Thereupon, the proceedings concluded.)

CERTIFICATE

I hereby certify that the foregoing transcript is an accurate transcript of the audio recorded proceedings in the above-entitled matter.

09/06/20

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