

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE No. 9:19-CV-80633-ROSENBERG/REINHART**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,
et al.,

Defendants,

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

Relief Defendants.

**ORDER OVERRULING DEFENDANTS' OBJECTION
TO MAGISTRATE JUDGE'S ORDER**

This matter is before the Court upon Defendant Harold Seigel's and Relief Defendant H.S. Management's Objection [DE 247] to Magistrate Judge's Ruling dated September 17, 2020 [DE 244]. The Court has carefully considered the Objection and the Receiver's Response thereto [DE 258], and is otherwise fully advised in the premises. For the reasons set forth below, Defendants' Objection is **OVERRULED**.

I. BACKGROUND

This dispute arises from a discovery order entered by Magistrate Judge Bruce E. Reinhart on September 17, 2020. DE 244. The Receiver's Renewed Motion to Compel [DE 219] and Defendant Harold Seigel and Relief Defendant H.S. Management's Motion for

Protective Order [DE 227] were referred to the Magistrate Judge by this Court [DE 236]. The Magistrate Judge held a hearing on the motions on September 8, 2020 [DE 243]. The Magistrate Judge's Order, entered orally at the September 8th hearing and memorialized in a written Order entered on September 17, 2020, granted in part and denied in part both motions. DE 243; 244. Relevant to the Seigels objections, the Order compelled Defendant Harold Seigel and Relief Defendant H.S. Management Group, LLC, Seigel's entity, ("the Seigels") to respond to questions propounded by the Receiver and to produce documents requested by the Receiver pursuant to paragraph 9 of this Court's prior Receivership Order. *See* DE 244; DE 20. The Order also denied the Seigels' request for entry of a gag order to prevent the Receiver from speaking or writing publicly about the Seigels for lack of any legal authority for such a request. *See* DE 258-1 at 36.

The Seigels raised three objections to the Order. DE 247. First, the Seigels argue that the Magistrate Judge's Order was clearly erroneous in finding that the Seigels were agents of the Receivership Entities. DE 247 at 9. Second, the Seigels argue that even if they were agents, compelling responses to the Receiver's requests listed on page 13 of the Receiver's Reply [DE 237] was clearly erroneous because the requests called for the discovery of information beyond the scope of Paragraph 9 of the Receivership Order. *See id.* at 9-12. Third, the Seigels argue that the Magistrate Judge's Order did not sufficiently address Defendants' Motion for Protective Order seeking the gag order against the Receiver. *See id.* at 12. They further argue that their request to gag the Receiver was dispositive and, thus, the Order should be reviewed *de novo* by this Court *See id.* at 3.

In response, the Receiver challenges each objection that the Seigels raise and requests that the objections be overruled. The Receiver first argues that given the Seigels' counsel's own admission to the Magistrate Judge and the findings by this Court, the Seigels were officers of the Receivership Entities. *See* DE 258 at 9-11. Second, the Receiver argues that the Magistrate Judge's determination that the Receiver's requests for information fell within the ambit of paragraph 9 of the Receivership Order was not clearly erroneous because the requests related to either "the business of the Receivership Entity, or any other matter relevant to the operation or administration of the Receivership." *See id.* at 11-13; Receivership Order at 6 ¶ 9. And lastly, the Receiver argues that the Magistrate Judge's determination that the Seigels did not meet their burden for injunctive relief was not clearly erroneous because the Seigels failed to cite to any supporting legal authority. *See* DE 258 at 13-16.

II. STANDARD OF REVIEW

"A district court reviewing a magistrate judge's discovery order is, in general, limited by statute and rule to reversing that order only if it is 'clearly erroneous or contrary to law.'" *S.E.C. v. Merkin*, 283 F.R.D. 699, 700 (S.D. Fla. 2012) (citing 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a)). "In the absence of a legal error, a district court may reverse only if there was an 'abuse of discretion' by the magistrate judge." *Id.* (citing *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 401 (1990)).

"Clear error is a highly deferential standard of review." *Holton v. City of Thomasville Sch. Dist.*, 425 F.3d 1325, 1350 (11th Cir. 2005). "A finding is clearly erroneous when the reviewing court, after assessing the evidence in its entirety, is left with a definite and firm conviction that a mistake has been committed." *Krys v. Lufthansa German Airlines*, 119 F.3d

1515, 1523 (11th Cir. 1997) (citing *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985)). “A magistrate judge’s order is contrary to law when it fails to apply or misapplies relevant statutes, case law, or rules of procedure.” *Merrett v. Liberty Mut. Ins. Co.*, No. 3:10-CV-1195-J-34MCR, 2013 WL 5330258, at *1 (M.D. Fla. Sept. 23, 2013) (quoting *Botta v. Barnhart*, 475 F. Supp. 2d 174, 185 (E.D.N.Y. 2007) (internal quotation marks omitted)).

The “clearly erroneous or contrary to law” standard for reviewing a magistrate judge’s order “is very different from the *de novo* review and adoption of a Report and Recommendation on a dispositive Order, and more closely resembles an appellate function.” *Combs v. Town of Davie*, No. 06-60946-CIV-COHN/SNOW, 2007 WL 676102, at *2 (S.D. Fla. Feb. 28, 2007) (citing *Haines v. Liggett Group, Inc.*, 975 F.2d 81 (3d Cir. 1992)). Furthermore, “[t]he purpose of referring non-dispositive motions to a Magistrate Judge is to increase the efficiency of the system,” and “the ‘clearly erroneous’ standard of review contemplates a certain amount of deference to the findings of the Magistrate Judge on those matters on which she has the power to make a final determination.” *Id.*; see also 12 Wright, Miller & Marcus, Federal Practice & Procedure Civ. 2d § 3069 (“[I]t is extremely difficult to justify alteration of the magistrate judge’s nondispositive actions by the district judge.”). This Court is mindful that “magistrate judges are afforded broad discretion in resolving nondispositive discovery disputes.” *Johnston v. Aetna Life Ins. Co.*, 282 F. Supp. 3d 1303, 1312 (S.D. Fla. 2017).

III. ANALYSIS

First, the Court finds that the Objection should be overruled because it is untimely. Rule 72(a) of the Federal Rules of Civil Procedure states that “[a] party may serve and file objections to the [Magistrate’s] order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to.” Fed. R. Civ. P. 72(a). “An oral order read into the record” is sufficient. *Id.* Advisory Committee Note (1983). The Magistrate Judge pronounced his rulings orally on September 8, 2020 [DE 243] and his written order dated September 17, 2020 notes that the order merely memorialized the prior oral ruling [DE 244]. Accordingly, the deadline for any objections to the Order were due September 22, 2020, 14 days after the oral rulings. This Objection was filed on October 2, 2020 [DE 247], 24 days after the oral rulings and 15 days after the written Order. While the Objection fails due to its untimeliness, it also fails on the merits.

The Seigels have failed to demonstrate how any finding in the Magistrate Judge’s Order was “clearly erroneous” or otherwise “contrary to law.” The Seigels’ first objection is to the Magistrate Judge’s finding that the Seigels were agents of the Receivership Entities and consequently fell within the scope of paragraph 9 of the Receivership Order. The Court has previously found the Seigels to be officers of the Receivership Entities [*See* DE 40 at 2, 3] and counsel for the Seigels admitted at oral argument that the Seigels were agents of the Receivership Entities [DE 258-1 at 31]. Thus, after assessing the evidence in its entirety, the Court is not “left with a definite and firm conviction that a mistake has been committed” and finds that the ruling was not “clearly erroneous.” *Krys*, 119 F.3d at 1523 (11th Cir. 1997). Accordingly, the Seigels’ first objection is overruled.

Second, the Court finds that the Magistrate Judge appropriately exercised his discretion in determining that the requests limited to page 13 of the Receiver's Reply [DE 237 at 13] were within the scope of paragraph 9 of the Receivership Order. The Magistrate Judge gave the Seigels ample opportunity to explain why the inquiries did not fall within the ambit of paragraph 9 at the hearing, and the Seigels' response was that they had already provided the requested information to the SEC. *See* DE 258-1 at 35. Again, the Court is not "left with a definite and firm conviction that a mistake has been committed" and finds that the ruling was not "clearly erroneous." *Krys*, 119 F.3d at 1523 (11th Cir. 1997). Therefore, the Seigels' second objection is overruled.

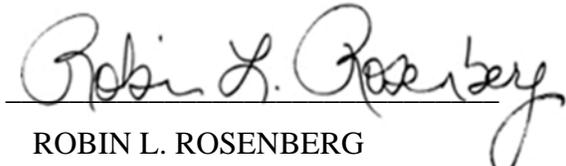
Lastly, the Seigels' third objection to the Magistrate Judge's denial of their Motion for Protective Order was based on their request that a gag be placed on the Receiver regarding certain topics. Yet, the Seigels fail to cite to any authority that would justify prior restraint in their Motion, in their responses to the Magistrate Judge's questions at the hearing, and in their Objection. Although the Seigels argue that this denial should be reviewed *de novo* by the Court, a motion for protective order is not case dispositive and thus the appropriate standard to be applied is the clearly erroneous standard. *See Point Blank Sol'ns, Inc. v. Toyobo America, Inc.*, NO. 09-61166-CIV, 2011 WL 1456029, *2 (S.D. Fla. 2011). The Court, in this instance, is not "left with a definite and firm conviction that a mistake has been committed" and finds that the ruling was not "clearly erroneous." *Krys*, 119 F.3d at 1523 (11th Cir. 1997). Therefore, the Seigels' third objection is overruled.

IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Defendant Harold Seigel's and Relief Defendant H.S. Management's Objection to Magistrate Judge's Ruling Dated September 17, 2020 [DE 244] is **OVERRULED**.

Defendant Harold Seigel and Relief Defendant H.S. Management are **ORDERED** to respond, by no later than **5:00 PM on November 16, 2020**, to the interrogatories and requests for production propounded by the Receiver on page 13 of the Receiver's Reply. *See* DE 237 at 13.

DONE and ORDERED in Chambers, West Palm Beach, Florida, this 4th day of November, 2020.


ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Copies furnished to Counsel of Record