

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SECURITIES EXCHANGE COMMISSION)

Plaintiff,)

vs.)

DAVID TANNER, et al.,)

Civil Action No.: 05-4057-SAC

Defendants,)

and)

MARGARET F. SPENCER, et al.,)

Relief Defendants.)

MOTION OF RECEIVER *PENDENTE LITE*, LARRY E. COOK,
FOR TURNOVER OF PROPERTY OF THE
RECEIVERSHIP ESTATE TRANSFERRED TO IPTS

COMES NOW the Receiver *Pendente Lite* Larry E. Cook (the “Receiver”), by and through his undersigned counsel, and for this Motion for Turnover of Property of the Receivership Estate Transferred to IPTS, respectfully states as follows:

Introduction and Summary

1. The Receiver seeks a turnover order to direct IPTS to return not less than US\$978,684.31 plus €329,226.31 to the Receivership Estate. As shown more fully below, IPTS received investor funds from defendant Marroc Corporation’s account at Wachovia Bank wherein stolen investor funds had been pooled. In addition, IPTS’ administrative contact informed the Receiver that IPTS is holding investor funds. Furthermore, IPTS recently sent an e-mail to the investors asking them for an additional contribution to IPTS.

2. IPTS did not return reasonable equivalent value for the investor funds it received. Furthermore, IPTS has not responded to demands to return the funds. The Receiver therefore seeks that this Court direct that the funds be returned to the Receiver.

3. The Order Appointing Receiver (Docket # 10) directs all persons to promptly deliver to the Receiver all Receivership Assets and promptly surrender all Receivership Records to the Receiver. The Receiver therefore seeks that this Court direct that certain Receivership Assets in the possession of iPTS be immediately returned to the Receiver.

Authorities

4. Federal courts have broad equitable powers enabling them to fashion appropriate ancillary remedies necessary to grant full relief. SEC v. Blatt, 583 F.2d 1325 (5th Cir. 1978); SEC v. Manor Nursing Centers, 458 F.2d 1082, 1103-04 (2d Cir. 1972).

5. This includes the power to impose a receivership, and to direct that all of the proceeds of the fraud be paid to the receiver to preserve the status quo for the benefit of the defrauded investors. Id. at 1104-05.

6. With respect to third parties, both the Commission and the Receiver are entitled to orders directing the return of the stolen investor funds. A court can obtain equitable relief from a non-party regardless of whether that non-party committed any wrongdoing, simply by showing that the non-party has possession of the fraud proceeds and no legitimate claim to them. SEC v. Cherif, 933 F.2d 403, 414, n.11 (7th Cir. 1991); SEC v. Colello, 139 F.3d 674, 679 (9th Cir. 1998). Moreover, courts have jurisdiction to decide the legitimacy of ownership claims made by non-parties to assets alleged to be proceeds from securities laws violations. Cherif, 933 F.2d at 414, n. 11.

7. The Receiver is entitled to the same relief under two theories. The first is constructive trust. United States v. Cannistraro, 594 F. Supp. 62, 72, n.11 (D.N.J. 1988) (“The courts impose the remedy of constructive trust where, rightfully or wrongfully, a party has obtained property which unjustly enriches him.”), modified on other grounds, 871 F.2d 1210 (3rd Cir. 1989); see also Rollins v. Metropolitan Life Insurance Co., 863 F.2d 1346, 1354 (7th Cir.

1988) (“a constructive trust may be invoked even where the unjustly enriched party is completely blameless”). The second is the applicable fraudulent transfer statutes. E.g., Cunningham, as Trustee for Ponzi v. Brown, 265 U.S. 1 (1924).

Facts

8. iPTS received US\$573,000 in investor funds via a wire transfer from defendant Marroc Corporation’s Wachovia Account to iPTS’ VEF Bank account, account number LV73VEFBNP30010096460 (the “iPTS Account”) on April 1, 2005. A true and correct copy of the wire transfer is attached as **Exhibit A**.

9. As stated in the Securities and Exchange Commission’s (the “Commission”) Complaint (Docket # 1) and Memorandum of Law in Support of Plaintiff’s Application for an *Ex Parte* Temporary Restraining Order, Order Freezing Assets and Other Emergency Relief (the “TRO Motion”) (Docket # 5), the defendants in this matter obtained investor funds by fraud, misrepresentations, and omissions. *See* Complaint, ¶¶ 17 -23 and TRO Motion, pages 5-7.

10. As further stated in the Complaint and TRO Motion, one of the vehicles by which the defrauded investors “invested” in Capital Enhancement Club was by transferring funds to Marroc’s Wachovia account. *See* TRO Motion, page 9.

11. At the time of the filing of the Complaint, the Commission was aware that at least some of the defrauded investor funds were transferred to an account at VEF Bank in Riga, Latvia (the “VEF Bank Account”). *See*, Blair Dec. (Docket #6), ¶¶ 12, 24, and Exhibit K to Blair Dec.

12. The Court’s May 4, 2005 Temporary Restraining Order (Docket # 9) found, *inter alia*, that there is good cause to believe investor funds and assets obtained by Defendants and Relief Defendants have been and will be misappropriated.

13. In addition, the Court held a Preliminary Injunction hearing on May 17, 2005. Other than relief defendant Dynamic Environmental Solutions, no one challenged the entry of

the Court's May 18, 2005 Preliminary Injunction Order (Docket # 29). The Preliminary Injunction Order, *inter alia*, found the Commission had demonstrated a prima facie case that Defendants used improper means to obtain investor funds and assets and that the Commission had presented sufficient evidence to demonstrate that a receiver is appropriate to marshal and preserve the assets for the benefit of the investors.

14. The Receiver has since obtained a copy of the February 18, 2005 "Capital Enhancement Club Newsletter" which, in part, informs investors: (i) that due to a discontinuation of VirtualGold, payments to investors will be made via iPTS; and (ii) investments into CEC may be made via Marroc's Wachovia bank account. A true and correct copy of the February 18, 2005 Newsletter is attached hereto as **Exhibit B**.

15. As reported in the Receiver's Preliminary Report (Docket # 55), the Receiver and the Commission have identified approximately \$4,194,023 in off-shore accounts, with most of that amount located at VEF Bank and Krajbanka, both in Riga, Latvia.

16. The Receiver and the Commission, in conjunction with US and Latvian authorities, have since determined that there is currently US\$978,684.31 and €329,226.31 in the iPTS Account.

17. On or about June 10, 2005, the Receiver conducted a telephone interview with George Hegedus, the administrative contact for iPTS, Inc. During that interview, Mr. Hegedus informed the Receiver:

- (i) David Tanner completed an iPTS account application on-line.
- (ii) Wire transfers sent to VEF Bank with an iPTS member number were placed in an iPTS account, iPTS would then notify CEC of the balance, and CEC would then direct the iPTS payment system to make on-line payments to CEC members.

18. On or about September 4, 2005, iPTS sent an e-mail to CEC members. The e-mail informed CEC members that CEC funds frozen in VEF Bank should become available soon

and requested CEC members send iPTS an additional three percent of the members' account balance at VEF Bank to underwrite iPTS' travel expenses in traveling to Europe. The e-mail further requested CEC members send an e-mail to iPTS with a subject line of: "Dear George!" to indicate the members' authorization for iPTS to attempt to recover members' funds from the frozen VEF Bank account. A true and correct copy of iPTS' September 4, 2005 e-mail is attached hereto as **Exhibit C**.

19. The funds in the iPTS Account are traceable to the defrauded investors' funds deposited there.

20. iPTS did not return reasonably equivalent value for the investor funds it received.

21. iPTS has refused to return those funds to the Receiver.

Argument

22. On the facts as known to the Receiver, the funds received by iPTS need to be returned to the Receivership Estate. iPTS has informed the Receiver that the funds in the VEF Bank account include investor funds. Furthermore, iPTS has contacted the investors in an attempt to get them to give iPTS additional money. The money iPTS obtained from investors in the course of CEC's securities fraud never equitably became iPTS' money. Instead, iPTS merely held the money in its possession as a constructive trustee for the benefit of the defrauded investors. The funds in the iPTS Account equitably belong to the fraud victims, and therefore should be returned to Larry Cook, as Receiver, to be used in compensating the defrauded CEC investors.

Conclusion

WHEREFORE, the Receiver respectfully requests the Court enter an Order:

- (iii) Directing iPTS, or any person to whom the US\$978,684.31 and €329,226.31 of investor funds in the iPTS Account were subsequently transferred or entrusted to return such funds to the Receiver; and

(iv) For such other and further relief as the Court deems just and appropriate.

Dated: September 15, 2005

Respectfully submitted,

Lathrop & Gage L.C.

By: */s/ Brian M. Holland*
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SUMMARY OF EXHIBITS

The following exhibits in reference to the Receiver's Motion For Turnover of Property of the Receivership Estate, are available upon request:

1. Exhibit A: Wire Transfer from Marroc Corporation's Wachovia Account to iPTS' VEF Bank Account
2. Exhibit B: February 18, 2005 CEC Newsletter.
3. Exhibit C: September 4, 2005 e-mail from iPTS to CEC investors.

Respectfully submitted,

Lathrop & Gage L.C.

By: /s/ Brian M. Holland

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Attorneys for Larry E. Cook, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2005, I electronically filed the foregoing, with the Clerk of the Court for the District of Kansas, Topeka Division, by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participants:

Timothy P. Davis, SEC;

Christopher M. Joseph and Stephen M. Joseph, Counsel for Spencer Defendants;

Roger N. Walter, Co-Counsel for Relief Defendant Vectra Resources, LLC;

Christopher Bebel, Co-Counsel for Relief Defendant Vectra Resources, LLC;

Randall J. Forbes and Kevin M. Fowler; Counsel for Relief Defendant Dynamic Environmental Solutions;

Robert L. Herskovits, Counsel for Defendant Tanner; and

Thomas D. Haney, Counsel for Defendant Tanner.

I further certify that I mailed the foregoing document and the notice of electronic filing by depositing a correct copy thereof in the United States mail, first class, postage prepaid and addressed to the following non-CM/ECF participants:

iPTS
George Hegedus
804 Shannon Blvd
Newmarket, ON L3Y 1P9
CANADA

/s/ Brian M. Holland
An attorney for Larry E, Cook,
Receiver