

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	CIVIL ACTION
Plaintiff,)	
)	NO. 1:11-cv-56-TCB
v.)	
)	
STANLEY J. KOWALEWSKI, <i>et al.</i>)	
)	
Defendants.)	

BRIEF OF DEFENDANT KOWALEWSKI

CONCERNING

HEARING TO BE HELD SEPTEMBER 29, 2011

Preamble

This matter is before the Court on the Plaintiff's "Notice of Non-compliance" [Document 125], as well as the Receiver's similar "Notice of . . . Failure to Comply" [Document 129]. This is Defendant Kowalewski's brief, as directed by the Court [Document 128] summarizing the evidence he expects to present at the hearing scheduled for September 29, 2011, and setting out his views of the issues to be decided by the Court.

Introduction

This case is very nearly concluded in all respects.

Defendant Kowalewski has resolved by agreement with the Receiver all the outstanding issues between them. To that end, Defendant Kowalewski has done, *inter alia*, the following:

- executed a Blanket Transfer and Assignment of Tangible and Intangible Personal Property, as requested by the Receiver;
- consented to an order prohibiting him from receiving reimbursement or indemnification of his legal fees and expenses from the SJK Funds, as requested by the Receiver;
- executed quitclaim deeds to houses in North Carolina, as requested by the Receiver; and
- consented to an order resolving the Receiver's Motion for Turnover and Accounting, terminating the receivership herein, and imposing judgment in the additional amount of \$250,000.

Thus, all issues outstanding between Mr. Kowalewski and the Receiver, including the matter set for hearing (as it relates to the Receiver), are resolved.

Mrs. Kowalewski has likewise settled with the Receiver.

These settlements have saved the Receiver time and expense, and have thereby benefited the Receivership Estate.

In addition, Mr. Kowalewski executed a settlement offer, which has been accepted by the SEC, settling the SEC's Administrative Proceedings under the Investment Advisers Act of 1940, and agreeing to the imposition of sanctions. While not before this Court, this is one of the last issues remaining between the SEC and Mr. Kowalewski.

Thus, there are only two issues before the Court: whether Mr. Kowalewski, in fact, has failed to comply with the Court's Order of August 31, 2011 (the "Order"); and the appropriate amount of disgorgement and civil penalties to be imposed on Mr. Kowalewski.

Mr. Kowalewski's Compliance with the Order

The Order, in paragraph 3, required Mr. Kowalewski, within 48 hours, to furnish "[a] preliminary list of the Fixtures [defined as "recently removed fixtures and other items"]. Mr. Kowalewski provided such a list within the time prescribed.

The Order, also in paragraph 3, further required Mr. Kowalewski to supplement the preliminary list "in order to provide a complete and accurate accounting of such removed items." Such supplementation has been provided.

The Order, in paragraph 4, required Mr. Kowalewski no later than September 19, 2011, to provide to counsel for the Receiver and the SEC a similar

accounting of all personalty removed from the Henson Farms House since January 6, 2011. Such an accounting was provided.

The Order, in paragraph 5, required Mr. Kowalewski to return the Fixtures on September 9, 2011. Items were returned in timely fashion.

The Order, in paragraph 6, required Mr. Kowalewski to replace “[a]ny fixture that is not returned or has been damaged or is otherwise unsuitable for reinstallation.” Many Fixtures were not returned because they had been damaged or were otherwise unsuitable, and Mr. Kowalewski replaced them, to the extent he was able within the time available, and he undertook to make further replacements.

The Order, in paragraph 9, required Mr. Kowalewski to provide by September 19, 2011, a written proposal for performance of the repair and installation work. Mr. Kowalewski provided such a proposal. And he subsequently provided other proposals.

By this point, however, both the SEC and the Receiver were not satisfied with the efforts of Mr. Kowalewski on a variety of fronts and for a number of reasons, and activities took a different course.

It was clear that the notion of having Mr. Kowalewski engage a contractor, and somehow supervise or oversee the work from his new home in South Carolina, was not practical. Accordingly, negotiations began with the objective of putting in

the hands of those who must be satisfied the oversight of the restoration/remediation of the Henson Farms house.

That resulted in the agreement with the Receiver pursuant to which Mr. Kowalewski agreed to entry of a judgment against him in the amount of \$250,000 for use by the Receiver in the remediation/restoration of the house. The Court will be asked to approve that settlement, which includes termination of the Receivership as to Mr. Kowalewski, at the hearing, if not before.

The Receiver's concerns have been addressed.

The SEC, on the other hand, is not satisfied with any of Mr. Kowalewski's efforts to comply with the Order, and in particular wants further information to be provided. For example, counsel for the SEC has asserted:

I will be satisfied only when I am sure where every stick, fixture, every cabinet that was taken from that house has been accounted for to my satisfaction. For example, I don't believe that the exterior light fixtures were stolen.

Given that Mr. Kowalewski has agreed to pay for all the Fixtures, including the ones he believes were stolen, and given that the Receiver has agreed to accept that resolution of the issue, there is no practical benefit to be derived from such an accounting as the SEC is demanding.

The evidence will show that Mr. Kowalewski made a good faith effort, repeatedly, to comply with the August 31, 2011, Order; that he complied not only with the letter of that Order, but with the spirit as well; and that there is no cause for him to be held in contempt.

The Appropriate Amount of Disgorgement

The disgorgement proposed by the SEC seeks to require Mr. Kowalewski to pay – or pay back – a sum that includes expenditures that were made for legitimate business purposes, and not for Mr. Kowalewski personally. In addition, the SEC would require Mr. Kowalewski to return all amounts he received as compensation, and thus deny Mr. Kowalewski any “credit” for compensation to which he is entitled for his management of funds that are not the subject of this proceeding.

The evidence will show the amounts by which the SEC’s proposed disgorgement figures should be reduced.

Respectfully submitted,

s/ Thomas R. Todd, Jr.

Thomas R. Todd, Jr.

Local Rule 5.1 Certification

The undersigned hereby certifies that the within and foregoing BRIEF OF DEFENDANT KOWALEWSKI CONCERNING HEARING TO BE HELD SEPTEMBER 29, 2011, was prepared in Times New Roman 14-point type and in full compliance with Local Rule 5.1.

s/ Thomas R. Todd, Jr.

Thomas R. Todd, Jr.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 27, 2011, the undersigned electronically filed and served the foregoing BRIEF OF DEFENDANT KOWALEWSKI CONCERNING HEARING TO BE HELD SEPTEMBER 29, 2011 using the CM/ECF system which will automatically send e-mail notification of such filing to attorneys of record, as follows:

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s/ Thomas R. Todd, Jr.

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