

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)	
and SJK INVESTMENT)	
MANAGEMENT, LLC,)	
)	
Defendants.)	

RESPONSE OF STANLEY J. KOWALEWSKI
TO
PLAINTIFF’S “NEW ARGUMENT” IN ITS REPLY BRIEF

COMES NOW, Stanley J. Kowalewski, a defendant in the above-captioned action, and, by and through his undersigned counsel, as ordered by the Court, responds to the “new argument raised in the SEC’s reply brief, i.e., whether he continued to defraud investors after being enjoined from doing so,” as follows:

Plaintiff in its Reply Brief, contends that Mr. Kowalewski has “continued to make misrepresentations to investors,” and focuses on one section of an email sent by Mr. Kowalewski. That section of the email concerned an investment made in CDLD Holdings by the SJK Special Opportunities Fund.

Contrary to the characterization by the SEC, the email sent to the representative of ONE investor¹ (not “investors” as stated on page 6 of the SEC’s Reply Brief) was not intended by him to “lull” that investor into believing that Mr. Kowalewski can save it, rather it was intended by Mr. Kowalewski to alert that investor to actions and activities of the Receiver that Mr. Kowalewski feels are not in the best interest of that investor, or of any investors. Indeed, properly read, the email simply urges the investor to consider whether the Receiver’s actions are benefiting investors.

Contrary to the implied assertion of the SEC (on page 4 of its Reply Brief) Mr. Kowalewski’s email makes no “claims about the [current] value of assets of the SJK Special Opportunities Fund.” Rather, his email states a historic fact: that the investment was made “into CDLD Holdings based on an appraisal that valued McNairy Pointe at \$15.9 million.” (Declaration, ¶ 4) The SEC attached to its Reply Brief (as Exhibit D) the first page of that very appraisal.²

¹ Declaration of Stanley J. Kowalewski (“Declaration”), submitted herewith, ¶2.

² The SEC is correct when it points out the difference between the \$15.9 million figure used by Mr. Kowalewski in his email and the \$15,415,000 figure in the appraisal. That typographical error (Declaration, ¶ 4) represents a misstatement of \$485,000, which, because it is only slightly more than three percent of the true number, is immaterial.

Furthermore, Mr. Kowalewski's email includes a reference to the \$3.1 million appraisal referenced by the SEC on page 5 of its Reply Brief as "a more recent appraisal." Calling attention to that appraisal is not the act of someone trying to "lull" investors. (Declaration, ¶ 5)

Furthermore, Mr. Kowalewski also referred to the proposed sale of the McNairy Pointe property for \$3.25 million. Granted, Mr. Kowalewski stated his opinion that a sale at that price is a "fire sale," but taken in context that is not a "materially false statement," as asserted by the SEC. (Declaration, ¶ 6)

Finally, Mr. Kowalewski's email cannot properly be read as trying to convince anyone to believe that he "can save [investors] from the losses the Receiver anticipates they may face" Indeed, the only decision the email sought to influence was a decision whether or not to review the actions of the Receiver, to seek additional information from the Receiver, and possibly to consider challenging the Receiver. (Declaration, ¶ 7) That is not "lulling" as described in *U.S. v. Witting*, 425 F.Supp. 2d 1196, 1210 (D. Kansas, 2007).

Mr. Kowalewski's email did not make a materially false statement, did not violate the Court's order, and does not afford a basis for holding him in contempt.

Respectfully submitted,

s/ Thomas R. Todd, Jr.

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Local Rule 5.1 Certification

The undersigned hereby certifies that the within and foregoing RESPONSE OF STANLEY J. KOWALEWSKI TO PLAINTIFF'S "NEW ARGUMENT" IN ITS REPLY BRIEF 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 May 23, 2011, the undersigned electronically filed and served the foregoing RESPONSE OF STANLEY J. KOWALEWSKI TO PLAINTIFF'S "NEW ARGUMENT" IN ITS REPLY BRIEF using the CM/ECF system which will automatically send e-mail notification of such filing to attorneys of record, as follows:

Thomas B. Bosch representing **S. Gregory Hays**
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s/ Thomas R. Todd, Jr.

Thomas R. Todd, Jr.

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DECLARATION OF STANLEY J. KOWALEWSKI

I, Stanley J. Kowalewski, pursuant to 28 U.S.C. § 1746, do hereby declare:

1. I am the individual defendant named in the above-captioned action.
2. On May 10, 2011, at 10:15 a.m., I sent an email to Gregory Schaack, Chief Financial Officer, St. Joseph's/Candler Health System, Inc. Mr. Schaack was the only recipient.
3. In sending that email to Mr. Schaack, it was not my intention to do anything other than to alert him to actions and activities of the Receiver that I believe are not

in the best interests of investors such as St. Joseph's/Candler, in order that he could evaluate those actions and activities for himself.

4. When the investment was made into CDLD Holdings, it was made on the basis of an appraisal that valued McNairy Pointe at \$15,415,000. (The \$15.9 figure in my email is a typographical error.) The first page of that appraisal is attached to the SEC's Reply Brief as Exhibit D.

5. My email to Mr. Schaack referred to the \$3.1 million appraisal of the McNairy Pointe property referenced in the May 5, 2011, Memorandum of Mr. Dantzler, specifically to call Mr. Schaack's attention to it.

6. My email to Mr. Schaack referred to the proposed sale of the McNairy Pointe property for \$3.25 million, specifically to call Mr. Schaack's attention to it and to apprise him of my belief that such a price is very low, so that, if he chooses, he can inquire further into the particulars of that proposed transaction.

7. Given my present circumstances, I recognize that I cannot take any action that I believe would benefit the investors in the SJK Special Opportunities Fund (or any other investors), and my email to Mr. Schaack was not intended to cause him to believe otherwise. My only goal in sending that email to Mr. Schaack was to encourage him to inform himself about the activities of the Receiver, and to take such action as he deemed appropriate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 23, 2011.

A handwritten signature in black ink, appearing to read 'Stanley J. Kowalewski', written in a cursive style.

Stanley J. Kowalewski