

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

Civil Action No.: 1:11-cv-0056-TCB

v.

**STANLEY J. KOWALEWSKI
and SJK INVESTMENT
MANAGEMENT, LLC,**

Defendants.

**PLAINTIFF'S REPLY TO DEFENDANT KOWALEWSKI'S RESPONSE
TO PLAINTIFF'S "NEW ARGUMENT" IN ITS REPLY BRIEF**

Plaintiff Securities and Exchange Commission ("Commission") respectfully replies to Kowalewski's Response to Plaintiff's "New Argument" in its Reply Brief as follows:

Kowalewski's Email Contains More than One Lie

Kowalewski's email to Greg Shaack, the investor representative of the largest SJK investor, contains more than one lie:¹

¹ The entire tone of the email is fraudulent as it purports to be written by his counsel, but in fact is only signed by Kowalewski.

The valuation of the SJK Special Opportunities Fund LP underscores the point that the Receiver is not capable of unwinding these types of investments. SJK Investment Management made its investment into CDLD Holdings based on an appraisal that valued McNairy Pointe at \$15.9 million. **They also made the investment with the understanding that there was no debt or liens on the property and Kevan Combs and DKF Holdings (the other two partners in CDLD Holdings currently) made that representation to SJK Investment Management.** [Dkt. 78, Attachment B, page 2]
[Emphasis supplied]

The highlighted portion of the excerpt from Kowalewski's email is plainly false.

On May 20, 2011, the Receiver filed his Notice of Sale of Real Property by CDLD Holdings, LLC ("CDLD"). [Dkt. 81] Exhibit D to the Notice contains minutes and emails that demonstrate that Kowalewski was plainly aware of the outstanding loan on the property as it increased its ownership of CDLD from 5% to 50%. [Dkt. 81-5] For example, at page 3 of 26, minutes of a meeting of members of CDLD held on April 8, 2010, shows that SJK Special Opportunities Fund, L.P. ("SOF") was notified that the purpose of the meeting was to request members make additional capital contributions to reduce the principal on a loan outstanding to SunTrust Bank. At the time, the SOF held a 5% interest in CDLD. [Dkt. 81-5, pp. 3-5] Later, on June 24, 2010, Kowalewski personally signed a Consent of Members of CDLD to Action Without Meeting in which SOF and the other members contributed additional capital explicitly to reduce the principal

outstanding of the loan owed to SunTrust. SOF's interest increased to 30%. [Dkt. 81-5, pp. 6-7] Implicit in these loan reduction payments was the reduced appraised value of the property that resulted in SunTrust requiring the outstanding loan to be paid down.² The remainder of Exhibit D contains minutes showing how additional contributions from SOF increased its ownership of CDLD to 50% and emails that leave no doubt that Kowalewski's claim to Shaack that Kowalewski was not told of the outstanding loan was false. While Kowalewski may claim that he was merely offering an opinion as to the valuation of the McNairy Pointe property, a reading of the email as a whole makes plain that Kowalewski was representing to one of his victims that his valuation of the property was correct and the Receiver's was uninformed. Kowalewski's email contains at least two misrepresentations of material fact, each of which violate the antifraud provisions in violation of the preliminary injunction in this case.³

² After discussing the matter with counsel for the other members of CDLD, the Commission believes they will testify at any hearing in this matter that they had the appraisal and discussed it with Kowalewski in connection with the principal reductions.

³ While not directly related to the underlying case, a finding that Kowalewski's valuation of the McNairy Pointe property was false and unsupported (along with readily obtainable proof that many other assets of the SOF were falsely valued) leads directly to proof that the statements sent to investors in the SJK funds were false. It is important that this matter be resolved quickly in order for the Receiver to avoid incurring further legal expenses

Kowalewski's fine reading of the email at issue admits that he was bringing the proposed sale to Shaack's attention so Shaack could potentially consider challenging the Receiver. This mischief and other acts by Kowalewski described in his email have complicated the Receiver's task and made it more expensive to the detriment of his victims. He should be sanctioned accordingly.⁴

Dated: May 25, 2011

Respectfully submitted,

/S/ Alex Rue
James Alexander Rue
Georgia Bar No. 618950
One of Counsel for Plaintiff
SECURITIES AND EXCHANGE
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defending against Kowalewski's claim for advancement of legal fees. No advancement is required if Kowewski is found to have committed fraud.

⁴ The undersigned certifies that this motion has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1B

CERTIFICATE OF SERVICE

This is to certify that on May 25, 2011, I electronically filed the foregoing Document with the clerk of the Court using CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

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I hereby certify that I have mailed by US first class mail a copy of the same to the following non-CM/ECF participant:

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This 25th day of May, 2011.

/s/ Alex Rue
James Alexander Rue