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

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	Civil Action File No. 1:12-CV-1996-TWT
v.	:	
BENJAMIN DANIEL DEHAAN AND LIGHTHOUSE FINANCIAL PARTNERS, LLC,	:	
Defendants.	:	

RESPONSE BY RECEIVER TO MOTION FOR PROTECTIVE ORDER BY DEFENDANT DEHAAN; MOTION BY RECEIVER FOR THE ENTRY OF AN ORDER: 1) COMPELLING THE PRODUCTION OF ALL PROPERTY, BUSINESS, BOOKS, RECORDS, AND ASSETS OF LIGHTHOUSE FINANCIAL PARTNERS, LLC, MAINTAINED BY PAGE PERRY, LLC; 2) FINDING CERTAIN PARTIES IN CONTEMPT OF AN ORDER OF THIS COURT; AND 3) SCHEDULING THE DEPOSITION OF DEFENDANT DEHAAN; AND MEMORANDUM OF LAW IN SUPPORT THEREOF

COMES NOW, S. Gregory Hays, the Receiver (the "Receiver") for Lighthouse Financial Partners, LLC ("Lighthouse"), Defendant in the above captioned case, appointed pursuant to a certain Order of this Court of July 2, 2012, Appointing a Receiver for Lighthouse Financial Partners, LLC and the Continuation of an Asset Freeze (the "Appointment Order"), by and through

counsel, and hereby files this: a) Response (the "Response") to the Motion of Benjamin Daniel DeHaan ("DeHaan") for a Protective Order (Doc. No. 15, "Motion for Protective Order"); b) Motion (the "Motion to Compel") by the Receiver for the entry of an Order: 1) compelling the production of all property, business, books, records, accounts and assets (the "Files") of Lighthouse maintained by Page Perry, LLC ("Page Perry"); 2) finding certain parties in contempt of an order of this Court; and 3) scheduling the deposition of DeHaan; and c) Memorandum of Law (the "Memorandum") in support thereof. In support of the Response, Motion to Compel, and Memorandum, the Receiver shows the Court as follows:

PROCEDURAL DEFECTS OF MOTION FOR PROTECTIVE ORDER

1. As a preliminary matter, the Motion for Protective Order: a) fails to cite any authority upon which the relief sought in the Motion for Protective Order may be granted; and b) is not accompanied by a memorandum of law in support of the Motion for Protective Order as required by local rule 7.1(A)(1) of the Local Rules for the Northern District of Georgia.
2. Under such circumstances, the Motion for Protective Order should be denied with prejudice on the basis that the Motion for Protective Order is not supported by authority upon which DeHaan may obtain a protective order with regard to

the Files to be produced by Page Perry in accordance with the Appointment Order of this Court and a properly served subpoena (the "Subpoena") for document production issued by the Receiver directed to Page Perry.

3. Even if the Motion for Protective Order cited applicable authority allowing the Court to grant the Motion for Protective Order, the relief sought in the Motion for Protective Order is contrary to the terms of the Appointment Order wherein time of the essence due to the concern expressed by the Court in the second paragraph of the Appointment Order "about the preservation of assets for the benefit of the defrauded advisory clients."

4. Pursuant to paragraph XIII of the Appointment Order, the Court authorized expedited discovery, including, but not limited to, "All written responses to the Receiver's requests for discovery under the Federal Rules of Civil Procedure shall be delivered to the such place as counsel for the Receiver may direct, by the most expeditious means available, including facsimile or e-mail."

5. Furthermore, pursuant to section B of paragraph XIII of the Appointment Order, "upon request of the Receiver, Defendants shall produce all documents within three days of service of such request."

6. Pursuant to paragraph XII of the Appointment Order, "on three (3) days written notice from the Receiver, the Defendants shall make themselves available for

deposition and shall produce to the Receiver the originals of any records in their custody, possession or control relating to the financial affairs, from January 1, 2011 through the present, of Lighthouse."

7. Pursuant to paragraph IX of the Appointment Order, the "Receiver shall perform an accounting…as soon as possible, but not later than 60 days from the entry of this [Appointment] Order." Since the Files contain the original records of Lighthouse, the prompt production of the files is required for the Receiver to complete the accounting in a timely manner by September 9, 2012.

8. The Appointment Order does not provide DeHaan with the right to delay production of any documents or the investigation of the Receiver.

9. The Receiver has already patiently waited more than 30 days for the production of the Files. An additional delay of another 30 days as requested in the Motion for Protective Order will contradict the express discovery authorized by the Appointment Order and hinder the ability of the Receiver to: a) perform his duties pursuant to the Appointment Order; b) preserve and protect the assets of Lighthouse; and c) file the accounting with the Court as required by the Appointment Order in a timely manner.

10. Accordingly, even if DeHaan is able to present applicable authority, the Motion for Protective Order should be denied because the relief sought in the Motion

for Protective Order contradicts the expedited scheduled underlying the Appointment Order and the Movant DeHaan has failed to comply with the terms of prior Orders of the Court in express violation of the time honored requirement that one who seeks equity must do equity.

FACTUAL BACKGROUND

11. From 2007 until approximately June 21, 2012 (the "Representation Period"), Page Perry served as corporate counsel for Lighthouse and accumulated certain property, business, books, records, accounts and assets of Lighthouse in such capacity.

12. During the Representation Period, DeHaan: a) served as an officer, agent, and principal of Lighthouse; and b) did not have an engagement letter or written representation agreement with Page Perry and there exists no joint representation agreement between Lighthouse, DeHaan, and Page Perry.

13. Pursuant to the engagement letter (the "Engagement Letter") entered by and between Lighthouse and Page Perry dated December 9, 2008, and executed by DeHaan on behalf of Lighthouse in his capacity as President of Lighthouse, the client in the engagement was Lighthouse and Page Perry agreed that the law firm would not represent any individual or other entity in the engagement. The Engagement Letter expressly indicates that: "If it appears that any individual or

other entity does need representation, [Page Perry] will counsel with that individual or entity and with [Lighthouse] to determine if [Page Perry] should and can represent that other individual or entity consistent with [Page Perry's] representation of [Lighthouse]." Upon information and belief, Page Perry did not at any time consult with an independent representative of Lighthouse regarding any potential representation of DeHaan individually by Page Perry and, as such, was precluded by the terms of the Engagement Letter from representing DeHaan individually.

14. Although the Motion for Protective Order alleges that Page Perry represented DeHaan individually during the Representation Period, Page Perry has previously indicated to the Receiver that Lighthouse: a) was the principal client of Page Perry; and b) paid for all services rendered by Page Perry that resulted in the generation and/or retention of the Files by Page Perry. Under such circumstances, the Files maintained by Page Perry are the property of Lighthouse.

15. The Motion for Protective Order does not provide any evidence of the purported representation of DeHaan by Page Perry in an individual capacity.

16. Upon information and belief, any representation of DeHaan by Page Perry was related to activities at Lighthouse or the general affairs of Lighthouse.

17. The Court entered on June 11, 2012, an order (the "Preliminary Order") imposing preliminary injunctions, freezing assets, and directing the Defendants, Lighthouse and DeHaan, to complete an accounting within 40 days of the entry of the Preliminary Order or by July 27, 2012.

18. Although the deadline for filing a timely accounting has passed, DeHaan has failed to complete an accounting as required by the Preliminary Order.

DOCUMENT PRODUCTION BY PAGE PERRY

19. On July 2, 2012, the Receiver was appointed pursuant to the Appointment Order to administer, preserve and protect the assets of Lighthouse (the "Receivership Estate").

20. Pursuant to Paragraph VII of the Appointment Order, "all persons acting for or on behalf of the Receiver Estate, and all persons receiving notice of this order by personal service or otherwise, having possession of the property, business, books, records, accounts or assets of the Receiver Estate are hereby directed to deliver the same to the Receiver."

21. On July 6, 2012, in accordance with the terms of the Appointment Order acknowledged to have been received and reviewed by Page Perry, counsel for the Receiver: a) confirmed in writing to Page Perry that the Receiver waived the

corporate privilege of Lighthouse in and to the Files, and b) demanded that the Files be produced and delivered to the Receiver by Page Perry.

22. When contacted by counsel for Receiver to comply with the production requirement set forth in the Appointment Order, Page Perry requested: a) a subpoena for the production of the Files; and b) that DeHaan be allowed an opportunity to object to the production of all of the Files.

23. The Receiver subpoenaed the Files on July 11, 2012, with a copy of the Subpoena forwarded to prospective counsel for DeHaan, Howard J. Weintraub ("Weintraub").

24. After DeHaan finally employed Weintraub as counsel to represent his individual interests, Weintraub requested an opportunity to review the Files before Page Perry delivered the Files to the Receiver.

25. Rather than producing the Files as required by the Appointment Order and the Subpoena, Page Perry delivered the Files or copies of the Files to Weintraub as counsel for DeHaan for inspection and prior review with regard to a purported claim of individual attorney-client privilege asserted by DeHaan (the "DeHaan Privilege").

26. Page Perry subsequently produced approximately one-third of the Files to the Receiver; however, upon information and belief, a substantial amount of the Files have not yet been produced to the Receiver.

27. Counsel for DeHaan has failed to: a) provide a privilege log detailing the Files sought to be withheld from production to the Receiver pursuant to any claim of DeHaan Privilege; and b) provide approval for the release by Page Perry of the remaining Files to the Receiver that are not subject to a claim of DeHaan Privilege.

DEHAAN DEPOSITION

28. Paragraph VIII of the Appointment Order requires DeHaan to cooperate with and assist the Receiver in the administration of the Receivership Estate.

29. On July 11, 2012, the Receiver issued a notice to take the deposition of DeHaan originally scheduled for Wednesday July 25, 2012 (the "DeHaan Deposition").

30. At the request of recently retained counsel for DeHaan, the DeHaan Deposition did not occur as scheduled on July 25, 2012, but was indefinitely postponed.

31. Although DeHaan is required to appear within three (3) days notice pursuant to the Paragraph VII of the Appointment Order, counsel for DeHaan has not yet

agreed to a date for the DeHaan Deposition as requested several times by counsel for the Receiver.

32. Pursuant to paragraph XII of the Appointment Order, "the Receiver shall promptly notify the Court and counsel for the Commission of any failure or apparent failure of the Defendants to comply in any way with the terms of this Order." Accordingly, the Receiver has a duty to notify the Court of the issues set forth herein.

REQUESTED RELIEF

33. Pursuant to this Response, the Receiver requests that the Court deny the Motion for Protective Order and specifically: a) direct DeHaan to complete an accounting; b) deny any further time for counsel for DeHaan to review the Files; c) require all the Files to be immediately produced by Page Perry to the Receiver; and d) order that the DeHaan Deposition be held immediately.

34. In the event that Page Perry is granted additional time to produce the Files based on a purported DeHaan Privilege, the Receiver requests that Page Perry and/or DeHaan be required to present evidence satisfactory to the Court regarding the existence of any individual privilege asserted by DeHaan in and to any of the Files prior to the grant of any such extension of time.

35. Pursuant to this Motion to Compel, the Receiver requests that the Court: a) direct DeHaan to complete an accounting; b) compel the production of all Files by Page Perry; c) enter a finding of contempt against Page Perry and DeHaan for their failure to comply with the terms of the Appointment Order and the Subpoena; and d) schedule and compel DeHaan to appear and testify at the DeHaan Deposition to be conducted by the Receiver.

MEMORANDUM OF AUTHORITY

36. One who seeks equity such as DeHaan requesting an extension of time in the Motion for Protective Order must do equity in order to obtain equitable relief; the failure of DeHaan to complete a timely accounting and cooperate with the investigation by the Receiver into the business affairs of Lighthouse precludes the grant of equitable relief in favor of DeHaan.

37. Pursuant to the Appointment Order, a party such as Page Perry with notice of the Appointment Order, shall deliver to the Receiver any property, business, books, records, accounts or assets of the Receivership Estate in the possession of such party.

38. The attorney-client privilege with regard to the Files belongs to the entity, Lighthouse, and not to any individual formerly employed by or in control of

Lighthouse, DeHaan. *See Standard Forex. Polycast Technology Corp. v. Uniroyal, Inc.*, 125 F.R.D. 47, 49 (S.D.N.Y. 1989).

39. As the only party currently authorized to act on behalf of Lighthouse, the Receiver holds the right to assert or waive a privilege on behalf of Lighthouse. *See U.S. v. Plache*, 913 F.2d 1375, 1381 (9th Cir. 1990); *CFTC v. Standard Forex*, 882 F. Supp. 40, 44 (E.D.N.Y. 1995) (a receiver may control the privileges of an entity in the absence of an individual with the right to control such entity); *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 349-357 (1985) ("Individual officers and directors always run the risk that successor management might waive the corporation's attorney-client privilege with respect to prior management's communications with counsel."). Incident to such authority and the authority set forth in the Appointment Order, the Receiver has waived any privilege with regard to the Files.

40. Because an entity such as Lighthouse may only act through an agent, "courts have held that any privilege that attaches to communications on corporate matters between corporate employees and corporate counsel belongs to the corporation, not to the individual employee, and that employees generally may not prevent a corporation from waiving the attorney-client privilege arising

from such communications." *United States v. International Bhd. of Teamsters*, 119 F.3d 210, 215 (2d Cir. N.Y. 1997) (citations omitted).

41. Accordingly, the waiver of any privilege of Lighthouse by the Receiver also waives any privilege that DeHaan may be able to assert in any communications to the extent that such "communications reflected his official duties within the company." *In re Grand Jury Investigation*, 575 F. Supp. 777, 779 (N.D. Ga. 1983) (citations omitted); *Diversified Indus., Inc. v. Meredith*, 572 F.2d 596, 611 n.5 (8th Cir. 1978) (en banc) ("Ordinarily, the privilege belongs to the corporation and an employee cannot himself claim the attorney-client privilege and prevent disclosure of communications between himself and the corporation's counsel if the corporation has waived the privilege.").

42. In instances such as the present circumstances where an agent of a corporation asserts a privilege with regard to communications to counsel for the corporate entity, some courts have recognized a narrow exception with elements that have yet to be established by DeHaan.

43. In order for a court to potentially recognize that DeHaan may possess an individual privilege in any of the Files that is separate from any privilege of Lighthouse, DeHaan must establish that: a) DeHaan approached Page Perry for the purpose of seeking legal advice; b) DeHaan clearly indicated to Page Perry

that DeHaan was seeking legal advice in his individual capacity rather than as a representative of Lighthouse; c) Page Perry knowingly communicated with DeHaan in his personal capacity knowing that a potential conflict between Lighthouse and DeHaan could arise; d) the communications sought to be privileged were confidential; and e) the substance of the communications sought to be protected does not concern Lighthouse or the general affairs of Lighthouse. *See In re Grand Jury Investigation*, 575 F. Supp. 777, 780 (N.D. Ga. 1983).

44. The party asserting a privilege has the burden of establishing the existence of the asserted privilege. S*ee In Re Grand Jury Subpoena Bierman*, 765 F.2d 1014, 1019 (11th Cir. 1985).

CONCLUSION

45. Although counsel for DeHaan has retained a majority of the Files based on a purported individual privilege asserted by DeHaan and has delayed the production of such Files to the Receiver, DeHaan has yet to present any evidence to indicate that DeHaan has an individual privilege with regard to any of the Files.

46. Specifically, DeHaan has presented no evidence to establish that: a) DeHaan approached Page Perry for the purpose of seeking legal advice; b) DeHaan

clearly indicated to Page Perry that DeHaan was seeking legal advice in his individual capacity rather than as a representative of Lighthouse; c) Page Perry knowingly communicated with DeHaan in his personal capacity knowing that a potential conflict between Lighthouse and DeHaan could arise; d) the communications sought to be privileged were confidential; and e) the substance of the communications sought to be protected does not concern Lighthouse or the general affairs of Lighthouse.

47. Under the circumstances, neither Page Perry nor DeHaan has any right to further delay the production of all Files to the Receiver or the scheduling of the DeHaan Deposition. Accordingly, the Motion for Protective Order by DeHaan should be denied.

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

1. Denying the Motion by DeHaan for Protective Order;
2. In the alternative, requiring Page Perry and/or DeHaan to present evidence satisfactory to the Court regarding the existence of any privilege asserted by DeHaan in and to any of the Files prior to the grant of any extension of time to produce the Files;

3. Granting this Motion by the Receiver to Compel the production of the Files in its entirety;
4. Compelling DeHaan to complete an accounting within three (3) days from the date of the entry of an order approving the Motion to Compel;
5. Compelling Page Perry to produce all of the Files to the Receiver immediately;
6. Finding Page Perry and/or DeHaan in contempt for failure to comply with Orders of this Court in failing to deliver property of Lighthouse and produce the Files as required by the Appointment Order and the Subpoena;
7. Scheduling the DeHaan Deposition as soon as possible after the production of all of the Files and ordering DeHaan to appear and testify at such DeHaan Deposition;
8. Taxing Page Perry and/or DeHaan with all costs, fees, and expenses incurred by the Receiver and his professionals with regard to this Response, Motion to Compel, and Memorandum, including the document production and the discovery sought herein; and
9. Granting the Receiver such other and further relief as is just and proper.

Respectfully submitted, this the 14th day of August, 2012.

/s/
James C. Frenzel
Georgia Bar No. 276830
Counsel for S. Gregory Hays, Receiver for
Defendant, Lighthouse Financial Partners, LLC

Of Counsel:
James C. Frenzel, P.C.
Suite 155, East Tower
Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326
(404) 266-9961
Jcf-bklaw@mindspring.com

CERTIFICATE OF COMPLIANCE

This is to certify that to the best of my knowledge this document has been prepared with one of the font and point selections approved by the Court in LR 5.1B, pursuant to LR 7. Specifically, the above-mentioned document has been prepared using Times New Roman font, 14 point.

This, the 14th day of August, 2012.

Respectfully submitted,

/s/

James C. Frenzel
Georgia Bar No. 276830
Counsel for S. Gregory Hays, Receiver for Defendant, Lighthouse Financial Partners, LLC

Of Counsel:
James C. Frenzel, P.C.
Suite 155, East Tower
Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326
(404) 266-9961
Jcf-bklaw@mindspring.com

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

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	Civil Action File No. 1:12-CV-1996-TWT
v.	:	
BENJAMIN DANIEL DEHAAN AND LIGHTHOUSE FINANCIAL PARTNERS, LLC	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 14, 2012, I electronically filed this document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Edward G. Sullivan, Esq.
U.S. Securities and Exchange Commission
3475 Lenox Road
Suite 1000
Atlanta, GA 30326
SullivanE@sec.gov

S. Gregory Hays, Receiver
Hays Financial Consulting, LLC
3343 Peachtree Road, NE, Suite 200
Atlanta, GA 30326
ghays@haysconsulting.net

Howard J. Weintraub, Esq.
Counsel for Benjamin Daniel DeHaan
Law Offices of Howard J. Weintraub, P.C.
1355 Peachtree Street, NE, Suite 1250
Atlanta, GA 30309
law@howardjweintraubpc.com

Matthew G. McLaughlin, Esq.
Counsel for Page Perry, LLC
Hawkins Parnell Thackston & Young, LLP
4000 SunTrust Plaza
303 Peachtree Street NE
Atlanta, Georgia 30308-3243
mmclaughlin@hptylaw.com

J. Steven Parker, Esq.
Robert D. Terry, Esq.
Page Perry, LLC
1040 Crown Pointe Parkway
Suite 1050
Atlanta, Georgia 30338
jsparker@pageperry.com
bterry@pageperry.com

This, the 14th day of August, 2012.

Respectfully submitted,

/s/
James C. Frenzel
Georgia Bar No. 276830

Counsel for S. Gregory Hays, Receiver for Defendant, Lighthouse Financial Partners, LLC

Of Counsel:
James C. Frenzel, P.C.
Suite 155, East Tower
Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326
(404) 266-9961
Jcf-bklaw@mindspring.com