

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

IN RE:

Case No. 16-20516-AJC

PROVIDENCE FINANCIAL
INVESTMENTS, INC.

Chapter 7

Debtor.
_____ /

TRUSTEE'S NOTICE OF FILING DISTRICT COURT ORDER

Notice is hereby given of the filing of the foregoing copy of *Contempt of Court Order* (ECF No. 44) entered on July 30, 2016 in district court case *United States Securities and Exchange Commission v. Providence Financial Investments, Inc.; Providence Fixed Income Fund, LLC et al.*, in the United States District Court, District of Minnesota, Case No. 16-cv-1877 (WMW/FLN).

Dated: August 1, 2016

Respectfully submitted,

AKERMAN LLP

Las Olas Centre II, Suite 1600
350 East Las Olas Boulevard
Fort Lauderdale, FL 33301-2229
Phone: (954) 463-2700
Fax: (954) 463-2224

By: /s/ Eyal Berger

Eyal Berger
Florida Bar No. 11069
eyal.berger@akerman.com

(Proposed) Counsel for Trustee Maria Yip

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on August 1, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day by transmission of Notices of Electronic Filing generated by CM/ECF to those parties registered to receive electronic notices of filing in this case as listed in the below service list.

By: /s/ Eyal Berger
Eyal Berger, Esq.

SERVICE LIST

16-20516-AJC Notice will be electronically mailed to:

James B Miller, Esq on behalf of Debtor Providence Financial Investments, Inc.
bkcmiami@gmail.com

Office of the US
USTPRegion21.MM.ECF@usdoj.gov

Maria Yip
@yipcpa.com, myip@ecf.epiqsystems.com

16-20516-AJC Notice will not be electronically mailed to:

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States Securities and
Exchange Commission,

Case No. 16-cv-1877 (WMW/FLN)

Plaintiff,

CONTEMPT OF COURT ORDER

v.

Providence Financial Investments, Inc.;
Providence Fixed Income Fund, LLC;
Jeffory Churchfield; and Jack Jarrell;

Defendants.

This matter is before the Court on the emergency motion of Plaintiff United States Securities and Exchange Commission (“SEC”) for civil contempt, appointment of a receiver and expedited discovery. (Dkt. 31.) The SEC alleges that Defendants Providence Financial Investments, Inc. and Providence Fixed Income Fund, LLC (“the Providence Defendants”) failed to comply with specific provisions of the June 10, 2016 Agreed Order of Preliminary Injunction and Other Relief. The Court heard oral argument on the SEC’s emergency motion for civil contempt, appointment of a receiver and expedited discovery on July 29, 2016.

Because the Providence Defendants are in contempt of court, this Court hereby freezes immediately all assets and holdings of the Providence Defendants in an effort to maintain the status quo and to effectuate the accounting of the Providence Defendants’ assets. Moreover, the record in this case demonstrates that the appointment of a receiver

is appropriate. The Court will determine whom to appoint as a receiver as outlined below. The freeze on the Providence Defendants' assets will lift upon appointment of the receiver.

BACKGROUND

On June 7, 2016, the SEC filed a complaint against the Providence Defendants, Jeffery Churchfield, and Jack Jarrell, alleging the violation of various securities laws.¹ (Dkt. 1.) The SEC alleges that the Providence Defendants engaged in fraudulent conduct by offering and selling unregistered securities through unregistered brokers. The securities at issue are promissory notes that purport to pay annual returns generally ranging from 12% to 13%. According to the Complaint, the Providence Defendants represented to investors that the investment proceeds on the promissory notes would fund the factoring of accounts receivable in Brazil. The SEC specifically alleges that the Providence Defendants concealed important information about their financial health from investors, improperly paid millions of dollars to insiders of the Providence Defendants, and issued an undisclosed 6% annual commission to unregistered brokers for selling the promissory notes. Through the sale of these promissory notes, the Providence Defendants allegedly raised more than \$64 million from over 400 investors throughout the United States.

On the same day it filed the complaint, the SEC also filed an emergency motion seeking (1) a temporary restraining order preventing the Providence Defendants from

¹ Because the SEC's emergency motion only requests relief against the Providence Defendants, the Court limits its discussion and analysis to the Providence Defendants.

violating the securities laws' antifraud and registration provisions, (2) expedited discovery, (3) an order prohibiting the destruction of corporate records, (4) an order prohibiting the Providence Defendants from paying additional commissions or dispersing money to certain executives, and (5) the appointment of a receiver over the Providence Defendants. (Dkt. 3.) Shortly thereafter, the SEC and the Providence Defendants entered a stipulation regarding the SEC's requested emergency relief before the Court ruled on the motion. (Dkt. 20.) Accordingly, in the June 10, 2016 Order, the Court denied as moot the SEC's emergency motion and entered the stipulated preliminary injunction against the Providence Defendants. (Dkt. 23.) As relevant here, the preliminary injunction required that the Providence Defendants "make a sworn accounting to this Court" in a specified manner by July 25, 2015.

On July 25, 2015, the Providence Defendants filed a letter, (Dkt. 30), advising the Court that "they are presently unable to comply" with the accounting requirements of the Court's June 10, 2016 Order. On July 27, 2016, the SEC filed an emergency motion for contempt of court, the appointment of a receiver and expedited discovery. (Dkt. 31.) The Providence Defendants filed for Chapter 7 bankruptcy on July 28, 2016, in the United States Bankruptcy Court for the Southern District of Florida. (Dkt. 41.) On July 29, 2016, this Court heard argument on the SEC's emergency motion for contempt of court, the appointment of a receiver and expedited discovery against the Providence Defendants. This Order follows.

ANALYSIS

A district court has the inherent power to enforce compliance with its lawful orders through civil contempt. *Shillitani v. United States*, 384 U.S. 364, 370 (1966). Particularly in actions brought by the SEC to enforce federal securities laws, federal courts have inherent equitable authority to order a variety of ancillary relief measures. *See SEC v. Wencke*, 622 F.3d 1363, 1369 n.6 (9th Cir. 1980). The party seeking civil contempt bears the initial burden of proving the violation of a court order by clear and convincing evidence. *Chicago Truck Drivers Union Pension Fund v. Bhd. Labor Leasing*, 207 F.3d 500, 505 (8th Cir. 2000). The burden then shifts to the non-moving party to demonstrate the inability to comply. *Id.* In order to demonstrate an inability to comply, the non-moving party must: (1) provide a categorical and detailed explanation that establishes the inability to comply, (2) demonstrate that the noncompliance was not self-induced, and (3) prove it took all reasonable good faith efforts to comply with the court order. *Id.* at 506.

When a district court determines that a party is in contempt, it may issue a contempt order either to coerce the defendant into compliance with the court order, to compensate the complainant for sustained losses, or to achieve both outcomes. *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947). “The Court’s discretion in fashioning an appropriate remedy for contempt includes the power to ‘grant the relief that is necessary to effect compliance with its decree. The measure of the court’s power in civil contempt proceedings is determined by the requirements of full

remedial relief.’ ” *Hartman v. Lyng*, 884 F.2d 1103, 1106 (8th Cir. 1989) (quoting *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193 (1949)).

The Court’s June 10, 2016 Order required the Providence Defendants to provide a sworn detailed accounting to the Court on Monday, July 25, 2016. This sworn accounting was to disclose in detail—among other things—all assets, funds and property of the Providence Defendants, the locations of such assets, and the various uses of those assets. The Providence Defendants failed to provide this accounting and admitted their non-compliance in a letter to the Court dated July 25, 2015. (Dkt. 30.) The Providence Defendants not only failed to provide a detailed explanation for this failure, but also did not present any evidence of good faith efforts undertaken to comply. *See Chicago Truck Drivers Union Pension Fund*, 207 F.3d at 506. The Providence Defendants are in civil contempt of the Court’s June 10, 2016 Order.

The SEC’s motion contends that the failure of the Providence Defendants to comply with the Court’s June 10, 2016 Order presents an emergency because it renders the Court and the SEC “unable to account for the companies’ use of investor proceeds and ability to repay their investor victims.” (Dkt. 31 at 2.) The Court agrees. In this case, the SEC’s allegations involve not only injuries to the alleged investor victims but also a violation of the public trust. It is alleged that the Providence Defendants *publicly* sold unregistered securities, withheld information about their financial condition, and fraudulently dispersed ill-gotten gains. The Court provided the Providence Defendants the opportunity to account for their assets to assuage concerns regarding the allegations in the underlying Complaint. The Providence Defendants failed to comply and proffered no

justification. Therefore, they cannot be entrusted with their own corporate assets at this time.

Accordingly, the Court will immediately freeze the assets and financial holdings of the Providence Defendants as an equitable remedy for the Providence Defendants' civil contempt of court. *See SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105-06 (2d Cir. 1972) (outlining standards for temporary asset freeze in similar circumstances); *see also United States v. First Nat'l City Bank*, 379 U.S. 378, 383 (1965) (explaining that “[c]ourts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved” (internal quotation marks omitted)); *Rahman v. Oncology Assocs.*, 198 F.3d 489, 497 (4th Cir. 1999); *cf. Deckert v. Indep. Shares Corp.*, 311 U.S. 282, 289 (1940) (recognizing that, when in an equitable posture, a district court may seek to maintain the status quo to aid in a potential recovery that rescinds fraudulent sales). Freezing the assets of the Providence Defendants ensures that those assets remain unchanged until a detailed accounting can be completed by an independent third party. This asset freeze is a coercive remedy intended to secure full compliance with the Court's requirement that it receive an accurately detailed accounting of the assets of the Providence Defendants—as they existed on July 25, 2016. *See Hartman v. Lyng*, 884 F.2d at 1106.

The Court also will appoint a receiver in this matter as detailed in a future order. This receiver will ensure the compliance with the accounting requirement outlined above and serve additional duties as ordered. On or before August 12, 2016, the SEC and the

Providence Defendants shall submit the names and curriculum vitae of three qualified and available individuals for the Court to consider for appointment as a receiver. At least one of the three individuals must be located in Minnesota. These proposals also should include any other details (e.g. fee structure, relevant experience, etc.) that the parties determine to be relevant. After completing its due diligence in the selection of an appropriate receiver suited to the unique needs of this matter, the Court will issue its order on Plaintiff's motion for the appointment of a receiver and for expedited discovery.

ORDER

Based on the foregoing analysis, and all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. Plaintiff's Emergency Motion for Contempt, (Dkt. 31), is **GRANTED** as to the Providence Defendants as outlined above, and the assets of the Providence Defendants are hereby immediately frozen until the appointment of a receiver in this matter. The parties shall immediately notify the United States Bankruptcy Court for the Southern District of Florida of this Order in any bankruptcy filings by the Providence Defendants.

2. The SEC and the Providence Defendants shall each submit to this Court no later than Friday, August 12, 2016, the names and curriculum vitae of three proposed receivers. Each submission must include at least one individual located in Minnesota. Submissions shall be made via e-mail to wright_chambers@mnd.uscourts.gov and must copy counsel for the opposing party.

3. The Court will issue its ruling on Plaintiff's motion for the appointment of a receiver and for expedited discovery following its review of the proposed receivers.

4. All terms and requirements of this Court's June 10, 2016 preliminary injunction remain in full force and effect.

Dated: July 30, 2016

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge