

The Court Should Allow the Receiver's Collection Efforts to Continue

At present, this case is focused on the Court-appointed Receiver's actions to recover money for those who suffered financial loss connected to misconduct at issue in this action. The Court has already taken possession of the entity Defendant and Relief Defendants and placed them under the Receiver's control. (Docs. 7-1 and 34). And the Court has already granted the Commission a Final Judgment against Defendant Kaleta, permanently enjoining him from further violations and ordering him to pay disgorgement and a civil money penalty. (Doc. 73).

The Commission's remaining unadjudicated claims, which are injunctive and monetary, sound against the entity Defendant and Relief Defendants. Because these entities are in the Court's possession and under the Receiver's control and because all of their assets will be liquidated and returned to their rightful claimants through the receivership process, Commission counsel expects to recommend that the Commission dismiss its remaining claims against these entities. As a result, the remaining steps in this case primarily involve the Receiver's recovery efforts, which are quite significant.

The Receiver's Recovery Efforts

To date, the Receiver has initiated three collection efforts through this Court. First, he filed an ancillary complaint on April 10, 2010, against now-bankrupt Defendants Protechnik and DeArmas, seeking to collect on a note under which they owe approximately \$160,000 plus interest to Defendant Kaleta Capital Management, LLC, which is in receivership. (Doc. 1, Case 4:10-cv-01189, now consolidated with the instant case). Next, he filed a motion to sell a radio station that became part of the receivership estate when the Court took possession of Relief Defendant Business Radio Network L.P., d/b/a BizRadio by expanding the receivership on June 17, 2010. (Doc. 34). The Receiver expects the sale to realize approximately \$1 million for the

receivership. That motion is pending. Finally, on August 23, 2011, he filed an ancillary complaint, seeking, among other things, to recover millions of dollars for the receivership estate from multiple Defendants, including former officers of receivership entities. (Doc. 105).

Staying the Whole Case Will Harm Receivership Claimants

Protechnik and DeArmas's liability on the note and the note's collectibility have no relation whatsoever to the Receiver's contemplated radio-station sale or to the claims in the receiver's August 23rd ancillary complaint. If the Court links the three actions, and stays the whole case, it risks derailing the radio-station sale. It also risks frustrating the Receiver's efforts to collect millions of dollars from the Defendants in the August 23rd ancillary case. At a minimum, such a stay would dramatically delay any distribution to the harmed investors who have rightful claim to the receivership assets.

Conclusion

For the foregoing reasons, the Commission strongly urges the Court to allow all remaining aspects of the case to proceed, despite the stay as to Protechnik and DeArmas.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

On August 25, 2011, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Southern District of Texas, using the electronic case filing system. I hereby certify that I have provided copies to all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/Timothy S. McCole
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