

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

Case No: 8:19-cv-886-VMC-SPF

OASIS INTERNATIONAL GROUP,
LIMITED, ET AL,

Defendants;

and

MAINSTREAM FUND SERVICES, INC., ET AL,

Relief Defendants.

**RELIEF DEFENDANT MAINSTREAM FUND SERVICES, INC.’S RESPONSE IN OPPOSITION
TO INTERVENOR UNITED STATES’ MOTION TO EXTEND STAY OF ALL PROCEEDINGS**

Relief Defendant Mainstream Fund Services, Inc. (hereinafter “Mainstream”) hereby opposes Intervenor United States’ Motion to Extend the Stay of All Proceedings (Dkt. 215). “Mainstream Fund Services, Inc. is a full-service fund administration firm dedicated to partnering with their clients to provide accurate, timely and comprehensive accounting services....”¹ Mainstream’s 363 clients from across the globe outsource over \$183 Billion to Mainstream.² As described in Mainstream’s original opposition to the stay (Dkt. 159), on at least two occasions, this action has temporarily crippled Mainstream Americas’ business operations by freezing Mainstream Americas’ operating account, and the action has generally had a negative impact on

¹ <https://www.mainstreamgroup.com/locations/united-states/>

² <https://www.mainstreamgroup.com/about-us/our-clients/>

Mainstream's public relations because a layperson is not familiar with the concept of a "relief defendant."

As detailed in Exhibit 1, a sworn declaration by Jay Maher, Mainstream Chief Executive Officer, Private Equity, Venture Capital, Mainstream Australia and its clients have since also suffered additional harm as a result of this action, including losing access to millions of dollars for over a week, reputational harm through a global industry database, and the loss of its largest client, along with AUD 62,390 in annual revenue.

A one-hundred eighty (180) day extension of the stay will unnecessarily prolong this action and continue to unduly prejudice and burden Mainstream, an innocent relief defendant. Accordingly, Mainstream opposes Intervenor United States' Motion for an Extension of the Stay of All Proceedings and requests that the Court deny the Motion. In the alternative, Mainstream respectfully requests that the Court temporarily lift the stay so that Mainstream can file a motion for summary judgment, and the Court can consider the same.

FACTUAL AND PROCEDURAL HISTORY

1. On or about September 4, 2013, Defendant Oasis International Group, Ltd. (hereinafter "Oasis") retained Mainstream, f/n/a Fundadministration, to provide cash management services. *See* Dkt. 97.

2. On or about April 15, 2019, Plaintiff Commodity Futures Trading Commission (hereinafter "Plaintiff"), filed an Emergency *Ex Parte* Motion for a Statutory Restraining Order, Preliminary Injunction, and Other Equitable Relief and Memorandum in Support (hereinafter "Emergency Motion") pursuant to 7 U.S.C. § 13a-1(a) of the Commodity Exchange Act. Dkt. 4.

3. On April 15, 2019, this Court granted Plaintiff's Emergency Motion for an *ex parte* statutory restraining order and appointed a temporary receiver (hereinafter "the Order"). Dkt. 7.

This Order froze three Citibank accounts under Mainstream's control, including Oasis' cash management account ending in -0764, Mainstream's general operating account ending in -5606, and an account ending in -1174 that holds collateral related to Mainstream's lease.³ See Dkt. 7, ¶6.

4. Stated plainly, Plaintiff should never have requested that the accounts ending in -5606 and -1174 be frozen in the first place. As the Certified Fraud Examiner indicates in her affidavit, only \$232,585.31 of the \$8,405,071.76 in total deposits came from the Oasis cash management account ending in -1174. Dkt. 4-1, ¶74. That \$232,585.31, a mere fraction of the total, was clearly fees for Mainstream's cash management services to Oasis, and the remainder of the account originated from other clients and affiliated Mainstream accounts. See *id.* Nevertheless, Plaintiff requested to freeze the entire operating account, temporarily crippling Mainstream's business. In similar fashion, Plaintiff requested to freeze the collateral account ending in -1174 even though "[t]he only source of funds to the account was a \$57,720 bank transfer to the account from Mainstream [*operating*] acct 5606" (Dkt. 4-1, ¶73), not the Oasis cash management account ending in -0764. To Plaintiff's credit, they readily agreed to unfreeze the operating account ending in -1174 and the collateral account ending in -5606 after a phone call with counsel, but damage had already been done. Specifically, on April 19, 2019, Mainstream had two payments totaling just over \$8,000 bounce and was unable to receive \$24,650 incoming.

5. On or about April 15, 2019, World-Check, a database that monitors heightened risk individuals and organizations used around the world to identify and manage financial, regulatory, and reputational risk, flagged Mainstream, causing severe reputational harm within the industry.

Exhibit 1.

³ Pursuant to a lease agreement for their New York City office space, Mainstream Americas is required to maintain six months rent in this account.

6. Through Mainstream's cooperation, on or about April 23, 2019, Citibank transferred approximately \$5.9 Million, the entirety of the account ending in -0764, to the Receiver. Accordingly, Mainstream is no longer in control of any Oasis funds. *See* Dkt. 97.

7. On May 1, 2019, members of Mainstream management, to include the Chief Executive Officer, Americas, Chief Financial Officer, Americas, and Head of Cash Management, Americas, cooperatively participated in an interview with agents from the Federal Bureau of Investigation and Internal Revenue Service.

8. On May 3, 2019, Mainstream complied with the Order and provided the Receiver with "a full detailed accounting..." *See* Dkt. 7, ¶32.

9. On May 28, 2019, Mainstream consented to the Preliminary Injunction. Dkt. 82.

10. On May 31, 2019, Mainstream provided the Receiver a full production *Bates* stamped MS000001-MS019378 in compliance with the Order Appointing Receiver and Staying Litigation (Dkt. 44).

11. On June 5, 2019, Mainstream's operating account ending in -5606 was once again frozen in error. After hours of communicating with Plaintiff, the Receiver, and Citibank representatives, the account was eventually unfrozen.

12. On June 6, 2019, Mainstream fully complied with an IRS subpoena, providing documents *Bates* stamped MS000001-MS019378.

13. On June 28, 2019, Mainstream filed a Response in Opposition to Intervenor United States' Motion for Temporary Stay, detailing the burden that Mainstream has suffered as a result of this action. Dkt. 159.

14. On July 9, 2019, counsel for Mainstream participated in a mediation session at the Receiver's Office. *See* Dkt. 177. During mediation, Plaintiff indicated that Plaintiff would be

willing to remove Mainstream from this action in exchange for the \$232,585.31 in fees that Mainstream earned while performing legitimate services for a client.

15. Mainstream vigorously opposes any attempt to seize these legitimately earned fees as Mainstream has not committed any violation here. Unlike the \$5.9 Million that Mainstream readily transferred to the Receiver on April 23, 2019, Mainstream has a legitimate claim to the \$232,585.31 in fees that Mainstream earned while performing legitimate services for a client.

16. On July 12, 2019, this Court granted the United States' initial request for a *temporary* stay. Dkt. 179.

17. On or about August 14, 2019, Morgan Stanley withheld AUD 9.1 million belonging to one of Mainstream's largest clients for over one week and informed the client that the subject lawsuit was the reason for the withholding. Exhibit 1.

18. On or about August 16, 2019, Mainstream's largest client, Magellan and their U.S. investor expressed concern over the subject lawsuit and took their mandate for this client to a competing fund administrator. As a result, Mainstream lost AUD 62,390 in annual revenue and the Mainstream brand suffered irreversible damage. Exhibit 1.

19. On or about August 20, 2019, Refinitiv, the owner of World-Check, finally agreed to un-flag Mainstream after Mainstream's leadership exhausted considerable time and effort. *See* Exhibit 1.

20. On August 28, 2019, counsel for the Receiver requested that Mainstream provide bank records from Citibank and Wells Fargo. On September 4, 2019, Mainstream provided the Receiver with responsive documents *Bates* stamped MS019379 - MS020005.

21. On September 30, 2019, the Receiver requested bank records, supporting documents, daily reconciliation reports, and internal and external communication pertaining to the

Oasis defendants, all in native electronic format. As a result of the request, Mainstream was compelled to retain a document services provider capable of *Bates* stamping documents in native electronic form. On October 26, 2019, Mainstream provided the Receiver with responsive documents *Bates* stamped MS020006 – MS022153.

22. As of the date of this motion, Plaintiff has not agreed to remove Mainstream from this action.

ARGUMENT

23. In *Landis v. North America*, 299 U.S. 248 (1936), the Supreme Court provided:

the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.

24. Indeed, not every instance of a parallel proceeding calls for a stay in the civil case. *See Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962) (“In some situations it may be appropriate to stay the civil proceeding ... In others it may be preferable for the civil suit to proceed- unstayed.”). Rather, the Court “must stay a civil proceeding pending resolution of a related criminal prosecution only when ‘special circumstances’ so require in the ‘interests of justice.’” *U.S. v. Lot 5, Fox Grove, Alachua County, Fla.*, 23 F.3d 359, 364 (11th Cir. 1994)(citing *United States v. Kordel*, 397 U.S. 1, 12 & n.27 (1970); *S.E.C. v. Horowitz & Ullman P.C.*, No. C80-590A, 1982 WL 1576, at *4 (N.D. Ga. Mar. 4, 1982)(The court refused to stay a securities case merely because the civil defendants were also targets of a related criminal investigation.).

25. An extension of the stay here would continue to impose a significant burden and undue prejudice on the interests of Mainstream in prompt resolution of this action. *See United States v. Pinnacle Quest Int'l*, No. 3:08-CV-136-RV-EMT, 2008 WL 4274498, at *2 (N.D. Fla.

Sept. 11, 2008). Indeed, this cooperative relief defendant has experienced repeated financial and reputational harm as a result of this action while attempting to operate a legitimate business. An extension of the stay in the proceedings will continue to burden and unduly prejudice this cooperative relief defendant, which has already produced all relevant documents and records in its possession, as well as the entirety of the Oasis cash management account.

WHEREFORE, Relief Defendant Mainstream Fund Services, Inc. opposes Intervenor United States' Motion for an Extension of the Stay of All Proceedings (Dkt. 215) and respectfully requests that the Court deny the Motion.

IN THE ALTERNATIVE, Relief Defendant Mainstream Fund Services, Inc. respectfully requests that the Court temporarily lift the stay so that Mainstream can file a motion for summary judgment, and the Court can consider the same.

Dated: January 8, 2020

Respectfully submitted,

s/ Dennis C. Vacco

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which served all parties of record who are equipped to receive service of documents via the CM/ECF system. I hereby certify that on January 8, 2020, I provided service via electronic mail to Receiver Burton W. Wiand at bwiand@wiandlaw.com.

Respectfully submitted,

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