

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

Case No. 8:19-cv-886-T-33SPF

OASIS INTERNATIONAL GROUP
LIMITED; OASIS MANAGEMENT, LLC;
SATELLITE HOLDINGS COMPANY;
MICHAEL J. DACORTA; JOSEPH S.
ANILE, II; RAYMOND P. MONTIE, III;
FRANCISCO "FRANK" L. DURAN; and
JOHN J. HAAS,

Defendants,

and

MAINSTREAM FUND SERVICES, INC.;
BOWLING GREEN CAPITAL
MANAGEMENT LLC; LAGOON
INVESTMENTS, INC.; ROAR OF THE
LION FITNESS, LLC; 444 GULF OF
MEXICO DRIVE, LLC; 4064 FOUNDERS
CLUB DRIVE, LLC; 6922 LACANTERA
CIRCLE, LLC; 13318 LOST KEY PLACE,
LLC; and 4OAKS LLC,

Relief Defendants.

REPORT AND RECOMMENDATION

This cause comes before the Court upon "Receiver's (1) Notice of David Manoukian's and ATC Brokers Ltd.'s Failures to Comply with Court Orders Appointing Receiver and (2) Motion for an Order for David Manoukian and ATC Brokers Ltd. to Show Cause Why They Should Not Be Held in Contempt of Court for Failing to Comply with Court Orders" (Doc.

278). Non-party Mr. Manoukian filed a Response in Opposition thereto (Doc. 284).¹ In addition, with leave of Court, the Receiver filed a Reply (Doc. 295) and Mr. Manoukian filed a Sur-Reply (Doc. 298). For the reasons discussed herein, it is recommended that the motion be denied.

I. BACKGROUND

On April 15, 2019, the Commodity Futures Trading Commission (“CFTC”) filed a complaint against the Defendants and Relief Defendants, as styled above (collectively referred to as the “Receivership Entities”), alleging violations of the Commodity Exchange Act and CFTC regulations. More specifically, Defendants in this action are alleged to have engaged in a fraudulent scheme to solicit and misappropriate money from over 700 U.S. residents for pooled investments in retail foreign currency contracts (“forex”). Defendant Oasis International Group, Ltd. (“OIG”) allegedly raised millions of dollars from public investors through representations that the investors would receive a 12% annual return plus “spread pay” based on forex trading conducted by two introducing brokers, Oasis Global FX, S.A. and Oasis Global FX, Ltd.² (collectively the “Oasis Entities”). The CFTC alleges that, rather than use pool participants’ funds for forex trading, Defendants traded only a small portion of the solicited funds in forex -- which incurred trading losses -- and instead misappropriated the

¹ The Receiver points out that ATC Brokers Ltd. did not respond to the instant motion and, therefore, is deemed not to oppose the relief sought by the Receiver (Doc. 295 at 1 n.1 (citing Local Rule 3.01(b) and *Velez v. Bank of America, N.A.*, 8:18-cv-88-T-35SPF, Doc. 96 at 1 (Oct. 4, 2019))). However, because issues regarding this Court’s jurisdiction over ATC Brokers Ltd., a non-party located in the United Kingdom, have neither been briefed nor addressed, the Court is unwilling to recommend a ruling based on ATC Brokers Ltd.’s failure to respond.

² Oasis Global FX, S.A. and Oasis Global FX, Ltd. are regulated foreign entities. Oasis Global FX, S.A. is a Belize entity, and Oasis Global FX, Ltd. is a New Zealand entity. (Doc. 110 at ¶ 28).

majority of pool participants' funds and issued false account statements to pool participants to conceal Defendants' trading losses and misappropriation.

The Oasis Entities conducted almost all forex trading on behalf of OIG and its investors through non-party ATC Brokers Ltd. ("ATC UK"), a London-based forex firm. ATC UK provides services to omnibus brokers. Specifically, it provides third-party software that its omnibus broker clients can use to engage in overseas forex trading on behalf of the omnibus brokers' own clients. All of ATC UK's omnibus broker clients receive the same setup and back office software. The omnibus broker clients' underlying clients have no relationship with ATC UK. Here, ATC UK software provided account records for OIG investors. ATC UK allegedly accepted \$20 million of Receivership property at the direction of the Receivership Entities and, according to the Receiver, has identified one account in the name of Oasis Global FX, S.A. that contained \$2,005,368.28.

In the instant motion, Burton W. Wiand, the Court-appointed Receiver for the Receivership Entities, alleges that, despite receiving \$20 million in Receivership assets and executing trades at the heart of the Oasis Ponzi scheme, non-parties ATC UK and its executive director, Mr. Manoukian, have repeatedly resisted efforts by the Receiver to obtain documents that are crucial to the Receiver's investigation. The Receiver asserts the documents are crucial because they would shed light on the flow of Receivership funds and the basis for financial misrepresentations that ATC UK provided to investors. The Receiver argues that his investigation has found that, in addition to handling trades in forex, ATC UK also played a key role in the presentation of fraudulent website data to the Oasis Entities' investors. Mr. Manoukian, a California resident, is executive director and 50% shareholder of ATC UK as well as a shareholder of ATC UK's U.S. affiliate ("ATC US"). The Receiver

argues that Mr. Manoukian was the primary individual dealing with Oasis Entities from the United States, including regularly e-mailing them from ATC US's e-mail server. ATC US, also a non-party, is a U.S. entity organized in California and is separate from ATC UK.³

The Receiver now seeks an order directing Mr. Manoukian and ATC UK to show cause why they should not be held in contempt of Court for their noncompliance with the Court's Consolidated Receivership Order, dated July 11, 2019 (the "Order") (Doc. 177).⁴ Assuming the inability to show cause, the Receiver moves for the entry of an order (1) holding Mr. Manoukian and ATC UK in contempt, (2) requiring Mr. Manoukian and ATC UK to produce the requested documents and information within 10 days of his Court's order, (3) requiring Mr. Manoukian and ATC UK to pay the fees and costs incurred by the Receiver in connection with the filing of the motion and all previous attempts to obtain documents and testimony, and (4) fining Mr. Manoukian and ATC UK for their willful failure to comply with the Order and ordering a continuing fine of \$10,000 per day should ATC UK and Mr. Manoukian fail to comply with this Court's order and direction for them to produce information and documents to the Receiver (Doc. 278 at 19). Mr. Manoukian argues that he cannot be held in contempt given the Receiver's disregard for non-party discovery rules, the continuing harassment in the face of cooperation, and the substantial compliance rendered by ATC UK more than a year ago. Mr. Manoukian requests that the Court deny the relief sought by the Receiver and compel the Receiver to pay the reasonable fees and costs incurred by non-

³ ATC US is a U.S. company regulated by the CFTC with its own employees and customers. It services clients in U.S. markets that are authorized to trade in foreign currency exchanges by U.S. regulators. ATC UK is registered with and regulated by the government of the United Kingdom. It has separate employees and clients from ATC US. ATC UK does not have authorization to service clients or assist with trading in American markets.

⁴ The Order combined and superseded two prior orders (Docs. 7 and 44) and is the operative document governing the Receiver's activities.

party Mr. Manoukian in defending the Receiver's discovery abuses and his misuse of the appointment power.

II. RELEVANT DISCOVERY

In April 2019, ATC UK provided some documents to the CFTC and the U.S. Department of Justice pursuant to requests made by the CFTC through the U.K.'s Financial Conduct Authority, a regulatory body that oversees ATC UK. The Receiver states that he has reviewed those productions and determined they are inadequate for his investigation. The Receiver, however, does not elaborate on why or in what way the documents are inadequate. The Receiver acknowledges that, subsequently, ATC UK substantially cooperated with the Receiver by providing documents belonging to the Oasis Entities to the CFTC, freezing assets, and engaging in extensive communications with CFTC and the Receiver. (*See* Doc. 114-6; Doc. 229 at 12-13; Doc. 284 at 6-8). The Receiver apparently ceased communicating with ATC UK after June 2019.

In October 2019, the Receiver served a subpoena on ATC US for, among other things, all documents relating to the Oasis Entities. ATC US objected to the subpoena and subsequent exchanges of correspondence between counsel did not resolve the dispute. Mr. Manoukian asserted that the subpoena was overbroad, that the information sought was available in a production that ATC UK had already made to the CFTC and a U.K. regulator, and that ATC US was separate from its U.K. affiliate, ATC UK. Mr. Manoukian states that the Receiver has yet to respond to ATC US's objections (Doc. 284 at 3). In November 2019, ATC US produced its own organizational documents to show it was a distinct entity from ATC UK. Moreover, ATC US argued that the documents requested were not in its possession, custody, or control.

In January 2020, the Receiver served a subpoena for deposition duces tecum on Mr. Manoukian in his personal capacity (Doc. 278-3). The subpoena, served on January 6, required compliance and attendance at a deposition on January 10. The Receiver agreed to cancel the deposition but demanded a response to the subpoena by January 17 (Doc. 284-5 at 3). ATC US provided the Receiver with a courtesy draft of a motion to quash intended for filing in the California district where Mr. Manoukian resides. The draft motion raised numerous objections to the subpoena, all of which remain unchallenged. Mr. Manoukian asserts that the Receiver never responded to the courtesy draft of the motion to quash.

Instead of addressing the objections to the October and January subpoenas, the Receiver again demanded documents from ATC UK and Mr. Manoukian via a letter dated May 5, 2020 (the “Letter”) (Doc. 278-5) sent to counsel for ATC US, in which the Receiver cited to the Court’s Order and “highlight[ed] the duties of any recipient [of the Letter] to cooperate and provide records” (Doc. 278 at 4). ATC US responded and explained that it was not ATC UK and had no dealings with the Oasis Entities but proposed to arrange a conference for the Receiver with counsel for ATC UK to discuss the Receiver’s demands. The Receiver did not respond.

The Receiver, seemingly frustrated with the discovery process, asserts that “[h]aving served two subpoenas that elicited a barrage of baseless hurdles to production raised by Mr. Manoukian and ATC [UK], the Receiver determined the most expeditious method of resolving this issue was to bring this matter before this Court for resolution, rather than waste thousands of investor dollars dealing with repeated, baseless obstruction and interference” (Doc. 278 at 10-11). Concomitantly, in July 2020, the Receiver contacted counsel for Mr. Manoukian and ATC UK to conduct a 3.01(g) conference and filed the instant motion.

III. DISCUSSION

“A finding of civil contempt must be based upon clear and convincing evidence that: 1) the allegedly violated order was valid and lawful; 2) the order was clear, definite, and unambiguous; and 3) the alleged violator had the ability to comply with the order.” *Zow v. Regions Fin. Corp.*, 595 F. App’x 887, 889 (11th Cir. 2014) (citation and quotation omitted). “Once a prima facie showing of a violation has been made, the burden of production shifts to the alleged contemnor, who may defend his failure of the grounds that he was unable to comply.” *CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1529 (11th Cir. 1992) (citing *United States v. Rylander*, 460 U.S. 752, 757 (1983)). Unlike criminal contempt proceedings, a civil contempt proceeding does not have to establish that a respondent intended to violate, or willfully violated, the order in question. *See McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949); *CFTC v. Commonwealth Fin. Grp., Inc.*, 874 F. Supp. 1345, 1349 (S.D. Fla. 1994). “Therefore, the focus of the court’s inquiry in civil contempt proceedings is not on the subjective beliefs or intent of the alleged contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.” *Howard Johnson Co. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990) (citations omitted). Moreover, prior to imposing a contempt sanction, a court “must consider the character and magnitude of the harm threatened by the continued contumacy, and the probable effectiveness of any suggested sanction bringing about the result desired.” *In re Chase & Sanborn Corp.*, 872 F.2d 397, 401 (11th Cir. 1989) (quoting *United States v. United Mine Workers of Am.*, 330 U.S. 258, 304 (1947)).

As discussed above, the Receiver alleges the ATC UK and Mr. Manoukian are in contempt of the Court’s Order (Doc. 177), which appoints the Receiver and, among other things, delineates the Receiver’s powers and duties. More specifically, the Receiver argues

that, based on the powers granted to the Receiver in the Order, ATC UK's and Mr. Manoukian's failure to provide documents to the Receiver upon his request constitutes contempt. The Receiver's interpretation of the powers afforded by the Court's Order, however, is overly broad. The Court's Order does not, in fact, provide the powers that the Receiver alleges to have been violated.

A. The Receiver's Powers Pursuant to the Order

In pertinent part, the Court's Order provides the Receiver with the powers, authorities, rights, and privileges previously possessed by the Receivership Entities. It also provides the Receiver with power to conduct discovery concerning any subject matter within the powers and duties granted by the Order. For the reasons discussed herein, neither provides a basis for a finding of contempt.

i. Powers and Rights of Receivership Entities

As is typical, the Order gives the Receiver the same rights or powers to which the Receivership Entities would be entitled. *See Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 25 (1st Cir. 1990) (It is "well settled that 'the plaintiff in his capacity of receiver has no greater rights or powers than the corporation itself would have.'") (quoting *McCandless v. Furlaud*, 296 U.S. 140, 148 (1935)); *Phelan v. Middle States Oil Corp.*, 210 F.2d 360, 363 (2d Cir. 1954) ("In short, the [receiver's] 'practice' means the procedure by which he gets the power to do those things which an owner of the property would have without court authorization."). More specifically, the Order states:

The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, and general and limited partners of the entity Receivership Defendant under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a

receiver by the provisions of 28 U.S.C. § § 754 and 1692, and Fed. R. Civ. P. 66.

(Doc. 177 at ¶ 5).⁵ In other words, the Receiver stands in the shoes of the Receivership Entities in regard to assets, property, and records and is “authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records, and all other documents or instruments relating to the Receivership Defendants.” (Doc. 177 at ¶ 15).

The Order also directs that “[a]ll persons and entities having control, custody, or possession of any Receivership Property are hereby directed to turn over such property to the Receiver.” (Doc. 177 at ¶ 15). Receivership Property is defined as “all assets (real, personal, intangible, or otherwise) of the Defendants and the Relief Defendants ... as well as the assets of any other entities or individuals that: (a) are attributable to funds derived from pool participants, lenders, investors, or clients of the Defendants and/or Relief Defendants; (b) are held in constructive trust for the Defendants and/or Relief Defendants; (c) were fraudulently transferred by the Defendants and/or Relief Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants and/or Relief Defendants.” (Doc. 177 at 2).

The Receiver asserts that he is trying to “collect records of the Receivership Entities’ business from the Entities’ vendors and the vendors’ officers, including [ATC UK] and its California-based executive director Mr. Manoukian” (Doc. 295 at 1). The Court does not disagree with the Receiver that a receiver is authorized to “take control of receivership entities,

⁵ 28 U.S.C. § 754 sets forth a receiver’s rights and responsibilities in relation to receivership property situated in different districts. 28 U.S.C. § 1692 speaks to process and orders affecting said property in different districts. Federal Rule of Civil Procedure 66 provides that “[t]hese rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule.”

preserve their assets, and collect the records necessary to ascertain the entities' property" and that "[t]hese powers are of course the same ones exercised by the entities themselves before a receiver's appointment" (Doc. 295 at 2). The Receiver, however, is not seeking records or information that belong to or would otherwise be ascertainable by the Receivership Entities. To the contrary, the Receiver makes clear that he is seeking these records as part of its investigation of ATC UK and ATC US throughout the record: "The documents would shed light on the flow of Receivership funds, and the basis for financial misrepresentations that ATC [UK] provided to investors." (Doc. 278 at 2); "The Receiver concluded that he needs to review ATC [UK]'s records. The Receiver also needs to review the funds earned by ATC [UK] for the transactions it executed as part of the OIG scheme." (Doc. 278 at 8); "numerous of the records requested in the subpoena are clearly in the custody and control of ATC (US) and relevant to the Receiver's investigation of ATC (US) and ATC [UK]" (Doc. 278 at 8 n. 3); "ATC [UK] and Mr. Manoukian have never countered the Receiver's assertion that ATC played a key role in the Oasis scheme" (Doc. 278 at 4); in his Fifth Interim Report, Receiver states he "[f]iled a motion for an order to show cause why ATC [UK] and one of its principals should not be held in contempt of Court and continued investigating Spotex, LLC and other entities to determine whether the Receiver has viable claims and whether the assertion of any such claims would be cost-efficient" (Doc. 294 at 5). This purpose clearly falls outside the purview of the powers and rights granted to the Receiver by virtue of standing in the shoes of the Receivership Entities.

A review of the document requests made by the Receiver in his Letter to Mr. Manoukian and ATC UK, which was, in fact, incorrectly sent to counsel for ATC US,

confirms that he is seeking ATC UK documents, not Receivership Entities' documents. The

Letter requests:

1. All records showing the calculation and accounting of the spread income credited to the accounts of Oasis investors;
2. All records of markups and commissions or other revenues received by ATC from trades involving Oasis International Group, Ltd., Oasis Global FX, S.A., and Oasis Global FX, Ltd.;
3. All communications, whether e-mails, voicemails, texts, paper correspondence, recorded conference calls, or the like, between ATC and Spotex⁶ that in any way relate to Oasis International Group, Ltd., Oasis Global FX, S.A., and Oasis Global FX, Ltd.;
4. All communications relating to, or with, Oasis International Group, Ltd., Oasis Global FX, S.A., and Oasis Global FX, Ltd.; whether those communications are internal or with third parties;
5. All records identifying contra parties to trades of, or on behalf of, Oasis International Group, Ltd., Oasis Global FX, S.A., and Oasis Global FX, Ltd.;
6. Any statements, accountings, or similar records of the trading conducted by, or on behalf of, Oasis International Group, Ltd., Oasis Global FX, S.A., and Oasis Global FX, Ltd.;
7. All records of receipt or disbursement of funds from or to Oasis International Group, Ltd., Oasis Global FX, S.A., and Oasis Global FX, Ltd.; and
8. All records of compensation, including but not limited to salary, dividends, distributions, stock, draws, or bonuses, paid by ATC or any Receivership Defendant to any entity or person, including but not limited to Mr. Manoukian, for services to or transactions involving Oasis International Group, Ltd., Oasis Global FX, S.A., and Oasis Global FX, Ltd.

(Doc. 278-5 at 4-5). Again, these requests are not requests that the Receivership Entities could make as a matter of right for themselves.⁷

⁶ Spotex's relation to this litigation is unclear.

⁷ To the extent that a request or some aspect of a request seeks records of the Receivership Entities to which the Receiver is entitled pursuant to the Order as discussed herein, they have not been separately identified by the Receiver. The Court is addressing the arguments made

To this point, the Receiver argues that the Order also provides other tools, not available to a corporation, to give the Order effect (Doc. 295 at 3). The Receiver cites to portions of paragraphs 8(B), 13, 14, 15, 16, and 17 as the most relevant paragraphs supporting his rights and powers beyond those to which the Receivership Entities would be entitled. A review of these paragraphs as applicable to this motion, however, establishes only the Receiver's right to documents, accounts, books, records, assets, or funds of the Receivership Entities. The Court notes that the Receiver did not cite to any authority in support of the proposition that the language in the Order should be interpreted to require non-parties to provide records that are related to the Receivership Entities, but which are not otherwise actual records of the Receivership Entities themselves.⁸ The Court declines the Receiver's unsubstantiated invitation to interpret the Order more broadly.⁹

ii. Power to Conduct Discovery

In order to effectuate the Receiver's duties to, for example, determine the nature, location, and value of all property interests of the Receivership Entities and to sue for and collect, recover, and take into possession from third parties all Receivership Property and records relevant thereto, the Order grants the Receiver the general power and duty "[t]o issue subpoenas or letters rogatory to compel testimony of persons or production of records, consistent with the Federal Rules of Civil Procedure, except for the provisions of Fed. R. Civ.

by the parties regarding the requests as a whole and the means by which those requested documents are being sought.

⁸ Even if the Court were to find that the Order bestowed upon the Receiver powers beyond those to which the Receivership Entities themselves would be entitled, a finding of contempt would be inappropriate because the Order was not "clear, definite, and unambiguous" in that respect. *See Zow*, 595 F. App'x at 889.

⁹ It is worth noting that the Order, as adopted and entered by the Court (Doc. 177), was drafted and proposed by the CFTC (Docs. 172, 172-4).

P. 26(d)(1), concerning any subject matter within the powers and duties granted by this Order” (Doc. 177 at ¶ 8H). Here, the Receiver admittedly considered and yet rejected the various alternatives for obtaining the documents at issue pursuant to his power to conduct discovery, stating:

Proceeding in California requires the engagement of California counsel and protracted litigation in a court not familiar with this matter. The Receiver also has considered the engagement of counsel in London to pursue matters there, and to that end has been in contact with lawyers in the U.K. The Receiver plans to file a motion for the Court to approve the engagement of counsel in London. Considering that this Court has jurisdiction over Mr. Manoukian, ATC [UK], and ATC (US), the most efficient path is seeking relief in this Court as to all matters.

(Doc. 278 at 11 n.4). The Receiver’s “most efficient path,” however, is beyond the scope of powers provided by the Order and unacceptably void of the protections afforded non-parties under the Federal Rules of Civil Procedure. Rule 45(d)(1), governing non-party discovery, provides that “[a] party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). In other words, the Federal Rules of Civil Procedure provide protection to non-parties from undue burden or expense, and the Receiver has not established that the Order and the powers provided therein override the protection afforded by the Federal Rules of Civil Procedure in this respect. The Court notes that the Receiver’s initial approach to pursue these documents from ATC US and Mr. Manoukian via subpoenas and his powers to conduct discovery rather than seeking the documents via his powers derived from the Receivership Entities themselves belies the Receiver’s belief in his power to do so pursuant to the latter. For these reasons, the Receiver must pursue the documents, to the extent that they are relevant and proportional to the needs of the case, via the regular, albeit arguably less efficient, path of discovery.

In reviewing the Receiver's efforts to obtain documents via his discovery powers, there has been no violation of the Order on the part of the non-parties. The Receiver issued two subpoenas under Rule 45: the October 2019 subpoena served on ATC US, which the Receiver does not seek to enforce in the instant motion, and the January 2020 subpoena served on Mr. Manoukian. With respect to the latter, the proper court in which to make a motion seeking to hold Mr. Manoukian in contempt for failure to comply with the subpoena or an order related to it is the court for the district where compliance is required – the United States District Court for the Central District of California. *See* Fed. R. Civ. P. 45(g).

As to ATC UK, a finding of contempt would be unwarranted because no unsatisfied requests, via letters rogatory or otherwise, were made of ATC UK by the Receiver. (*See, e.g.*, Doc. 284-9 at 3, email correspondence between the Receiver's counsel and counsel for ATC UK regarding Local Rule 3.01(g) conferral for the instant motion filed July 10, 2020 (“We trust you will not mislead the court to suggest that ATC UK has not been cooperating with requests when none have been made to it or its representatives prior to the below e-mail dated 8 July 2020.”)). Moreover, the basis for this Court's alleged jurisdiction over ATC UK for discovery purposes is not otherwise discussed or established by the Receiver.¹⁰ As such, the Receiver has not established any violation of the Court's Order pursuant to his discovery powers.

¹⁰ Mr. Manoukian asserts that the ATC UK documents being sought are protected by the European Union's General Data Protection Regulations (“GDPR”); *i.e.*, the obligations imposed by the GDPR on U.K. entities prevent disclosure of such documents unless the entity seeking those documents goes through the proper U.K. channels.

B. Request for Fees

Finally, Mr. Manoukian requests, pursuant to 28 U.S.C. § 1927, that the Court award fees and costs to him “as a sanction against the Receiver’s false premises, his refusal to comply with this Court’s appointment order requiring the Receiver to comply with Rule 45 when exercising ‘any subject matter within the powers and duties granted by’ the order (Doc. 44), and his frivolous waste of resources” (Doc. 284 at 1). Section 1927 states that “[a]ny attorney ... who so multiples the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” 28 U.S.C. § 1927. “Section 1927 allows district courts to assess attorneys’ fees against counsel and law firms who willfully abuse the judicial process by ‘conduct tantamount to bad faith.’” *Dzwonkowski v. Dzwonkowski*, No. 05-0544-KD-C, 2008 WL 2163916, at *20 (S.D. Ala. May 16, 2008) (quoting *Avirgan v. Hull*, 932 F.2d 1572, 1582 (11th Cir. 1991)), *aff’d in part, dismissed in part*, 298 F. App’x 885 (11th Cir. 2008). The Court does not find that Mr. Manoukian has established bad faith on the part of the Receiver and recommends that this request be denied.

IV. CONCLUSION

The Order empowers the Receiver to take possession of Receivership Property and to conduct discovery in support of his duties. To the extent the Receiver seeks records that are not Receivership Property, such records must be compelled through discovery tools available to all parties, such as subpoenas and letters rogatory, within the parameters set forth in applicable treaties, statutes, or the Federal Rules of Civil Procedure. In other words, the Order does not bestow upon the Receiver any additional or extraordinary powers for conducting discovery. While the Order enjoins, in relevant part, all persons receiving notice

of the Order from taking any action that would hinder, obstruct, or otherwise interfere with the Receiver, the Order certainly does not strip non-parties, such as Mr. Manoukian and ATC UK, of their legal rights, including the right to assert a good faith objection to a request that seeks non-Receivership Property. Accordingly, there has been no violation of the Order warranting a finding of contempt.

Therefore, it is hereby

RECOMMENDED:

(1) Receiver's Motion for an Order for David Manoukian and ATC Brokers Ltd. to Show Cause Why They Should Not Be Held in Contempt of Court for Failing to Comply with Court Orders (Doc. 278) be denied.

(2) Mr. Manoukian's request for fees and costs be denied.

IT IS SO REPORTED in Tampa, Florida, on September 14, 2020.


SEAN P. FLYNN
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

Within fourteen days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to the proposed findings and recommendations or request an extension of time to do so. 28 U.S.C. § 636(b)(1); 11th Cir. R. 3-1. Failure of any party to timely object in accordance with the provisions of § 636(b)(1) waives that party's right to challenge on appeal the district court's order based on the unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3-1.

cc: Hon. Virginia M. Hernandez Covington