UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

OASIS INTERNATIONAL GROUP, LIMITED *et al.*,

Defendants.
_____/

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

RECEIVER'S OPPOSITION TO DEFENDANT MICHAEL DACORTA'S MOTION TO DISMISS RECEIVER

Burton W. Wiand, the Court-appointed receiver (the "**Receiver**") over the assets of the above-captioned defendants and relief defendants (the "**Receivership**" or "**Receivership Entities**") opposes the Motion to Dismiss Receiver (Doc. 447) (the "**MTD**") filed by Michael DaCorta ("**DaCorta**"). As an initial matter, the MTD appears to be duplicative of DaCorta's objection (Doc. 445) to the Receiver's "**Determination Motion**" (Doc. 439) and should thus be denied under Local Rule 3.01(c). More importantly, the MTD relies on irrelevant statutory schemes and accuses the Receiver, his professionals, the various agencies of United States, and even judges who created unfavorable precedent in connection with the Receiver's previous appointments of

conspiring against DaCorta. As explained below, the MTD is frivolous. It seeks to deplete Receivership resources, frustrate the claims process, and avoid any accountability to the 791 individuals and entities that have alleged losses of more than $70 million as a result of DaCorta's conduct. It is devoid of evidentiary support or even particularized factual allegations. The Court should deny the MTD and order DaCorta, as a sanction, to reimburse the Receivership for the money required to prepare this opposition.

I. 28 U.S.C. §§ 754 AND 1692 DO NOT GOVERN THE RECEIVER'S STANDING OR COURT-MANDATED ACTIVITIES IN THIS ENFORCEMENT ACTION

DaCorta claims the CFTC "did not fulfill statutory requirements pertaining to prejudgment appointment of receivers" (Mot. ¶ 10) because the Receiver purportedly "failed to timely file the documents 28 U.S.C. §§ 754 & 1692 required" (Mot. ¶ 24). According to DaCorta, the Receiver thus "lacks standing to bring any cause of action in this pending Motion [*sic*] and, therefore, should be dismissed as Receiver with prejudice." Mot. ¶ 34. These arguments are without merit for at least three independent reasons.

First, the Receiver has not asserted any causes of action against DaCorta, who is the movant with respect to the MTD. Many of DaCorta's arguments appear to have been copied verbatim from his opposition to the Receiver's Determination Motion. The Court should thus treat the MTD as a second opposition and deny it as untimely under Local Rule 3.01(c). Notably,

DaCorta did not oppose the Receiver's motion initiating the claims process (*see* Doc. 230) nor did he submit a claim for the return of his purported property. All unsubmitted claims against the Receivership Entities are forever barred. *See, e.g.,* Docs. 231 (order), 249 (notice of claim bar date).

Second, 28 U.S.C. §§ 754 and 1692 do not apply to this enforcement action. DaCorta appears to believe that noncompliance with § 754 terminates receiverships, but he misunderstands the purpose of the statute, which governs only "property in different districts." For example, the Receiver made § 754 filings in more than 20 federal districts after entry of the Consolidated Order because potential "clawback" defendants resided in those districts. The Receiver needed personal jurisdiction over the defendants to sue them through a single action in the Middle District of Florida – *i.e.*, *Wiand v. Arduini et al.*, Case No. 8:20-cv-00862 (the "**Clawback Action**" or "**CA**"). Certain "*pro se*" defendants made claims about § 754 identical to those in the MTD, but their arguments were unsuccessful before both this Court (CA Doc. 344) and the United States Court of Appeals for the Eleventh Circuit (*Wiand v. Luda*, Case No. 20-14123 (11th Cir.)); *see also* Docs. 385, 390 (regarding litigation against ATC Brokers Ltd.). Put simply, receivers use § 754 to obtain jurisdiction in the underlying enforcement action or ancillary litigation over non-parties and property located in other districts. This Court already has jurisdiction over

DaCorta, his purported property, and any affiliated relief defendants.[1] Section 754 thus has no relevance to DaCorta or this enforcement action.

Third, even if § 754 did apply here, the Receiver complied with pertinent requirements under well-settled authority from receivership courts across the country. CA Doc. 344 ("[T]he Court finds that the Receiver has complied with the requirements of 28 U.S.C. § 754 and 28 U.S.C. § 1692.").

II. 28 U.S.C. §§ 3101-03 ALSO DO NOT GOVERN THE RECEIVER'S STANDING OR COURT-MANDATED ACTIVITIES IN THIS ENFORCEMENT ACTION

DaCorta further claims the CFTC "did not fulfill statutory requirements pertaining to prejudgment appointment of receivers" (Mot. ¶ 10) because "Wiand was not legally authorized as receiver under 28 U.S.C. §§ 3103, 3101, and 3102" (*id.* ¶ 25). Again, this argument is without merit for at least three independent reasons.

First, the CFTC sought the Receiver's initial appointment "in accordance with 7 U.S.C. § 13a-1(a) (2012) and Fed. R. Civ. P. 65." Doc. 4 at 5. Section 13a-1 of the Commodity Exchange Act "grants the district court with broad authority to order relief necessary to enforce the Act, including the appointment of a receiver." *C.F.T.C. v. Wall St. Underground, Inc.*, 2004 WL 957852, at *1 (D. Kan. Mar. 18, 2004) (appointing receiver); *C.F.T.C. v.*

[1] *See, e.g.,* Doc. 35-3 at 1 (admitting "the Court's jurisdiction over Defendants and over the subject matter of this action"); *id.* at 3 ¶ 11 ("Defendants and Relief Defendants agree that this Court shall retain jurisdiction over this matter.").

Offshore Fin. Consultants of Fla., Inc., 2002 WL 1788031, at *1 (S.D. Fla. June 5, 2002) (same); *C.F.T.C. v. First Bristol Grp., Inc.*, 2002 WL 31357411, at *3 (S.D. Fla. Aug. 20, 2002) (same). As such, the Receiver's initial appointment was authorized both by statute and by the Court's inherent equitable powers.

Second, given the CFTC's invocation of Section 13a-1 of the Commodity Exchange Act, DaCorta's reliance on 28 U.S.C. §§ 3101-03 is misplaced because those statutes are components of the Federal Debt Collection Procedures Act ("**FDCPA**"). "The FDCPA provides the exclusive civil procedures for the United States 'to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.'" *U.S. ex rel Doe v. DeGregorio*, 510 F. Supp. 2d 877, 883 (M.D. Fla. 2007) (quoting 28 U.S.C. § 3001(a)(2)). This Receivership, however, is not based on "a claim for a debt" owing from DaCorta (or anyone else) to the United States. It is not a *qui tam* action or a proceeding under the False Claims Act. Rather, the CFTC sued DaCorta to enjoin ongoing violations of the Commodity Exchange Act. *See, e.g.,* Docs. 1, 4. The CFTC sought the Receiver's appointment to preserve and marshal assets for the eventual distribution to creditors of the Receivership Entities – not to collect a debt on behalf of the United States. *See, e.g.,* Doc. 4 at 46 (explaining that Congress passed 7 U.S.C. § 13a-1(a), in part, to preserve "property which may be subject to lawful claims of customers" (quotation omitted)); *id.* at 53 ("because there may not be enough funds available to fully compensate all of the victims of [d]efendants' fraud, a

receiver will facilitate the marshaling of assets and the claims process and ensure that all investors are treated equitably").

DeGregorio illustrates the interplay (and potential confusion) between (1) the appointment of a receiver pursuant to the Court's inherent equitable powers and a complimentary regulatory framework like the Commodity Exchange Act and (2) the collection of a debt by the United States under the FDCPA. The court in *DeGregorio* held that civil penalties and treble damages recoverable by the government under the False Claims Act also constitute "debt" under the FDCPA. Some of DaCorta's arguments might have merit if the Receiver were attempting the pre-judgment collection of post-judgment fines and penalties on behalf of the CFTC, but he has done nothing of the sort.

Third, even if the FDCPA applied to this Receivership and the underlying enforcement action, the requirements of 28 U.S.C. §§ 3101-03 are relatively similar to those of 7 U.S.C. § 13a-1(a) and Fed. R. Civ. P. 65. For example, DaCorta claims he "was not noticed nor given an opportunity for a hearing pursuant to 28 U.S.C. § 3103" (Mot. ¶ 16), but he was indisputably given an opportunity for a hearing under the procedures that actually apply to this dispute. *See, e.g.,* Docs. 4, 9. He declined that opportunity by consenting to the Receiver's appointment and the entry of an injunction against him and affiliated entities. Similarly, DaCorta complains that no declaration was filed in support of the complaint (Mot. ¶ 14), but the CFTC filed a declaration and

numerous exhibits with its complaint (Doc. 4-1). The Receiver, however, will not attempt to compare the contents of those declarations to the requirements of 28 U.S.C. §§ 3101-03 because those statutes are simply not relevant.

III. THE RECEIVER'S MANDATE IS GOVERNED BY THE CONSOLIDATED ORDER, AND DACORTA CONSENTED TO THE ENTRY OF THAT ORDER AND ITS PREDECESSOR

As explained above, the CFTC sought the Receiver's appointment under to Section 13a-1 of the Commodity Exchange Act, and the Court appointed the Receiver pursuant to its inherent equitable powers. Nevertheless, DaCorta argues Mr. Wiand "was never lawfully appointed … Receiver in the instant case" (Mot. ¶ 2), but that argument is without merit because DaCorta expressly consented to the Receiver's appointment. *See* Doc. 35 (motion for entry of consent preliminary injunction and order appointing receiver); Doc. 35-3 (consent by DaCorta for himself and Oasis International Group, Limited; Oasis Management, LLC; Roar of the Lion Fitness, LLC; 444 Gulf of Mexico Drive, LLC; 6922 Lacantera Circle, LLC; 13318 Lost Key Place, LLC); Doc. 172 (second motion for entry of additional consent orders of preliminary injunction and for entry of a consolidated receivership order; DaCorta also did not oppose this second motion (*see id.* at 5)); Docs. 174-76 (consent orders of amended preliminary injunction and other equitable relief); Doc. 177 (the "**Consolidated Order**").

In fact, the Hon. William F. Jung, who presides over DaCorta's criminal prosecution, recently denied a motion to suppress inculpatory testimony from DaCorta's admitted co-conspirator, Joseph S. Anile, III ("**Anile**"), for substantively identical reasons:

> The Court finds that the receivership orders and the consent to same by Mr. DaCorta address whether the receiver possesses the attorney-client privilege for the receivership entities. The Court finds that the receiver does so possess this privilege for those entities as set forth in the receivership orders.

DCA Doc. 103 (emphasis added).[2] DaCorta's consent to the Receiver's appointment is equally fatal to his arguments in the MTD.

In addition, all the entities for which DaCorta executed consent agreements defaulted and otherwise failed to defend this action, even before the United States sought to intervene and impose a stay to protect its ongoing prosecution of DaCorta and his co-conspirators. *See, e.g.,* Docs. 69 (entry of default against Oasis Management, LLC); 73 (Roar of the Lion Fitness, LLC); 74 (444 Gulf of Mexico Drive, LLC); 76 (6922 Lacantera Circle, LLC); 77 (13318 Lost Key Place, LLC); 94 (Oasis International Group, Limited). These defaults were entered between May 23, 2019, and June 5, 2019. The United States did not file its initial motions to intervene and to stay until June 26, 2019 (Docs. 148-49), and the Court did not impose the stay until July 12, 2019 (Doc. 179).

[2] *See United States v. DaCorta,* Case No. 8:19-cr-605-T-02CPT (M.D. Fla.) (the "**DaCorta Criminal Action**" or "**DCA**").

In other words, DaCorta not only consented to the Receiver's appointment, but he also allowed the entities he formerly controlled to default on their defense of the CFTC's allegations. Given these facts, both (1) the Receiver's initial appointment and (2) the execution of his mandate pursuant to the Consolidated Order and its predecessors have always been lawful.

IV. THE RECEIVER HAS DILIGENTLY FULFILLED HIS COURT-APPOINTED MANDATE

"It is well recognized that a receiver is the agent only of the court appointing him; he represents the court rather than the parties." *Ledbetter v. Farmers Bank & Tr. Co.*, 142 F.2d 147, 150 (4th Cir. 1944); *United States v. Smallwood*, 443 F.2d 535, 539 (8th Cir. 1971) ("A receiver is an officer of the court. He is not an agent or employee of either party to the litigation in which he was appointed.") (citation omitted); *S.E.C. v. Loving Spirit Found. Inc.*, 392 F.3d 486, 490 (D.C. Cir. 2004) ("Neither a plaintiff nor a defendant, the receiver functions as an arm of the court appointed to ensure that prevailing parties can and will obtain the relief it orders.") (citation omitted); *S.E.C. v. N. Am. Clearing, Inc.*, 2015 WL 13389926, at *3 (M.D. Fla. Jan. 12, 2015) (describing receiver as an officer of the court), *aff'd* 656 F. App'x 969 (11th Cir. 2016); *S.E.C. v. Nadel*, 2010 WL 146832, at *1 (M.D. Fla. Jan. 11, 2010) (same); *Offshore Fin. Consultants of Fla., Inc.*, 2002 WL 1788031 at *4 ("The Receiver

shall be the agent of this Court in acting as Receiver under this Order."); *First Bristol Grp., Inc.*, 2002 WL 31357411 at *3 (same).[3]

When a party seeks to terminate a receiver or receivership, the party typically attempts to put forth, at minimum, perfunctory allegations of bias, incompetence, or even mere inefficiency. Similarly, when a party seeks to dissolve an injunction, courts require "the movant [to] show a change in circumstances that justifies the relief requested." *CWI, Inc. v. LDRV Holdings Corp.,* 2013 WL 12123229, at *2 (M.D. Fla. Oct. 16, 2013) (denying motion because movant presented "no evidence of a change in circumstances"). "Modification of an injunction is proper only when there has been a change of circumstances between entry of the injunction and the filing of the motion that would render the continuance of the injunction in its original form inequitable." *Id.* (quotation omitted).

Here, DaCorta has lodged few, if any, specific objections to the Receiver's conduct. Instead, the MTD contains a series of conclusory, unfounded, and even sanctionable "whereas" clauses that would not pass muster under any relevant standards and certainly do not constitute evidentiary proof of changed circumstances sufficient to warrant the removal of the Receiver or the

[3] These cases should not be interpreted to mean that the Receiver cannot take a position adverse to any of the parties. To the contrary, the Court directed the Receiver to investigate the affairs of the defendants and relief defendants and to institute litigation if appropriate. With the Court's express approval, the Receiver his filed at least three plenary lawsuits and recovered more than $4.5 million to date.

dissolution of the Receivership. For the avoidance of any doubt, each clause is excerpted and addressed briefly in the following bullet points:

- "Whereas Receiver Wiand was appointed on a pre-judgment basis without lawful authority" – false and sanctionable because DaCorta expressly consented to the Receiver's appointment (*see supra* § III).

- "Whereas Wiand failed to timely file the documents 28 U.S.C. §§ 754 & 1692 required" – irrelevant, and in any event, false (CA Doc. 344 ("[T]he Court finds that the Receiver has complied with the requirements of 28 U.S.C. § 754 and 28 U.S.C. § 1692.")).

- "Whereas Wiand was not legally authorized as receiver under 28 U.S.C. §§ 3103, 3101, and 3102" – not required and thus irrelevant (*see supra* § II).

- "Whereas Wiand, being unauthorized as receiver in the instant case, through acts with associated attorneys has knowingly conspired to injure, oppress, and intimidate Defendant" – false, frivolous, and sanctionable (*see* almost every Local Rule 3.01(g) Certification to the Receiver's motions since early 2019, including those attaching DaCorta's communications to the Court as a courtesy; the relevant communications are available to the Court for evaluation of any "intimidation" upon request).

- "Whereas Wiand, being unauthorized as receiver in the instant case, has knowingly deprived Defendant of his rights under law and statute" – false with respect all relevant statutes, including Local Rule 3.01(g) and 28 U.S.C. § 2001 (regarding property sales); otherwise too vague to substantively address.

- "Whereas Wiand, being unauthorized as receiver in the instant case, has knowingly and willfully acted in conspiracy to defraud the United States by obtaining or aiding to obtain the payment of fraudulent claims" – false, sanctionable, and frankly nonsensical, as DaCorta appears to accuse 791 of his former investors of submitting false claims under penalty of perjury, and no subdivision of the United States has ever objected to the Receiver's activities.

- "Whereas Wiand, being unauthorized as receiver in the instant case, has knowingly and willfully acted to defraud the United States by repeated misrepresentation of case law" – false and sanctionable; DaCorta and his "*pro se*" affiliates have often accused the Receiver and his attorneys of "injecting" unfavorable caselaw into this district for the past 15-20 years, as if the correctness of their arguments is inversely correlated with the number of opinions rejecting those exact same arguments.

- "Whereas Wiand, being unauthorized as receiver in the instant case, has knowingly represented himself falsely to be an officer of the court acting under color of law and has extorted money, papers, and other things" – false and sanctionable (*see supra* § III).

- "Whereas Wiand, being unauthorized by law as receiver in the instant case, through knowing, willful acts has mismanaged Defendant's property" – false, unsupported, and sanctionable, given DaCorta's express consent to many of the transactions about which he now complains and his failure to participate in the government's forfeiture actions (*see infra*).

- "Whereas Wiand, being unauthorized by law as receiver in the instant case, through knowing, willful acts received, possessed, and disposed of Defendant's property" – only as authorized by the Consolidated Order at this Court's express direction.

- "Whereas through the intentional, willful, and knowing acts of Receiver Wiand, Defendant was repeatedly denied constitutionally protected due process rights" – the Receiver's actions comport with due process; DaCorta's reluctance to further incriminate himself by failing to respond to the Receiver's activities substantively is not relevant.

Ordinarily, the Receiver would not respond to such serious allegations as if they were unfulfilled documents requests in a motion to compel, but DaCorta has not proffered anything more substantive than a string of false, defamatory, and sanctionable "whereas" recitals.

The closest the MTD comes to making a specific complaint about the Receiver's activities concerns certain real estate transactions. DaCorta argues the Receiver has liquidated properties "without statutory jurisdiction," "without judgment of any violations of U.S.C. Title 7," and "without material evidence of the alleged Ponzi scheme."[4] Mot. ¶ 3. These arguments, however, are without merit and do not constitute evidentiary proof of "changed circumstances" for at least four independent reasons.

First, the Consolidated Order and its predecessors expressly authorized the Receiver to seize and liquidate the defendants' and relief defendants' property. *See, e.g.,* Doc. 7 § IV.30.c.; Doc. 44 § V.19; Doc. 177 § V.19. As explained above, DaCorta consented to the entry of the pertinent orders (aside from the initial *ex parte* statutory restraining order).

Second, the Receiver liquidated the most valuable assets pursuant to a Liquidation Plan approved by this Court (the "**Liquidation Plan**") and a Memorandum of Understanding (the "**MOU**") with the United States Marshals Service and the Department of Justice. *See* Docs. 44 ¶¶ 51-52 (ordering development of Liquidation Plan); 105 (motion seeking approval of MOU and Liquidation Plan; DaCorta did not file an opposition to this motion); 112 (order

[4] DaCorta also argues (1) the Receiver "may only attach property of a named debtor," and "[t]here is no named debtor in the instant case" (Mot. ¶ 4), and (2) "[t]he value of the property attached may not exceed the amount of the debt claimed by the United States," and "[s]ince the U.S. claimed no debt amount, no property may be attached" (Mot. ¶ 5), but these are inapposite requirements of the FDCPA. They are not relevant to this enforcement action.

approving MOU and Liquidation Plan). In April 2019, the United States and its agents executed search warrants and seized cash, gold coins, silver ingots, sports cars, and luxury real estate from DaCorta and other defendants. The government instituted administrative, civil, and/or criminal forfeiture proceedings against the property. *See, e.g., United States v. 13318 Lost Key Place, Lakewood Ranch, Florida et al.,* Case No. 8:19-cv-00908 (M.D. Fla.) (the "**Civil Forfeiture Action**" or "**CFA**"). DaCorta generally failed to participate in those proceedings, and as a result, he lost any interest he may have had in the assets or their proceeds. *See, e.g.,* CFA Docs. 60, 63, 65, 67 (vesting title in the United States). After completion of the various forfeiture proceedings, the Receiver sold the forfeited assets pursuant to the Consolidated Order, the Liquidation Plan, and the MOU.

Third, in many cases, DaCorta even consented to the transactions through which the Receiver liquidated the seized assets. *See, e.g.,* Docs. 340, 341, 359, 363, 387 (all unopposed). To the extent DaCorta objected to any of the transactions, he did so because he disagreed with the proposed sale price – not because the Receiver purportedly lacked "standing" to engage in the transactions or any other alleged infirmity concerning the Receiver's appointment. *See, e.g.,* Doc. 222 ("Defendant DaCorta objects to the relief requested in the motion. He claims that the sale price is too low, given the 'perfect' condition and features of the Property…. According to DaCorta, this is

because '[r]eal estate agents are generally lazy and use their computers to determine a price without actually seeing and valuing all the additional features unique to a home.'").

Fourth, DaCorta did not own any real estate in his personal capacity. Instead, the properties were owned by limited liability companies, and as explained above, DaCorta consented to the Receiver's appointment on behalf of those companies. *See* Doc. 35-3. As also explained above, defaults were entered against those companies before the United States sought to stay this action to protect DaCorta's criminal prosecution. Put simply, the Receiver's activities with respect to the liquidation of Receivership assets have been lawful, equitable, generally unopposed, and approved by this Court at every step of the process.

Aside from the baseless "whereas" clauses and real estate matters discussed above, DaCorta's personal circumstances have not changed in any way that would render his initial consent to the Receiver's appointment inequitable. In fact, the deterioration of those circumstances further illustrates why the Receiver's appointment was necessary. For example, on April 27, 2021, DaCorta filed a motion in limine seeking to exclude from his trial inculpatory statements he made during the execution of a search warrant at a property he purchased with misappropriated investor funds. DCA Doc. 43. On September 24, 2021, the presiding Magistrate Judge recommended denial of DaCorta's

motion. *Id.* Doc. 84; *see also* Doc. 100 (adopting report and recommendation). On August 31, 2021, DaCorta filed a second motion in limine seeking to exclude testimony from his admitted co-conspirator, defendant Anile, who has already pled guilty to operating the Receivership Entities as a Ponzi scheme. *Id.* Doc. 74. Again, Judge Jung generally denied DaCorta's motion. *Id.* Doc. 103. His trial is currently scheduled for April 2022. *Id.* Doc. 96. Viewed in this light, DaCorta's attempts to frustrate the claims process and dismiss the Receiver are transparent. He is willing to deprive hundreds of defrauded investors of even a partial recovery of their losses because he cannot or will not admit his wrongdoing. This is an equity receivership, and the equities do not favor defendant DaCorta – rather, they call strongly for the denial of the MTD.

CONCLUSION

For the foregoing reasons, the Court should both deny the MTD and consider ordering DaCorta to reimburse the Receivership for the fees and costs associated with preparing this opposition. Because DaCorta failed to comply with Local Rule 3.01(g), the Receiver's counsel has consulted with counsel for the CFTC and is authorized to represent to the Court that the CFTC believes the Receiver was properly appointed, and the MTD should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 16, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and transmitted the same by email and/or First-Class U.S. Mail to the following:

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