

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
OASIS MANAGEMENT, LLC; AND
SATELLITE HOLDINGS COMPANY,

Plaintiff,

v.

Case No: 8:20-cv-00862-VMC-TGW

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.

**GARBELLANO'S REPLY TO THE RECEIVER'S RESPONSE IN
OPPOSITION TO DEFENDANT ROCCO GARBELLANO'S MOTION TO
SET ASIDE DEFAULT JUDGMENT & INCORPORATED MOTION TO
DISSOLVE WRIT OF GARNISHMENT**

Defendant, Rocco Garbellano ("**Garbellano**"), by and through his undersigned counsel, files this Reply to the Receiver's Response in Opposition to Defendant Rocco Garbellano's Motion to Set Aside Default Judgment & Incorporated Motion to Dissolve Writ of Garnishment ("Reply"), and in support thereof, states as follows:

BACKGROUND

1. Receiver filed a Complaint in the instant action on or about April 14, 2020 ("Complaint"). [Dkt. 1].
2. On August 11, 2020, Receiver filed a Motion for Default Judgment Against Defendant Rocco Garbellano ("First Motion for Default"). [Dkt. 320.] Garbellano was not served with the First Motion for Default.

3. On August 24, 2020, this Court denied Receiver's First Motion for Default. [Dkt. 383.]

4. Thereafter, on October 13, 2020, Receiver filed an Omnibus Motion for Default Judgment Against Defaulted Defendants ("Second Motion for Default"). [Dkt. 523.] Garbellano was not served with the Second Motion for Default.

5. On November 4, 2020, the Court entered a Default Judgment against Garbellano for damages in the amount of \$268,692.51, plus prejudgment interest in the amount of \$59,263.00. [Dkt. 613.]

6. On July 26, 2021, Garbellano filed a Motion to Set Aside Default Judgment & Incorporated Motion to Dissolve Writ of Garnishment ("Motion to Set Aside"). [Dkt. 993.]

7. On August 6, 2021, Receiver filed its Response in Opposition to Garbellano's Motion to Set Aside ("Response"). [Dkt. 1016.]

ARGUMENT

I. Garbellano has established a meritorious defense that could affect the outcome of the litigation.

Receiver erroneously argues that Garbellano's Motion to Set Aside should be denied because "unlicensed sale of securities is not a meritorious defense." [Dkt. 1016, pp. 9-10.] This position misses the mark. Garbellano never sold securities, much less "unregistered securities," and Receiver has failed to allege or show any facts that Garbellano engaged in any activity that would require a license. In support of his position, Receiver vaguely cites to Florida law, New York law, and Federal law. He

makes no attempt to identify what law he believes would apply or how the cited statutes rebut Garbellano's defense.

Furthermore, Garbellano was never charged with a crime or sued civilly for allegedly selling unlicensed securities. Receiver never alleged in the Complaint that Garbellano engaged in the unlicensed sale of securities. Therefore, while Receiver's argument potentially raises a reply to Garbellano's meritorious defense if the Default Judgment is set aside – i.e. that according to Receiver, Garbellano did not act in good faith – it does not negate the existence of Garbellano's defense that, if accepted as true, could affect the outcome of the litigation.

Likewise, the case law that Receiver cites fails and is readily distinguishable. The cases reaffirm the rule that a defendant may avoid reach back of commissions if the defendant acted in good faith and for fair value. Garbellano's affidavit establishes that he acted in good faith and for fair value. Receiver has completely failed to contradict said affidavit.

Receiver cites S.E.C. v. Pension Fund of America L.C., 377 Fed. Appx. 9557 (11th Cir. 2010) as holding that a claim for commissions was denied because the commissions were derived from a Ponzi scheme. Unlike Garbellano, the Pension Fund case involved a sales agent's demand for more than \$8.6 million in unpaid commissions to be paid from the receivership estate, notwithstanding the fact that sales agents had already been expressly excluded from the definition of "settlement class members" for purposes of entitlement to funds from the receivership estate, and notwithstanding the fact that the sales agent was not a party in any of the class action

lawsuits whereby claimants were demanding money from the receivership estate. Id. at 959. The issue in Pension Fund was whether the sales agent was denied due process, and the court merely held that the district court did not abuse its discretion by excluding sales agents from recovering *additional* commissions from the receivership estate. None of those facts are present here. Thus, the case fails to rebut Garbellano's meritorious defense.

On the contrary, Pension Fund supports Garbellano's defense. The court notes that the sales agent had already received over a half million dollars in commissions and implies that the sales agent was entitled to keep the funds already received. Id. at 963. Furthermore, the court states that the district court has "broad powers and wide discretion to determine relief in an equity receivership." Id. at 962 (internal citations omitted). In other words, the district court has broad discretion to grant Garbellano relief as an individual who received commissions in good faith and for fair value.

Receiver also cites the non-binding case of Warfield v. Byron, 436 F. 3d 551 (5th Cir. 2006). The issue in the case was whether summary judgment was properly granted in favor of the receiver. One co-defendant contested only the amount of the investment. The other co-defendant, prior to investing and recruiting other investors, had actual knowledge that an affiliated business had already been placed into receivership, the same people operated this business, the contracts were nearly identical, and the SEC was already investigating this business. Id. at 555. The courts holding is limited to the case because it held that the defendants failed to carry their burden to show they received the transfers in exchange for value. Garbellano, on the

other hand, stated in an affidavit that he had signed a commission agreement and introduced other investors to Oasis, thus earning the commissions pursuant to agreement.

Receiver cites no other binding or on-point case law. The cases Receiver cites are readily distinguishable. See Miller v. Taber, 2014 WL 317938, *2 (applying Utah and California law); In re World Vision Entm't Inc., 275 B.R. 641 (Bankr. M.D. Fla. 2002) (approving the good faith/fair value defense, but, using an objective standard, finding that [unlike Garbellano] the defendant-broker was an experienced insurance agent and had specific discussions about the need to obtain a securities license; therefore, the defendant should have known to investigate the company further to determine its legitimacy); In re Model Imperial Inc., 250 B.R. 776 (Bankr. S.D. Fla. 2000) (recognizing that a good faith recipient of an otherwise avoidable transfer, who [like Garbellano] acts as an intermediary with no dominion or control over the transferred property, can prevent the trustee from avoiding the transfer).

The facts of the instant case are analogous to In re Providence Financial Investments, Inc., 2018 WL 5003972, *1 (Bkrptcy S.D. Fla. Oct. 15, 2018). In Providence Financial, the defendant successfully avoided the claw back of the commissions he received as an originator by showing that he had no knowledge of the fraudulent operations and no intent to participate in the fraud. Further, “fair value” can be established if the defendant gave value to the debtors in exchange for the commissions, regardless of whether doing so furthered the Ponzi scheme or rendered the entity more insolvent. Id. at *4-6.

Receiver's Response mischaracterizes Garbellano's meritorious defense in an attempt to confuse the Court. At best, Receiver's position is mistaken because Garbellano did not sell securities. On the contrary, Garbellano, pursuant to a commission agreement, introduced or referred investors to Oasis as an originator. Garbellano gave no advice and did not engage in investment activities. He never had knowledge of where the investment dollars went or how income was generated. Garbellano never had dominion or control over the funds and had no knowledge or involvement in the Oasis business. In short, as his affidavit shows, he was an innocent originator who acted in good faith and for fair value. Therefore, Garbellano has established a meritorious defense that could affect the outcome of the litigation.

CONCLUSION

Garbellano's Motion to Set Aside should be GRANTED for the reasons set forth in the Motion to Set Aside and this Reply.

WHEREFORE, Defendant, Rocco Garbellano, respectfully requests this Honorable Court to enter an Order:

- i. Granting Garbellano's Motion to Set Aside Final Judgment and Incorporated Motion to Dissolve Writ of Garnishment; and
- ii. Granting Garbellano such other and further relief in its favor as this Court deems just and proper under the circumstances.

Respectfully submitted,

/s/ Holly A. Rice

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Attorney for Defendants, Rocco Garbellano

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of August, 2021 a true copy of the foregoing document was filed electronically with the Clerk of Court via the CM/ECF system, and thereby served on all counsel of record.

/s/ Holly A. Rice

Holly A. Rice