

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, etc.,

Plaintiff,

v.

Case No. 8:10-cv-245-T-17MAP

DONALD ROWE, *et al.*,

Defendants.

ORDER

Plaintiff Burton W. Wiand (“Wiand”), the court-appointed receiver for the defendants in a related Securities and Exchange enforcement action (“enforcement action”),¹ brought the instant action seeking recovery of alleged false profits obtained by Defendants from the purported Ponzi scheme perpetrated by Arthur Nadel. In connection with the enforcement action, Wiand issued subpoenas to SunTrust Banks, Inc. and Northern Trust, NA requesting financial records of Defendants and contacted Defendants’ counsel to schedule the deposition of Defendant Donald Rowe (doc. 16, Exhs. A, B). As non-parties to the enforcement action, Defendants filed objections and a motion to quash the subpoena served on SunTrust. *See* 8:09-cv-87-T-26TBM, doc. 416. In the motion to quash, Defendants contend Wiand impermissibly attempts to circumvent the applicable rules of discovery and to prematurely obtain confidential financial information which relates to and may be used to the disadvantage of Defendants in the instant recovery action by seeking the information in the enforcement action (*id.*).

¹ The case, styled *Securities and Exchange Commission v. Arthur Nadel, et al.*, 8:09-cv-87-T-26TBM, is currently proceeding in the Tampa Division of the Middle District of Florida before United States District Judge Richard A. Lazzara.

Shortly after filing its objections and motion to quash in the enforcement action, Defendants filed a motion in the instant recovery action seeking entry of a protective order (doc. 16). In the motion, Defendants request the Court stay any depositions or other discovery directed to or relating to Plaintiff's claims against Defendants in this action or, alternatively, request the Court consolidate this action with the enforcement action for purposes of discovery. In support of their requests, Defendants again argue Wiand impermissibly attempts to obtain early discovery by way of the subpoenas issued to SunTrust and Northern Trust in the enforcement action. In addition, Defendants contend they must abide by the mandates of Federal Rules 16, 26, 30, and 45 regarding discovery and cannot engage in formal discovery until after the initial case management conference, so Wiand should be similarly precluded from engaging in formal discovery relating to the claims in this action. If not, Defendants argue they will be unduly burdened by Wiand's duplicitous attempts to obtain information. Defendants concede, as they must, however, that the instant action "emanates" from Wiand's enforcement efforts in the enforcement action. As such, it is clear that the discovery sought in the enforcement action will invariably overlap with the discovery sought in the instant recovery action. Indeed, Wiand has not abused or manipulated the discovery process or violated the Federal Rules by seeking relevant documents and depositions in the enforcement action which also pertain to the instant recovery action. If Defendants want relief from the discovery arising out of and requested in the enforcement action, they may seek the appropriate relief in that action.

Furthermore, United States District Judge Elizabeth A. Kovachevich issued an order in this action instructing Defendants not to file an answer or *motions* until the Court sets case management deadlines (doc. 8). As of today, the Court has not set any deadlines but rather has scheduled a status conference for June 28, 2010, to discuss case management issues. Defendants have thus filed the instant motion for protective order in direct contravention of the Court's previous order.

For these reasons, it is hereby

ORDERED:

1. Defendants' motion for entry of a protective order (doc. 16) is DENIED.

DONE AND ORDERED at Tampa, Florida on June 23, 2010.



MARK A. PIZZO
UNITED STATES MAGISTRATE JUDGE

cc: Counsel of Record