UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-80354-CIV-MIDDLEBROOKS/JOHNSON

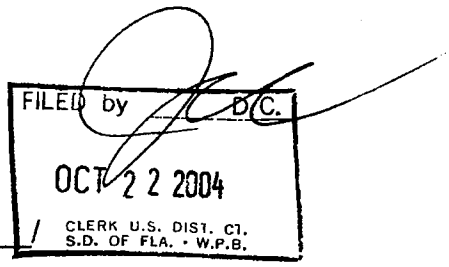
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

DENNIS CROWLEY, *et al.*,

Defendants.



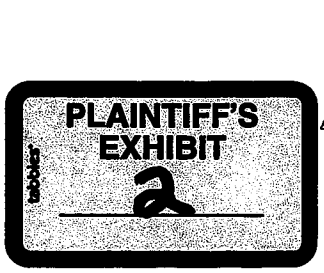
NOTICE OF SECOND RE-FILING

THIS CAUSE is before the Court on Defendants International Media Solutions, LLC, and Yolanda Velazquez' Motion for Partial Relief from, and Clarification of Freeze Order [DE #134]. Upon review of the docket, the Court notes the following:

1. On or about August 19, 2004, this Court filed it's Order ruling on the aforementioned motion.

2. On September 2, 2004, upon review of the docket, this Court noted that the subject Order had not been filed and docketed. On this same date, the Court filed it's Notice of Re-filing with a copy of its Order for filing and docketing.

3. Review of the docket today reveals that the re-filing notice along with the attached order has not been docketed. Despite the Court's two attempts, this Order continues to be absent from the record.



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4. Accordingly, the Court is submitting this Second Re-filing Notice with attached August 19, 2004 Order for filing and docketing purposes.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 22nd day of October, 2004.

LINNEA R. JOHNSON
UNITED STATES MAGISTRATE JUDGE

Copies furnished:

Judge Donald M. Middlebrooks
Nate Mancuso, Esq.
Allan M. Lerner, Esq.
William Nortman, Esq.
Myles Malman, Esq.
*Robert K. Levenson, Esq. [via fax by chambers 305-536-4154]
Steven M. Greenberg, Esq. [via fax by chambers 954-767-8343]
CSC Services of Nevada, Registered Agent
Martha Gordon, Registered Agent

*Attorney Robert Levenson shall fax this notice with attached order to all parties upon receipt.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-80354-CIV-MIDDLEBROOOKS/JOHNSON

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

DENNIS CROWLEY, SPEAR & JACKSON, INC., et al.,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court on Motion of Defendant Yolanda Velazquez for Partial Relief from, and Clarification of Freeze Order (D.E. #134). This matter was referred to this Court by the Honorable Donald M. Middlebrooks, United States District Judge for the Southern District of Florida, after the parties consented to trial before the undersigned United States Magistrate Judge. In view of said consent, the above-stated motion shall be disposed of by order rather than by report and recommendation.

By this motion Defendant Yolanda Velazquez ("Velazquez") seeks to "clarify" or modify a prior asset-freeze Order in a way which would allow her to access funds currently covered by said Order. On April 15, 2004, the District Court entered an Ex Parte Temporary Restraining Order ("TRO") against Velazquez and other

Defendants and Relief Defendants, which, among other things, froze Velazquez' assets pending further order of the Court. Velazquez subsequently consented to the entry of a Preliminary Injunction against her, which included an order extending the asset freeze pending resolution of this action.

In support of their TRO Motion, the Securities and Exchange Commission (the "Commission") submitted the Declaration of Commission accountant Michelle Lama which, together with supporting exhibits, showed that somewhere between February 2002 and August 2003, entities controlled by Defendants Crowley and Spear & Jackson transferred 350,000 shares of Spear & Jackson stock to International Media Solutions' ("IMS") brokerage accounts and that IMS received $1,660,421 from selling those shares. The Commission has submitted in support of their Response to the instant Motion, a Second Declaration of Michelle Lama showing that during the same February 2002 through August 2003 time period, IMS disbursed to Velazquez $606,300. The Asset Freeze Order, as it pertains to Velazquez, has managed to freeze three bank accounts in Velazquez' name with a combined total of $11,200. When served with discovery requests seeking information regarding the whereabouts of the $606,300 Velazquez received from IMS, she has responded by asserting her Fifth Amendment privilege against self-incrimination.[1]

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[1] Velazquez asserted her Fifth Amendment privilege when, prior to the Commission filing this action, she was subpoened to testify concerning her employment with and compensation from IMS, when, in both the TRO and the Preliminary Injunction, she was ordered to provide a sworn accounting of her assets and all funds received from IMS, and

Now, having repeatedly refused to disclose what happened to the money she made in commissions off of Spear & Jackson investors, Velazquez asks the Court to give her unchecked control over even more money that could be used to repay those investors by allowing her to keep a salary she apparently is earning. She justifies her request by contending that this new income is not connected to IMS and therefore, according to her logic, should not be subject to the asset freeze. As the Commission correctly observes, Velazquez' request to exempt from the scope of the asset freeze any new income received from her flies in the face of the purpose behind the asset freeze, and runs contrary to well-established case law concerning the scope and propriety of asset freezes entered as equitable relief.

Contrary to Velazquez' belief, the asset freeze in effect is not limited to assets connected to her activity at IMS. The law is well-established that a court may impose an interim asset on *all* of a defendant's assets up to the amount of the defendant's alleged ill-gotten gains to preserve funds for equitable remedies, including disgorgement. Levi Strauss & Co. v. Sunrise Int'l Trading, Inc., 51 F.3d 982, 987 (11th Cir. 1995). There is no requirement that frozen assets be traceable to the fraudulent activity underlying a lawsuit. SEC v. AB Financing and Inv., Inc., Case No. 02-23487-CIV-UNGARO-BENAGES, Slip Op. at 2 (S.D. Fla. Feb. 10, 2003)("a district court may freeze assets not specifically traced to illegal activity.");

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when confronted with Production Requests from the Commission in this action.

SEC v. Current Fin. Servs., 62 F.Supp.2d 66, 68 (D.D.C. 1999)(refusing to release personal funds not traceable to the fraud because defendant's liability exceeded total funds frozen); SEC v. Grossman, 887 F. Supp. 649, 661 (S.D. N.Y. 1995)("[i]t is irrelevant whether the funds affected by the asset freeze are traceable to the illegal activity.") (aff'd, 101 F.3d 109 (2d Cir. 1996)); SEC v. Glauberman, 1992 WL 175270 at *2 (S.D. N.Y. July 16, 1992)(rejecting defendant's argument that funds subject to disgorgement must be traced "dollar for dollar" to the illegal activity). Indeed, courts frequently freeze assets a defendant owned even before the fraud began to preserve them for potential disgorgement. SEC v. Belmonte, 1991 WL 214252 (S.D. Fla. April 25, 1991)(J. Roettger)(refusing to release funds from sale of home, even though home had been acquired prior to the alleged fraud, because there had been no showing that ill-gotten funds had not been used to subsidize mortgage payments or improve home); SEC v. Roor, 1999 WL 553823 at *2 (S.D. N.Y. July 28, 1999)(denying motion to release so-called "untainted" funds from mortgage of property that pre-existed alleged fraud).

The cases cited by Velazquez, Rosen v. Cascade Int'l, Inc., 21 F.3d 1520 (11th Cir. 1994) and Mitsubishi Int'l v. Cardinal Textile Sales, 14 F.3d 1507 (11th Cir. 1994), are not to the contrary. One year after those two cases were decided, the Eleventh Circuit handed down its decision in Levi Strauss, 51 F3d at 987, which specifically upheld the district court's imposition of an interim asset freeze to satisfy the potential disgorgement of profits. In so ruling the Eleventh Circuit distinguished

Rosen and Mitsubishi which held a district court does not have authority to freeze all of a defendant's assets to satisfy a potential *money judgment*, from a district court's inherent authority to freeze all of a defendant's assets, even those unrelated to the underlying litigation, to ensure the availability of *equitable relief*. Thus, where, as here, a defendants potential liability far exceeds the amount of frozen funds, it is appropriate to refuse to release any funds, regardless of whether they emanated from the underlying fraud alleged, unless the defendant can provide evidence of assets worth the minimum of the potential judgment. With Velazquez having failed to offer any proof of this sort, her request to modify the asset freeze is denied.

Velazquez' request to modify the asset freeze is rejected for another reason as well, namely, her failure and refusal to provide this Court with any evidence of her living expenses. Generally, a defendant wishing to exclude from an asset freeze, monies to pay reasonable living expenses is required to produce evidence of those expenses. A.B. Financing, Slip Op. at 4 (denying defendant's motion to modify the asset freeze in part because he failed to document his reasonable living expenses); S.E.C. v. Starcash, Inc., Case No. 02-80456-CIV-MIDDLEBROOKS, Slip Op. at 2 (S.D. Fla. June 18, 2002)(denying defendants' motion to modify the asset freeze because they had not submitted sworn statements showing their expenses or documentary evidence of those expenses); CFTC v. Prism Fin. Corp., 1996 WL 523349, *1, *4 (D. Col. April 5, 1996)(defendant wishing to apply for modification of asset freeze ordered to do so under oath, and with all proposed expenses "fully

substantiated by all relevant financial information.")

Velazquez clearly has not met her burden in this regard. Indeed she has provided even less than the defendants in A.B. Financing and Starcash, who at least provided a list of their expenses. Here, Velazquez comes to Court requesting a modification with empty hands, providing neither a sworn statement of her expenses nor any documentation of them. In the absence of that required evidence, Velazquez is not entitled to any modification of the asset freeze.

One last point bears mention. Velazquez complains she cannot comply with the evidentiary requirements because to provide a sworn statement of her expenses or to document them would violate her Fifth Amendment rights. This Court is confident that documentation of the sort required could somehow be managed without violating Velazquez' Fifth Amendment rights. Even assuming such could not be accomplished, this is not a valid defense as it is improper to use the Fifth Amendment as both a shield and a sword. It may well be Velazquez' right to assert the Fifth Amendment in response to Commission discovery requests and court orders, but she must then accept the consequences. One of the consequences of not providing sworn statements of the funds at her disposal and the expenses she has is that she can not meet the well established evidentiary requirements for modifying the asset freeze. In summary, the Fifth Amendment does not relieve Velazquez of the obligation to provide proper evidence of her reasonable living expenses in order to gain access to frozen funds. A.B. Financing, Slip Op. at 3

(defendant's refusal to provide sworn accounting due to Fifth Amendment prevented court from ascertaining whether any frozen assets were from "legitimate" sources and therefore mandated denial of motion to modify asset freeze). In accordance with the above and foregoing it is hereby,

ORDERED AND ADJUDGED that Velazquez' Motion for Partial Relief from, and Clarification of Freeze Order (D.E. #134) is **DENIED**.

DONE AND ORDERED, this 19th day of August, 2004, in Chambers at West Palm Beach, Florida.

LINNEA R. JOHNSON
UNITED STATES MAGISTRATE JUDGE

CC: Hon. Donald M. Middlebrooks
Nate Mancuso, Esq.
Allan M. Lerner, Esq.
William Nortman, Esq.
Myles Malman, Esq.
Robert K. Levenson, Esq.
Steven M. Greenberg, Esq.
CSC Services of Nevada, Registered Agent
Martha Gordon, Registered Agent