

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 02-23487-CIV-UNGARO-BENAGES

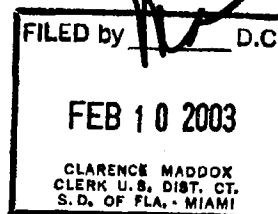
SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff,

v.

A.B. FINANCING AND INVESTMENTS, INC.,  
and ANTHONY W. BLISSETT,  
Defendants,

and

BLISSCO PROPERTIES, INC. JAMROCK  
MARKETPLACE, INC., and CARIBBEAN  
CULTURAL ART & EXHIBITION CENTRE, INC.  
Relief Defendants.



**ORDER DENYING MOTION TO MODIFY ASSET FREEZE  
TO ALLOW FOR THE PAYMENT OF REASONABLE LIVING EXPENSES**

THIS CAUSE is before the Court upon Defendant Blissett's Motion to Modify Asset Freeze, filed January 6, 2003.

THE COURT has considered the Motion, the pertinent portions of the record, and is otherwise fully advised in the premises.

On December 6, 2002, Plaintiff filed an emergency action against Blissett, A.B. Financing and Investments, Inc., and three corporate entities as relief defendants alleging violations of federal securities laws. The Court thereafter granted an *ex parte* Temporary Restraining Order that, *inter alia*, froze Defendant Blissett's personal assets. *See* Order of December 6, 2002. On December 13, 2002, with the consent of Defendant Blissett, the Court entered a preliminary injunction which continued the asset freeze imposed by the TRO. *See* Order of December 16, 2002. The instant motion followed on January 6, 2003, requesting modification of the asset freeze to allow for



reasonable living expenses and attorneys' fees.

On January 27, 2003, the Court entered an Agreed Order on Modification of Asset Freeze entitling Defendant Blissett to \$20,000.00 of the frozen funds to be used solely for his defense in this action. *See* Order of January 27, 2003 at 2. Thus, the only remaining issue before this Court is the question of Defendant Blissett's entitlement to additional funds to be used for living expenses.

Defendant submits three bases upon which he contends modification of the asset freeze is warranted: "(a) the extremely broad parameters of this asset freeze, (b) the unduly harsh consequences of its application ... [and], (c) Mr. Blissett's prior and ongoing cooperation." Motion at 5. Plaintiff opposes the motion contending: (1) the asset freeze is lawful and appropriate, (2) Blissett has not produced appropriate evidence of his expenses, and (3) Blissett has refused to participate in discovery and provide a sworn accounting. *See* Response at 6-10.

First, contrary to Defendant's assertion that the asset freeze is "extremely broad" and "arguably unlawful," a "district court may exercise its full range of equitable powers, including a preliminary asset freeze, to ensure that permanent equitable relief will be possible." *Levi Strauss & Co. v. Sunrise Intern. Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995) (citing *Federal Trade Commission v. United States Oil and Gas Corp.*, 748 F.2d 1431, 1433-34 (11th Cir. 1984)). Additionally, the contention that the asset freeze is too "broad" is negated by the fact that a "district court may freeze assets not specifically traced to illegal activity." *Id.* (citing *Kemp v. Peterson*, 940 F.2d 110, 113-14 (4th Cir. 1991)). Thus, any suggestion by Defendant that his personal assets are outside the parameters of the asset freeze is without merit. *See, e.g.*, Motion at 2-3, Reply at 3. In

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<sup>1</sup> Defendant's fourth contention, his need to retain counsel, has been obviated by the Court's Order of January 27, 2003, releasing funds for that purpose.

fact, Defendant Blissett's refusal to submit to an accounting prevents this Court from ascertaining the legitimate source of any of the funds, should one exist. *See Commodity Futures Trading Com'n v. American Metals Exchange Corp.*, 991 F.2d 71, 79 (3d Cir. 1993).

In that vein, Plaintiff dismisses Defendant's representation that he is fully cooperating with the investigation noting that he has declined to submit to a sworn accounting of his assets or participate in discovery electing instead to assert his rights under the Fifth Amendment. *See* Response at 4. Consequently, "until the [ ] court has had an opportunity to determine whether [Defendant's allegedly] ill-gotten gains can be quantified, it is premature to consider the propriety of the extent of the asset freeze." *American Metals Exchange Corp.*, 991 F.2d at 79. "Because a freeze is designed to preserve the status quo by preventing the dissipation and diversion of assets, [the undersigned] will allow the freeze to remain in effect until [the Court can] determine[] whether it can make an informed determination of the amount of unlawful proceeds retained by [Defendant] and, if it can, what that amount may approximate." *Id.* (citing *Commodity Futures Trading Com'n v. Co Petro Mktg. Group, Inc.*, 680 F.2d 573, 582-83 (9th Cir. 1982)).

Second, Defendant Blissett has failed to demonstrate that sufficient funds will be available in the event this Court finds disgorgement is necessary to repay the allegedly defrauded investors. *See International Controls Corp. v. Vesco*, 490 F.2d 1334, 1347 (2d Cir. 1974), *cert. denied*, 417 U.S. 932 (1974) ("an asset freeze may be appropriate to assure compensation to those who are victims of a securities fraud") (citing *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1105-1106 (2d Cir. 1972)). Consequently, in light of the undisputed facts of this case, the asset freeze is neither too broad nor too harsh. *See* Response at 2-5.

Third, Defendant Blissett has failed to document sufficiently his living expenses enabling this

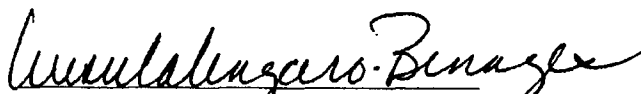
Court to determine a reasonable amount for release. *See American Metals Exchange Corp.*, 991 F.2d at 79 (modifying asset freeze only upon proof of “sufficiently documented” expenses); *S.E.C. v. Starcash, Inc.*, Case No. 02-80456-Civ-Middlebrooks (slip op. at 2) (S.D. Fla. June 8, 2002) (denying defendants’ motion to modify asset freeze for failure to provide “the Court with any supporting documentation upon which to make a determination as to their actual monthly living expenses”). Instead, Defendant Blissett only has submitted a declaration with estimated, undocumented cost amounts. *See Blissett Decl.* at 2. In fact, Defendant Blissett concedes this point requesting permission to belatedly submit the necessary proof. *See Reply* at 4. Additionally, Defendant now avers that he has reduced his living expenses in light of the asset freeze but does not reveal by how much. *See id.* Nevertheless, in light of the above, absent the ability to make a determination as to the source of the funds or their sufficiency for possible restitution, the Court finds any modification of the asset freeze would be premature. *See American Metals Exchange Corp.*, 991 F.2d at 79; *Co Petro Mktg. Group, Inc.*, 680 F.2d at 582-83; *S.E.C. v. Unifund SAL*, 910 F.2d 1028, 1042 (2d Cir. 1990), *reh’g denied*, 917 F.2d 98 (2d Cir. 1990) (A court has the authority to freeze assets at an amount that will cover the maximum civil penalty available under applicable law should securities law violations be proven at trial); *Levi Strauss & Co.*, 51 F.3d at 987.

Finally, Defendant Blissett maintains that assertion of his rights under the Fifth Amendment, precluding a sworn accounting or his participation in discovery, does not foreclose modification of the asset freeze to allow for reasonable living expenses. *See Motion* at 6; *Reply* at 5. Interestingly, Plaintiff cites to the same case for the proposition that assertion of the Fifth Amendment instead permits the inference “that all of Defendant’s accounts [are] traceable to the fraud” substantiating a complete freeze. *Response* at 9 (citing *S.E.C. v. Schiffer*, 1998 WL 307375 (S.D.N.Y. 1998))

(“[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.”) (quoting *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976)). In fact, in *SEC v. Schiffer*, to which both parties cite, the court noted that as a result of the defendant’s “invocation of the Fifth Amendment (rather than objection and proof as to the legitimacy of certain funds) .... considerable care must be taken to assure that assets properly subject to disgorgement are not depleted in an inadvertently or deliberately created murkiness of identification.” 1998 WL 307375 at \*6-7. Ultimately, therefore, the court assumed that all of the defendant’s funds were “suspect in nature” and elected to *reduce* the amount of funds available for living expenses and attorneys’ fees. *See id.* at \*7. Faced with the same constraints in the case *sub judice*, it is hereby

ORDERED AND ADJUDGED that the Motion is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 10 day of February, 2003.

  
URSULA UNGARO-BENAGES  
UNITED STATES DISTRICT JUDGE

copies provided:  
counsel of record