

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 01-1464-CIV-SEITZ/GARBER

PHILIPS SOUTH BEACH, LLC,
An Illinois Limited Partnership,

Plaintiff,

v.

PRUDENTIAL SECURITIES GROUP, INC.,
A Delaware corporation,

Defendant.

FILED BY JP D.C.
2001 MAY -7 PM 4:04
CLARENCE H. HANCOCK
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIA

ORDER

THIS MATTER is before the Court on Plaintiff's Sworn Motion for an Order Finding Party in Contempt [DE#5] and on Defendant's Motion for Protective Order *Nunc Pro Tunc* [DE#3], pursuant to an Order of Reference entered by the Honorable Patricia A. Seitz. A hearing was held on this matter on May 7, 2001. The Court has reviewed the pertinent portions of the record and is duly advised in the premises therein.

DISCUSSION

This matter stems from two hearings that were held in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, on March 30, 2001 and on April 6, 2001. At the April 6, 2001 hearing, the Honorable Gerald D. Hubbart entered an Order granting Plaintiff's Motion to Advance Discovery. Defense counsel did not appear at said hearing.

In the instant Motion for Contempt, Plaintiff asserts that Defendant has failed to comply with the Order of April 6, 2001. Defendant rebuts, however, that it was not properly served prior to the March 30, 2001 hearing before Judge Hubbart. Defense counsel made a limited appearance at said

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hearing solely to contest jurisdiction. Defendant further asserts that it did not receive notice of the hearing held on April 6, 2001 on Plaintiff's Motion to Advance Discovery.

At the May 7, 2001 hearing before the undersigned, Plaintiff's counsel asserted that Defense counsel was advised in open court at the March 30, 2001 hearing of the subsequent April 6th hearing. The Court has reviewed the transcript of the March 30, 2001 hearing. Plaintiff counsel's assertions notwithstanding, the record demonstrates that no date certain was set for a hearing subsequent to March 30, 2001. Based upon the record, the Court finds that Defendant did not have notice of the April 6, 2001 hearing. Accordingly, it is hereby

ORDERED that Plaintiff's Sworn Motion for Order Finding Party in Contempt [DE#5] is DENIED. It is further

ORDERED that Defendant's Motion for Protective Order *Nunc Pro Tunc* [DE#3] is GRANTED. The Circuit Court's Order of April 6, 2001 expediting discovery is VACATED. The parties are to proceed with discovery in accordance with the Federal Rules of Civil Procedure.

DONE AND ORDERED in Chambers at Miami, Florida this 7th day of May, 2001.


BARRY L. GARBER
UNITED STATES MAGISTRATE JUDGE

Copies supplied to:
Judge Patricia A. Seitz
Counsel of record