

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE
COMMISSION,Plaintiff,
- against -**ORDER**
12 CV 2937 (DRH) (GRB)BRYAN ARIAS, HUGO A. ARIAS, ANTHONY
C. CICCONE, SALVATORE CICCONE, DIANE
KAYLOR, JASON A. KERYC, ANTHONY
MASSARO, CHRISTOPHER E. CURRAN,
RYAN K. DUNASKE, MICHAEL P. DUNNE,
MARTIN C. HARTMANN, III, MICHAEL D.
KERYC, RONALD R. ROALDSEN, JR., and
LAURA ANN TORDY,

Defendants.

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HURLEY, Senior District Judge:

This SEC enforcement action, commenced on June 12, 2012, stems from an extensive Ponzi scheme operated by Nicholas Cosmo, who was convicted in connection with this scheme and sentenced by this Court in October 2011 to 300 months' imprisonment. (*See* Docket 09-CR-0255.) Several of the defendants in this action are also named defendants in a separate criminal action before this Court, having been charged in connection with their respective roles in that Ponzi scheme. (*See* Docket 12-CR-0357.)

Several of the defendants in this action have moved to stay all proceedings pending the resolution of the parallel criminal matter. By Order dated September 7, 2012, District Judge Arthur D. Spatt, who was then presiding over this action, referred the application to Magistrate Judge Gary R. Brown for a report and recommendation. On September 19, 2012, this case was reassigned to me as it has been deemed to be related to the pending criminal action, 12-CR-0357,

over which I am presiding.

Judge Brown held a motion hearing on September 10, 2012. (R&R at 3.) At the hearing, Judge Brown granted an unopposed motion made by the United States to intervene in this action for the purpose of seeking a stay of discovery, subject to certain limited exceptions, pending the resolution of the related criminal prosecution. (R&R at 4.) The United States's motion to stay discovery was unopposed, and Judge Brown granted that motion during the September 10, 2012 hearing. (*Id.*) The remaining issue before Judge Brown, therefore, was the request made by defendants Anthony Ciccone, Salvatore Ciccone, and Anthony Massaro (collectively, "defendants") "to stay this action in its entirety, based on concerns . . . that filing an answer would also require them to compromise their Fifth Amendment rights against self-incrimination." (*Id.*)¹ The SEC opposed that application, "principally wishing to avoid unnecessary delay, and wanting to compel the three defendants to file motions to dismiss if appropriate." (*Id.*)

On September 14, 2012, Judge Brown issued a Report and Recommendation recommending that "defendants' motion to stay their time to answer pending the resolution of the related criminal proceeding be GRANTED, but that the motion be DENIED as to the defendants' time to otherwise respond to the Complaint, including filing a motion to dismiss." (R&R at 8.)

On September 14, 2012, all parties were served with a copy of the Report and Recommendation. More than fourteen days have elapsed since service of the Report and

¹ Judge Brown noted that "[s]everal additional defendants have not answered or otherwise appeared in this action; as such no recommendations contained [in the Report and Recommendation] apply to those individuals or the plaintiff's claims against those defendants." (R&R at 3 n.1.)

Recommendation. No party has filed any objections.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. Accordingly, the Court adopts the September 14, 2012 Report and Recommendation of Judge Brown as if set forth herein.

The time for defendants Anthony Ciccone, Salvatore Ciccone, and Anthony Massaro to answer the Complaint in this action is hereby stayed pending the outcome of the ongoing criminal matter in 12-CR-357. Should defendants Anthony Ciccone, Salvatore Ciccone, or Anthony Massaro wish to file a motion to dismiss this action, they must file a pre-motion conference letter, as required by my Individual Practice Rule 3(B), within fourteen (14) days of the date of this Order.

Counsel for plaintiff is directed to serve a copy of this Order upon pro se defendant Salvatore Ciccone forthwith and file proof of service on ECF.

SO ORDERED.

Dated: Central Islip, New York
October 11, 2012

/s/
Denis R. Hurley
United States District Judge