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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

OHANA INTERNATIONAL, INC.;
FINANCIAL SOLUTIONS; AND
CHRISTIANO HASHIMOTO,

Defendants.

Case No. EDCV 04-01386 RT (SGLx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S APPLICATION FOR AN
ORDER TO SHOW CAUSE RE CIVIL
CONTEMPT AGAINST CHRISTIANO
HASHIMOTO**

1 **I. INTRODUCTION**

2 On November 16, 2004, defendant Christiano Hashimoto convened a
3 meeting in San Luis Obispo where he told approximately 25 investors in Financial
4 Solutions and/or Ohana International, Inc. (“Ohana”) that (1) he was going to
5 repay investors all of their principal and accrued interest by liquidating certain
6 investments that he had concealed from the Securities and Exchange Commission
7 (“Commission”) and receiver Robb Evans (“Receiver”) and that (2) he did not trust
8 the Receiver to act in the investors’ best interests. An investor attending the
9 meeting taped Hashimoto’s presentation and provided the tape to the Commission.
10 The transcription of the investor’s tape is filed concurrently herewith. The Court’s
11 Temporary Restraining Order (“TRO”) *inter alia* enjoined the defendants from
12 disposing of any of their assets and ordered them not to interfere with the Receiver.
13 Accordingly, the Commission asks the Court to order Hashimoto to show cause
14 why he should not be held in contempt of the TRO.

15 **II. ARGUMENT**

16 **A. Civil Contempt Is The Proper Means Of Enforcing Hashimoto’s**
17 **Compliance With The TRO**

18 The Court has inherent power to enforce compliance with its lawful orders
19 through civil contempt. *Shillitani v. United States*, 384 U.S. 364, 370 (1966); *see*
20 *also* 18 U.S.C. § 401 (1982); *In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d
21 1361, 1364 (9th Cir. 1987); *see also* Fed. R. Civ. P. 70. Further, courts have found
22 defendants in civil contempt under circumstances such as those presented herein.
23 Courts have, for example, held a defendant in a Commission civil enforcement
24 action in civil contempt for violating an order freezing funds and assets. *See, e.g.*,
25 *SEC v. Moss*, 644 F.2d 313, 315-16 (4th Cir. 1981), *cert. denied*, 455 U.S. 1023
26 (1982) (upholding determination by district court that defendant was in contempt
27 of freeze order when he sold a condominium apartment and some shares of bank
28 stock without the court’s approval). Courts also have held a defendant in a

1 Commission action in civil contempt for failure to account for funds and produce
2 records. *See, e.g., SEC v. Elmas Trading Corp.*, 824 F.2d 732, 732-33 (9th Cir.
3 1987); *SEC v. Penfield*, 157 F.2d 65, 66-67 (9th Cir. 1946). Thus, the Court has
4 the inherent authority to hold Hashimoto in contempt for his failure to obey the
5 TRO.

6 In a civil contempt proceeding, the ““moving party has the burden of
7 showing by clear and convincing evidence that the contemnor violated a specific
8 and definite order of the court.”” *FTC v. Affordable Media*, 179 F.3d 1228, 1239
9 (9th Cir. 1999) (quoting *Stone v. City and County of San Francisco*, 968 F.2d 850,
10 856 n.9 (9th Cir. 1992); *see also In re Crystal Palace*, 817 F.2d at 1365 (“If a
11 person disobeys a specific and definite court order, he may properly be adjudged in
12 contempt.”). The burden is then on the contemnor to demonstrate why he has been
13 unable to comply with the order. *See Affordable Media*, 179 F.3d at 1239 (citing
14 *Stone*, 968 F.2d at 856 n.9). The Commission will show, by clear and convincing
15 evidence, that Hashimoto has violated the TRO.

16 **B. The TRO Precludes Hashimoto From Disposing Of Assets Or**
17 **Interfering With The Receiver**

18 On November 3, 2004, this Court issued a TRO and related orders
19 appointing Robb Evans as temporary receiver¹ and also:

- 20 (1) restraining the defendants from “transferring, assigning, selling,
21 hypothecating, changing, wasting, dissipating, concealing, encumbering,
22 or otherwise disposing of, in any manner, any funds, assets, securities,
23 claims, or other real or personal property, wherever located, of
24 defendants” (TRO ¶ VI);

- 25 (2) “[freezing] all monies and assets . . . in all accounts at any bank, financial
26

27
28 ¹ On December 7, 2004, the Court appointed Robb Evans as Permanent Receiver and issued a Preliminary Injunction order and related orders continuing most of the terms of the TRO.

1 institution, or brokerage firm, all certificates of deposit, and other funds
2 or assets, held in the name of, or for the benefit of, or over which account
3 authority is held by defendants . . . or any trust, partnership, joint
4 venture, person or entity affiliated with any of the defendants” (TRO ¶
5 VII);

6 (3) providing the Receiver with “full power over all funds, assets, collateral,
7 premises . . . choses in action, books, records, papers and other real or
8 personal property, including notes, deeds of trust and other interests in
9 real property, belonging to, being managed by, or in the possession or
10 control of defendants” (TRO ¶ VIII);

11 (4) ordering any person “in custody, possession or control of any assets,
12 collateral, books, records, papers, notes, deeds of trust and other interests
13 in real property, or other property of or managed by defendants [to] give
14 access to and control of such property to the receiver” (TRO ¶ IX);

15 (5) ordering the defendants to “cooperate with and assist the receiver” and
16 prohibiting them from taking any action “to hinder, obstruct, or
17 otherwise interfere with the receiver . . . or to interfere in any manner,
18 directly or indirectly, with the custody, possession, management, or
19 control by the receiver of the funds, assets, collateral, premises or choses
20 in action described above” (TRO ¶ XII); and

21 (6) ordering the defendants to “prepare and deliver to the Commission a
22 detailed and complete schedule of all of their assets” (TRO ¶ XVII).

23 **C. Hashimoto Has Violated The Express Terms Of The TRO**

24 On November 16, 2004, Hashimoto convened a meeting of investors in
25 Financial Solutions and Ohana at the Madonna Inn in San Luis Obispo, California.
26 The San Luis Obispo area is home to many of the National Guard personnel who
27 constitute a significant block of the 1,273 investors defrauded by Hashimoto’s
28 fraudulent scheme. Steven Pedone, an investor in Financial Solutions who resides

1 in Paso Robles, California, attended the November 16 meeting and tape recorded
2 Hashimoto's presentation that night. (*See* Declaration of Steven Pedone ("Pedone
3 Dec.") at ¶¶ 3-4.)

4 The tapes evidence the fact that Hashimoto violated the express terms of the
5 TRO that was then in effect, by repeatedly claiming that he had assets that the
6 Commission and the Receiver did not know about. According to Hashimoto:

7
8 We're a diversifying holding company that has different joint
9 ventures all over the country, okay? The only joint ventures that they'd find
10 have been the ones that they've – they've put on their website and they
11 really don't understand the full spectrum of what we have. (*See* Declaration
of Peter F. Del Greco ("Del Greco Dec."), Ex. 1 at p. 3:12-17.²)

12 Some of the Joint Ventures though, that we had – and still have – are
13 worth in the hundreds of millions of . . . (Del Greco Dec., Ex. 1 at 7:4-6.)

14 If Hashimoto's assertion was truthful when he made it, then Hashimoto
15 violated paragraphs IX and XVII of the TRO, which required him to yield control
16 of all assets to the Receiver and to deliver to the Commission a complete schedule
17 of his assets.

18 It also appears that Hashimoto was attempting to violate, and may have since
19 violated, the terms of the TRO, by repeatedly claiming that he was in the process
20 of liquidating those assets unknown to both the Commission and the Receiver for
21 the purpose of repaying investors. Hashimoto told investors:

22
23 . . . [W]e've already taken steps to make sure that all of our investors
24 were taken – taken care of. In fact that they get all of their principal that
25 they have coming back for them and their interest. And I'll tell you how
we're going to do that. (Del Greco Dec., Ex. 1 at 1:15-18.)

26 [W]hat I've personally done is, I've gone to my other joint ventures
27

28 ² The page cites refer to the page and line number(s) of the transcript.

1 that we have and I've cashed in my poker chips, okay? . . . and by Friday,
2 one of our joint ventures will be able to cash out the over 800 investors we
3 have in one fell swoop, and we have three other ventures that are cashing
4 into us in the same amount. (Del Greco Dec., Ex. 1 at 4:4-11.)

5 So what we've done is, I've gone and had that money come out of
6 those Joint Ventures to a total third party because I'm not supposed to have
7 any money. (Del Greco Dec., Ex. 1 at 6:1-3.)

8 And so what's going to happen in a few days is that we are going to
9 have the funds available to liquidate, I mean, everyone. (Del Greco Dec.,
10 Ex. 1 at 8:9-11.)

11 A soon as we have the money back, we're going to lay it beneath the
12 third party account and tell 'em, and say to them, there's the money. We
13 want to reimburse our investors and that's going to be really up to them.
14 (Del Greco Dec., Ex. 1 at 24:16-25:2.)

15 FEMALE: I'm confused. I'm confused. And you say that you've got
16 other joint ventures that they don't know about and you're going to pay us
17 back, make us whole out of that other money.

18 CHRIS: Correct. It's not got to do anything with the frozen assets.

19 * * *

20 FEMALE: Well, okay so, so then they could freeze that also.

21 CHRIS: They could, but if I pay it back without telling them? (Del
22 Greco Dec., Ex. 1 at 25:14-26:2; 27:1-4.)

23 If Hashimoto carried out his professed claim, then he violated paragraphs VI
24 and VII of the TRO, which order the freeze all of the defendants' assets and
25 require the defendants not to dispose of any of their assets.

26 Even if Hashimoto's assertions were false, they evidence the fact that
27 Hashimoto violated paragraph XII of the TRO, which prohibits the defendants
28 from interfering with the Receiver, by flaunting his disregard for the Receiver's
authority and by repeatedly telling investors that he "did not trust" the Receiver to

1 repay the investors whom Hashimoto has defrauded. Hashimoto stated:

2
3 I will tell you that I do not trust the Receiver. (Del Greco Dec., Ex. 1
4 at 4:2-3.)

5 I do not trust a Receiver. (Del Greco Dec., Ex. 1 at 5:19.)

6 My problem with giving it [fund to repay investors] to the court or the
7 Receiver is that I don't know when they'll give it to you. (Del Greco Dec.,
8 Ex. 1 at 8:16-17.)

9 I can tell you that assets have been there the whole time. But they
10 didn't take the time. I have never talked directly to the Receiver. And
11 things get foggy between myself and 10 different people between me and the
12 Receiver. They've never taken the time. They don't know. And now I've
13 come to the point where I don't trust the Receiver because if we tell them
14 where all those other moneys are at, they're going to freeze those assets and
15 then nobody is going to get anything. (Del Greco Dec., Ex. 1 at 12:15-13:3.)

16 These assertions expressly interfere with the Receiver's ability to perform
17 his duties and implicitly encourage others not to cooperate with the Receiver for
18 fear that they will somehow lose what little remains of their investment principal.

19 **D. The Court Should Impose A Sanction Sufficiently Coercive To Compel**
20 **Hashimoto's Compliance**

21 The Court has broad equitable powers to order appropriate relief in civil
22 contempt proceedings. *SEC v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003). Civil
23 contempt is "wholly remedial" and is intended to coerce compliance with an order
24 of the Court. *Southern Railway Co. v. Lanham*, 403 F.2d 119, 124 (5th Cir. 1968);
25 *see also McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949).

26 Hashimoto has shown no inclination to obey specific and definite provisions of the
27 TRO (and, by extension, the Preliminary Injunction Order, which incorporates
28 those provisions). Therefore, the Court should impose a sanction sufficiently
coercive to compel Hashimoto's compliance with its orders. The Commission

1 seeks monetary sanctions against Hashimoto, which are appropriate, given his
2 knowledge of the TRO and his blatant violation of it.

3 **III. CONCLUSION**

4 For all of the reasons indicated herein, the Commission respectfully asks the
5 Court to issue an Order to Show Cause why Hashimoto should not be held in
6 contempt for his violations of the terms of the Court's TRO.

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8 DATED: January __, 2005

Respectfully submitted,

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