

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
TLC Investments & Trade Co.; TLC)
America, Inc. d.b.a. Brea Development)
Company; TLC Brokerage, Inc., d.b.a.)
TLC Marketing; TLC Development, Inc.;)
TLC Real Properties, RLLP-1; Ernest F.)
Cossey a.k.a. Frank Cossey; Gary W.)
Williams; Cloud & Associates Consulting,)
Inc.; and Thomas G. Cloud,)
)
Defendants,)
)
)
)
_____)

CASE NO. SA CV 00-960 DOC (EEx)

**ORDER APPROVING TEMPORARY
RECEIVER'S INITIAL STATUS
REPORT AND RECEIVER'S SECOND
STATUS REPORT AS MODIFIED;
MAINTAINING ASSET FREEZE AS
TO DEFENDANT CLOUD:
ORDERING THAT FUNDS PAID
OVER FROM STEWARD & MILLER
TO PAUL MEYER ARE SUBJECT
TO THE ASSET FREEZE AND SHOULD
BE PAID OVER TO THE RECEIVER;
AND GRANTING IN PART AND
DENYING IN PART DEFENDANT
WILLIAMS'S REQUEST TO MODIFY
THE TERMS OF THE PRELIMINARY
INJUNCTION**

On November 9,2000, the Receiver filed with the Court a Second Status Report. A hearing was held regarding the Report on November 13, 2000. With the addition of the modifications and alterations noted below, the Court APPROVES the Status Report. The Court also makes related orders.

**I.
RECEIVER'S INITIAL AND SECOND STATUS REPORTS**

With the modifications here noted, the Court approves the Temporary Receiver's Initial Status Report and the Receiver's Second Status Report and makes the following orders First, the Court authorizes the expenses of the Temporary Receivership up to and including October 30, 2000, specifically including the Receiver's fee of \$22,503.60.

Second, the Court authorizes the Receiver to proceed with the sale of assets as outlined in the Second Status Report, except that Court approval is needed for the sale of properties valued between \$250,001 and \$1 million, in addition to properties valued at over \$1 million. Details of individual transactions shall be filed under seal. The Receiver is authorized to sell the racehorses at Public auction. Under no circumstances will the dogs be destroyed. The Court makes no other specific orders about the dogs at this time, instead directing the parties to continue discussing how the dogs can be fed and protected and also how their value can be maximized, in the interests of the investors.

Third, the Receiver may obtain a line of credit up to \$5 million, under terms substantially similar to those described in the Second Status Report and attached exhibit.

Fourth, the Receiver is authorized to pursue the acquisition of the land needed for boat access for Phase One of the Marina Coves project. The Court makes this order to allow the Receiver to attempt to break even or earn a profit on Phase One of the Marina Coves project. The Receiver may bid on the needed land at the public auction expected to be held December 14, 2000. A brief status conference will be held regarding the outcome of the auction on December 19, 2000 at 7:30 a.m. in the Court's courtroom in Los Angeles, on the eighth floor of the Roybal Building. The Receiver shall provide the Court with a brief written report regarding the auction at that status conference. The Court makes no decision about Phase Two of the Marina Coves Project at this time.

II. ASSET FREEZE

A. Freeze of Personal Assets of Defendant Cloud

In the tentative version of its Order Granting a Preliminary Injunction, the Court lifted the asset freeze as to individual Defendant Cloud. The Court reversed this position in its final order and ordered a freeze of all individual Defendants' assets. In this Order, the Court directed the SEC to lodge a proposed order of preliminary injunction consistent with the Court's ruling. In the proposed order of preliminary injunction submitted by the SEC, the SEC did not include Cloud in the list of entities whose assets would be frozen. The Court inserted Cloud into the list and, via a separate order, requested the SEC to file a statement regarding the propriety of freezing Cloud's assets. The SEC filed two briefs explaining that Cloud can be personally liable for any judgment, if the SEC proves its case. Therefore, a freeze of Cloud's assets is appropriate and the freeze will be continued.

B. Funds Paid Over from Steward & Miller to Paul Meyer

On September 20, 2000, a couple of weeks before the Court entered the Temporary Restraining Order in this matter, Defendants transferred \$530,000 to the law firm of Steward & Miller for legal expenses. The Court's October 30, 2000 Order ruled on whether all but \$32,500 of this money was subject to the asset freeze. The Court requested further briefing regarding this remaining money, because the Court had no documents before it regarding whether the money was paid as non-refundable retainers or as deposits.

Responding to the Court's request, the SEC filed a brief. This brief indicates that James Waltz, an attorney who received \$10,000 for the representation of non-management TLC employees, submitted to the SEC an invoice showing what work he had done prior to the entry of the TRO. Waltz kept the money earned for that work, determined presumably by an hourly rate, and returned the rest of the money to the Receiver. The SEC does not challenge the money he kept. The SEC's brief also indicates that Tom Martin of Martin Investigative Services, who received \$7,500, submitted an invoice showing that he had already billed for over \$7,500. Thus, only the \$15,000 paid to attorney Paul Meyer for the representation of Candyse Cossey, the wife of Defendant Cossey, remains at issue.

If Meyer had received the money pursuant to a written non-refundable retainer agreement executed prior to the entry of the TRO, the Court would have held, as it did regarding Steward and Riddet's retainers, that the money was not subject to the asset freeze. However, because Meyer has not produced evidence of a written agreement dated prior to the entry of the TRO and for the reasons that follow, the Court concludes that the money transferred to Meyer is subject to the freeze.

Dean Steward of Steward & Miller sent the \$15,000 to Meyer on September 20, 2000. He sent it with a cover letter that states in part, "Thanks for agreeing to represent Mrs. Cossey.... I enclose a retainer in the amount of \$15,000." Meyer received the money on September 22, 2000. He deposited it into his general account on September 25, 2000. On October 2, 2000, he entered into an agreement with Mrs. Cossey. He states that the terms of the agreement were that he would represent her in SEC pre-filing matters and that the money was a non-refundable retainer. He does not directly state that they entered into a written agreement on October 2, 2000, instead stating only that they "confirmed" the terms of his representation. He also notes that his usual practice is to enter into oral agreements and then later confirm them in writing. He states that several weeks later, after the TRO was entered, he "was unable to locate a copy of a written retainer agreement." Meyer's Brief at 3:10. At that point, October 17, 2000, Meyer sent Mrs. Cossey a letter summarizing the terms of their agreement, including that the \$15,000 was received as a non-refundable retainer. Mrs. Cossey counter-signed this letter on, October 17, 2000.

There is no indication in the evidence before the Court that a written fee agreement was entered into by Meyer and Mrs. Cossey prior to October 5, 2000, the day the TRO was filed. {[1] The TRO was actually signed and dated on October 4, 2000 in the evening. However, it was not served on the parties until October 5, 2000, so no one had notice of it until October 5, 2000.} Under California law, a non-contingency fee agreement must be in writing when it is reasonably foreseeable that the total expense will exceed \$1,000. Cal. Bus & Prof Code § 614S (West 1990 & Suppl 2000). This Section provides, "Failure to comply with any provision of this section renders the agreement voidable at the option of the client." *Id* If a client voids a non-written agreement, the client is entitled to the return of the money, minus a reasonable fee for services actually rendered *Id*.

A classic retainer is non-refundable and therefore no longer subject to the client's control. Here, at any time up until the letter was signed on October 17, 2000, Mrs. Cossey could have voided the agreement and been entitled to the return of all the money except a "reasonable fee" for actual services rendered. The \$15,000 was in the control of Defendants

and therefore was and is subject to the asset freeze. Meyer shall file with the Court and serve on all parties and the Receiver a statement showing actual services rendered prior to October 5, 2000. He shall file and serve this statement and pay the \$15,000 over to the Receiver, except for a reasonable hourly compensation for services actually rendered, by December 1, 2000. If he has a copy of a written, non-refundable retainer agreement entered into and executed before the TRO, he may submit a copy to the Court prior to December 1, 2000.

III. DEFENDANT WILLIAMS'S OBJECTION TO THE PRELIMINARY INJUNCTION

On November 3, 2000, Defendant Gary Williams filed a brief objecting to some of the provisions of the preliminary injunction and requesting that its terms be modified. The Court denies most of these requests but makes one modification.

A. Finding of Likelihood of Engaging in Violations of Federal Securities Laws

Paragraph B of the preliminary injunction, on page 2, states, "Good cause exists to believe that defendants... and each of them, have engaged in, are engaging in, and are about to engage in transactions, acts, practices and courses of business which constitute violations of [federal securities laws]." Defendant Williams objects to the language, "are engaging in, and are about to engage in," on the grounds that there is no evidence to support such a finding. This Court disagrees, finding that the evidence submitted by the SEC thus far in this case is sufficient evidence to support such a finding. Therefore, the Court does not modify this aspect of the preliminary injunction.

B. Payment of Receiver's Costs

Paragraph XII of the preliminary injunction, on page 15, orders the TLC entities and Defendants Williams and Cossey to pay the costs of the Receiver. Defendant Williams argues that the TLC entities, not Defendant Williams, should be required to pay this cost. Because Defendant Williams can be personally liable for any judgment in this case, it is appropriate that the Receiver also be paid out of his personal assets if necessary. Therefore, the Court does not modify this aspect of the preliminary injunction.

C. Transfer of Documents and Similar Property

Paragraph XV of the preliminary injunction, on page 16, prohibits Defendants from transferring "books, records, computer programs, computer files, computer printouts, correspondence, memoranda, brochures, or any other documents of any kind" related to any of the Defendants. Defendant Williams objects to this provision in so far as it prevents him from transferring items to his counsel for defense in this or any related cases. The SEC is ordered to make available to counsel for any Defendants any documents, etc. in the possession of the SEC or the Receiver. In addition, the court modifies the preliminary injunction to allow Defendant Williams to transfer any such items to his counsel only, for use in his defense. The SEC may seek discovery of such items and Defendant Williams shall not make any claims of attorney-client privilege for such items based on the transfer to his counsel.

D. Modification of Asset Freeze

Defendant Williams also objects to the release of only approximately \$4,000 from the freeze of his personal assets. The Court has already ruled on the question of the freeze of Williams's assets and, for now, makes no changes.

IT IS SO ORDERED.

DATED: November 21, 2000

DAVID O. CARTER

UNITED STATES DISTRICT JUDGE