

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NATIONSTAR MORTGAGE
LLC,

Plaintiff,

v.

PATRICK JOSEPH SORIA, et
al.,

Defendants.

CV 18-3041 DSF (RAOx)

Order GRANTING Motion for
Turnover of Funds (Dkt. No.
240)

The Court-appointed Receiver has moved the Court to order law firm Leech Tishman Fuscaldo & Lampl to turn over \$185,000 that Leech Tishman received from Garson Silvers – which the Receiver claims is property of the Receivership.

The Ninth Circuit has adopted the rule of the Fifth Circuit that an attorney has a duty to inquire as to the legitimacy of the source of his or her fees.

[T]here is a clear principle that an attorney is not permitted to be willfully ignorant of how his representation is funded.... [W]hen taken together, [the legal authorities] teach that when an attorney is objectively on notice that his fees may derive from a

pool of frozen assets, he has a duty to make a good faith inquiry into the source of those fees. Failure to make such an inquiry in the face of this duty will result in disgorgement of the funds.

F.T.C. v. Network Servs. Depot, Inc., 617 F.3d 1127, 1143–44 (9th Cir. 2010) (quoting FTC v. Assail, Inc., 410 F.3d 256, 265 (5th Cir.2005)). In short, “an attorney is not permitted to be willfully ignorant of how his fees are paid.” Id. at 1144. In addition, an attorney is not allowed simply to accept his client’s word that the source of funds is legitimate. Id. at 1145; Assail, 410 F.3d at 266.

Leech Tishman does not contest that the second payment of \$100,000 from Silvers received after Leech Tishman was on notice of Silvers’ alleged complicity in Defendant Patrick Soria’s fraud should be returned.

Leech Tishman did not even come close to discharging its duty of inquiry into the source of the first \$85,000 payment. In the context of an alleged massive, blatant fraud with an appointed receiver, Leech Tishman was approached by Charles Shamash, the attorney for a person Leech Tishman was unfamiliar with who was offering to provide \$85,000 in defense funds for Patrick Soria. By Leech Tishman’s own account, it took Shamash’s word “as an officer of the court” that the \$85,000 was not tainted by Soria’s alleged fraud. Leech Tishman does not even attempt to show that its attorneys made any meaningful inquiry into the evidentiary basis for *Shamash’s* belief that the money was not tainted. At best, Leech Tishman attorneys asked Shamash why he believed the money was legitimate but made no apparent attempt to find out how Shamash knew the purported facts he was conveying. In other words, while there was some, limited inquiry into Shamash’s beliefs about the facts, there was no apparent inquiry into *why* Shamash had those beliefs about the facts.

Leech Tishman seems to believe it is enough that Shamash was known to be an honest lawyer and that his word could be believed. But it does not matter if Shamash had an honest belief that the money was untainted; it was not *Shamash's* duty to determine if the money was tainted. He very well could have believed that the money was legitimate – and the Court has no reason to believe otherwise – but that doesn't relieve Leech Tishman of its duty to inquire into the matter.

Leech Tishman wants to push off its duty of inquiry onto Shamash – as long as Shamash said things were fine, that would be enough. It might have been reasonable to rely on Shamash had Leech Tishman inquired of the evidence behind Shamash's beliefs, found that foundation adequate, and relied on it. But here, (1) it is apparent that Leech Tishman did not inquire of Shamash's foundation in any meaningful way and (2) Shamash knew no facts that would support an objectively reasonable belief that the money was untainted. Shamash's declaration submitted with Leech Tishman's opposition shows that Shamash had no real reason to believe that the money was independent of the fraud. See Shamash Decl. ¶ 7. Shamash's belief was based on Shamash's seemingly baseless understanding of Silvers' wealth and the wealth of Silvers' family.¹ Id. The only marginally concrete facts

¹ Shamash's declaration is notably devoid of any information regarding *how* Shamash "knows" various things about Silvers, Silvers' family, Silvers' past, and Silvers' connection with Soria. After the payment of the \$85,000 and in conjunction with the proposed payment of the \$100,000, Shamash allegedly "verified" certain facts about Silvers' deceased wife's family and Silvers' "tragic past." While it is not stated, this suggests that such due diligence was not done before the payment of the \$85,000. The Court is, once again, largely not told how any of the facts were "verified." There is reference to an article about Silvers' past, but the Court is not made privy to it. The Court also has no idea why the wealth of Silvers' deceased wife's family would be relevant

cited by Shamash are that Silvers lived in Beverly Hills and was involved in real estate ventures, which, of course, prove nothing relevant.² Id. Shamash's knowledge, at best, supported a belief that the money was not definitely tainted – Silvers *might* have had legitimate access to the money – but there must be enough information to determine that the money is most likely not tainted.

To be clear, this is not to say that Shamash is blameworthy as to the funds provided to Leech Tishman. It ultimately was not his problem. It was Leech Tishman's duty to inquire as to the source of the money. It relied on Shamash's unverified statements at its own risk.

The motion for turnover of funds is GRANTED. Leech Tishman is to turn over \$185,000 to the Receiver within five days of this Order.

IT IS SO ORDERED.

Date: November 6, 2018



Dale S. Fischer
United States District Judge

because there is no apparent reason to believe that Silvers would have access to any of that wealth.

² These facts are, of course, also perfectly consistent with Silvers *being part of Soria's operation*, which appears to be the case.