

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION**

IN RE: RECEIVER FOR)
RONNIE GENE WILSON AND) Civil Action No. 8:12-cv-2078-JMC
ATLANTIC BULLION & COIN, INC.)
_____)

ORDER

This matter is before the court on a Petition for a Rule to Show Cause (“Petition”) filed by the Receiver, through his counsel, on August 31, 2012, and subsequent Order to Show Cause entered by the court on September 5, 2012 (“Order to Show Cause”). [Docs. 5 & 6]. In his Petition, the Receiver seeks the repayment of at least \$586,400.00, transferred to Small Farmer’s Journal, Inc. (“SFJ”) directly from funds attributable to the illegal Ponzi scheme perpetrated by Ronnie Gene Wilson (“Wilson”) and Atlantic Bullion & Coin, Inc. (“AB&C”). *See United States v. Wilson*, 8:12-cr-00320-JMC. The Order to Show Cause directed SFJ to provide the court by September 21, 2012, all written documentation or evidence as to why SFJ should not be ordered to repay monies acquired from the illegal Ponzi scheme.

On October 4, 2012, SFJ filed its Response to the Order to Show Cause through South Carolina counsel. [Doc. 15]. Since that time, South Carolina counsel has withdrawn from representation. [Doc. 41]. Thereafter, the Receiver filed a Reply. [Doc. 45]. After consideration, the court grants the Receiver’s requested relief and orders SFJ to repay \$586,400.00 to the Receiver within fifteen (15) days of the service of this Order.

PROCEDURAL BACKGROUND

On July 30, 2012, Wilson and AB&C pled guilty to two counts of mail fraud stemming from their involvement in a criminal Ponzi scheme involving hundreds of victims and millions of

dollars. *See United States v. Ronnie Gene Wilson, et al*, 8:12-cr-320-JMC. Pursuant to the court's February 14, 2013 Order (and its predecessors) and related to the above noted criminal matter, the Receiver is tasked with assuming management and control over all the financial and business affairs for a number of individuals and companies (collectively "AB&C Receivership Entities"). The court Order requires the Receiver, among other things, to locate and manage assets previously acquired by and/or in the name/possession of the AB&C Receivership Entities. In addition, the court Order directs the Receiver to take those actions necessary for the protection of investors, including, but not limited to, initiating actions against individuals or companies to whom monies or assets were transferred that are directly traceable to the unlawful Ponzi scheme run by Wilson and AB&C. *See* February 14, 2013 Court Order [Doc. 43 at 2-3].

FACTUAL BACKGROUND

By way of background and as it relates to SFJ's connection to the funds of the fraudulent investment scheme orchestrated and effectuated by Wilson and AB&C, the following facts are relevant. As part of the fraudulent investment scheme, Wilson, through his company AB&C and other agents, recruited individuals to invest in the purported purchase and sale of silver holdings. Investors were promised high rates of returns on their investment. Some investors received substantial returns and profits through payments of ill-gotten gains from AB&C while other investors lost large sums of money. In addition, some individuals received payments from AB&C for a variety of other reasons, many under the guise of "investment". Records demonstrate that SFJ received payments totaling at least \$586,400.00 from AB&C. (*See* Petition Ex. A.) SFJ was not an investor, but received money directly from AB&C.

LEGAL DISCUSSION

“A Receiver may proceed summarily to recover money belonging to the receivership by petition to the appointing court for an order to show cause against a possessor not a party to the original action.” *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984). “The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.” *SEC v. Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). “At common law, where property has been obtained by fraud, a court in equity has jurisdiction to reach the property either in the hands of the original wrongdoer, or in the hands of any subsequent holder and to convey that property to the one who is truly and equitably entitled to the same.” *FTC v. Network Serv. Depot, Inc.*, 617 F.3d 1127, 1142 (9th Cir. 2010).

In *SEC v. Vassallo*, the United States District Court for the Eastern District of California discusses, albeit in an unpublished opinion, the concept of disgorgement in the context of a securities violation case. *See SEC v. Vassallo*, 2011 U.S. Dist. LEXIS 98418 (E.D. Ca. 2011). In so discussing, the court parallels the underlying common law equity principles that provide the foundation for disgorgement actions. The Receiver is entitled to recovery of the funds paid to SFJ by Wilson and AB&C if those funds flowed from a fraudulent investment scheme to a non-party who has no legitimate claim to the funds. *See id.* at * 9.

In its Response, SFJ argues that it should not be ordered to repay monies received from Wilson and AB&C because SFJ entered into arm’s length transactions in which value, i.e. 34% of the common stock of SJF, was given in exchange for the receipt of funds. Citing a myriad of cases, SFJ asserts that an arm’s length transaction, done in good faith, in which a legitimate sale of stock is accomplished, is not subject to disgorgement.

The court, however, finds that the Receiver has made a *prima facie* case with regard to

disgorgement and SFJ has presented no facts or evidence establishing a legitimate claim to the funds. Specifically, after review of the arguments set forth by the Receiver and SFJ, as well as all documents presented to the court for consideration, the court finds that SFJ has failed to submit facts or evidence establishing that a legitimate sale of stock occurred in accordance with Oregon law, South Carolina law and Federal law, and therefore SFJ has no legitimate claim to the funds. Moreover, the court notes that misrepresentations and materially misleading statements were made in the solicitation of the funds, including the representations regarding the value of SFJ and the intended uses for the monies, and numerous irregularities exist with regard to SFJ's position that it intended to sell common stock to Wilson and AB&C.

For these reasons, the court orders SFJ to disgorge these monies and repay \$586,400.00 to the Receiver within fifteen (15) days of the service of this Order.

The Receiver is directed to serve a copy of this Order upon SFJ.

SFJ is admonished that any further appearance, including filings, in this court must be made through counsel, as a corporation is prohibited from appearing *pro se*. See *Rowland v. Cal. Men's Colony, Unit 11 Men's Advisory Council*, 506 U.S. 194, 217 (1993); *Bruce v. Ladies Choice Fitness Ctr. (Columbia) Inc.*, 2013 WL 1687733 at *1 (D.S.C. Apr. 18, 2013).

IT IS SO ORDERED.



J. Michelle Childs
United States District Judge

May 7, 2013
Greenville, South Carolina