



Cir. 1991). The Receiver is alleging that Mr. Gunn was directly involved in the scheme which made the basis of the S.E.C.'s involvement in this case. The Receiver will prove the following at the evidentiary hearing:

- a. Mr. Gunn professes to be a retired attorney in Canada. However, the Receiver will show that Mr. Gunn was practicing law in connection to the Hammersmith and Bridgeport entities.
  - b. Mr. Gunn was in charge of "compliance" with these entities.
  - c. Mr. Gunn was the author of the "bogus" promissory notes involved in this case.
  - d. Mr. Gunn was the company's attorney.
  - e. Mr. Gunn was responsible for the formation, structure and operation of the scheme which forms the basis of the Receiver being appointed in this case.
  - f. The Receiver will trace the money, which went from honest investors to the company which then paid Mr. Gunn for "legal fees."
  - g. The Receiver anticipates filing a lawsuit, naming Mr. Gunn as a defendant.
2. Even Mr. Gunn's own motion shows that the "money" was commingle during the


transactions which took the money from honest investors and finally went to Mr. Gunn. A court can obtain equitable relief from a non-party against whom no wrongdoing is alleged if it is established that the non-party possesses illegally obtained profits but has no legitimate claim to them. *Id.* at 414, fn 11. This court has, "authority to grant the full panoply of equitable remedies so that the [victims] can obtain complete relief. *S.E.C. v. Antar*, 831 F.Supp. 380, 398 (D.N.J.1993), *citing S.E.C. v. Materia*, 745 F.2d 197, 200 (2d Cir. 1984), *cert. denied*, 471 U.S. 1053, 105 S.Ct. 2112, 85 L.Ed.2d 477 (1985). These remedies include disgorgement, asset freezes, appointment of receivers, repatriation of assets, constructive trusts, and restitution. The district court in *Antar* noted that "the securities statutes vest federal courts with jurisdiction over claims against nonviolators." *Antar*, 831 F.Supp. at 398. *See also, Deckert v. Independence Shares Corp.*, 311 U.S. 282, 288-89, 61 S.Ct.

229, 85 L.Ed. 189 (1940) (holding that a federal court had jurisdiction over a claim in a securities fraud action seeking relief from a non-party who held funds sought by the plaintiffs); *International Controls Corp. v. Vesco*, 490 F.2d 1334, 1338-39 (2d Cir. 1974), *cert. denied*, 417 U.S. 932, 94 S.Ct. 2644, 41 L.Ed.2d 236 (1974) (noting that the Securities Exchange Act gave the district court jurisdiction to restrain non-violators from disposing of assets claimed by plaintiffs). Disgorgement wrests ill-gotten gains from the hands of a wrongdoer. *S.E.C. v. Huffman*, 996 F.2d 800, 802 (5<sup>th</sup> Cir. 1993). It is an equitable remedy meant to prevent the wrongdoer from enriching himself by his wrongs. *Id.*

3. The Fifth Circuit has held that, “the granting or denying of injunctive relief rests within the sound discretion of the trial court and will not be disturbed unless there has been a clear abuse of it.” *S.E.C. v. Blatt*, 583 F.2d 1325, 1334 (5<sup>th</sup> Cir. 1978); *citing S.E.C. v. MacElvain*, 417 F.2d 1134, 1137 (5<sup>th</sup> Cir. 1972), *cert. denied*, 397 U.S. 972, 90 S.Ct. 1087, 25 L.Ed.2d 265 (1970). In this case, the Receiver has alleged and will prove that Mr. Gunn has profited by receiving money that is tainted profits. The diagram Mr. Gunn has made in his Motion even shows that the money that came from the investors was commingle with tainted funds. Mr. Gunn had an instrumental role in organizing the “bogus” promissory notes and the Receiver anticipates that he will file an amended complaint adding Mr. Gunn as a defendant after the evidentiary hearing.

4. In conclusion, the Receiver respectfully requests this Court to schedule a evidentiary hearing in order to determine whether the Receiver’s allegations against Mr. Gunn can be sustained and until such hearing, this Court should maintain the status quo and continue to freeze the account, and for any such other relief, either in law or in equity, which the Receiver may show himself justly entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this document was mailed, via the U.S. Postal Service, certified mail, R.R.R., to the following on this 8<sup>th</sup> day of May, 2000:

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