

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE	§	
COMMISSION	§	
	§	
Plaintiff,	§	
	§	NO. 3-05-CV-1328-L
VS.	§	
	§	
MEGAFUND CORPORATION, ET AL.	§	
	§	
Defendants.	§	

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Michael J. Quilling, as Receiver for Sardaukar Holdings, IBC and related entities, seeks an order requiring Chrystler Inc. ("Chrystler") and Jimmy C. Heard to show cause why they should not be held in civil contempt for violating this court's July 19, 2005 Amended Order Appointing Temporary Receiver. For the reasons stated herein, Chrystler and Heard should be adjudged in civil contempt and Heard should be incarcerated until such time as he and the company turn over the sum of \$107,392.61 to the Receiver.

I.

This is a civil action brought by the Securities and Exchange Commission ("SEC") against Bradley C. Stark, Stanley A. Leitner, James A. Rumpf and their respective companies, Sardaukar Holdings, IBC ("Sardaukar"), Megafund Corporation ("Megafund"), and CIG, Ltd. ("CIG"). In its complaint, the SEC alleges that the defendants raised more than \$13 million from unwitting investors by making false representations about the expected rate of return on their investments and by promising that a portion of the profits generated from the sale of securities would be used to benefit charitable causes.

On July 19, 2005, the court appointed Michael J. Quilling as the Receiver for various defendants and relief defendants, including Sardaukar and Bradley C. Stark. The order of appointment provides, in pertinent part:

All persons . . . who receive actual notice of this Amended Order by personal service or otherwise . . . *shall promptly deliver to the Receiver all Receivership Assets in the possession or under the control of any one or more of them and shall promptly surrender all Receivership Records.*

Order, 7/19/05 at 2-3, ¶ I(3) (emphasis added). According to the Receiver, Chrystler sent \$35,000.00 to Sardaukar in January 2005. (Exhs. 2-4). Two months later, in March 2005, Sardaukar made two payments to Chrystler--a return of its \$35,000 investment and an additional payment of \$107,392.61. (*Id.*). Records from the Sardaukar Holdings Receivership Estate indicate that these payments were made out of investor funds. (*Id.*). On February 1, 2007, the Receiver sent Chrystler and Heard separate letters enclosing a copy of the Amended Order Appointing Temporary Receiver and demanding the return of \$107,392.61 transferred to them by Sardaukar. (Exhs. 7 & 8). A second demand for the return of investor funds was made by email on March 1, 2007. (Exh. 9). When Chrystler and Heard failed to comply with these demands, the Receiver filed the instant motion.

A contempt hearing was scheduled for July 13, 2007 at 9:00 a.m. By order dated April 13, 2007, Heard was directed to attend this hearing in person and to show cause why he and Chrystler, Inc. should not be held in civil contempt for violating the Amended Order Appointing Temporary Receiver by failing to return \$107,392.61 in receivership assets to the Receiver. Order, 4/13/07. Heard, who has successfully evaded personal service of the show cause order, received actual notice

of the hearing on July 11, 2007, but failed to appear and has not communicated with the court regarding his absence.¹ The court therefore considers the contempt motion *in absentia*.

II.

A person who fails to obey a lawful court order may be held in contempt. *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995). In a civil contempt proceeding, the movant must establish that: (1) a court order was in effect; (2) the order required certain conduct by the respondent; and (3) the respondent failed to comply with the order. *See American Airlines, Inc. v. Allied Pilots Association*, 228 F.3d 574, 581 (5th Cir. 2000), *cert. denied*, 121 S.Ct. 1190 (2001), *citing Martin v. Trinity Industries, Inc.*, 959 F.2d 45, 47 (5th Cir. 1992). The standard of proof is clear and convincing evidence. *Petroleos Mexicanos v. Crawford Enterprises, Inc.*, 826 F.2d 392, 401 (5th Cir. 1987). Once the movant establishes a *prima facie* case, the burden shifts to the respondent to prove a present inability to comply with the order. *Id.*; *see also McPhaul v. United States*, 364 U.S. 372, 379, 81 S.Ct. 138, 142, 5 L.Ed.2d 136 (1960).

III.

The Receiver has proved by clear and convincing evidence that Chrystler, Inc. and Jimmy Heard have failed to comply with the July 19, 2005 order requiring the surrender and return of all receivership assets in their possession or under their control. The evidence shows that Sardaukar transferred a total of \$142,392.61 to Chrystler. A \$35,000.00 transfer, made on March 18, 2005, was a return of Chrystler's initial investment and is not contested by the Receiver. However, bank

¹ A prior hearing scheduled for April 13, 2007 was postponed after the Sheriff of Decatur County, Georgia was unable to serve Heard with the show cause order. (*See* Exh. 14). The Receiver then hired a private investigator to serve Heard with the show cause order for the July 13, 2007 hearing. Although the investigator was unable to locate Heard in person, she did speak to him by telephone on July 11, 2007. Heard confirmed his identify and acknowledged that the Receiver was trying to serve him with legal papers, telling the investigator that he "was not going to be found nor would be served." During that telephone conversation, the investigator read the entire show cause order to Heard, thus advising him of the July 13, 2007 hearing. (*See* Martinelli Aff. at 1-2, ¶¶ 3-6).

records show that a second transfer of \$107,392.61 was made by Sardaukar to Chrystler on March 31, 2005. (*See* Exh. 2 & 3). The Receiver maintains that these funds represent investor monies which belong to the Sardaukar Holdings Receivership Estate, and Chrystler has not introduced any evidence to the contrary. Despite repeated demands by the Receiver, Chrystler has failed to return this payment. The court therefore finds that Chrystler is in contempt of the July 19, 2005 order.

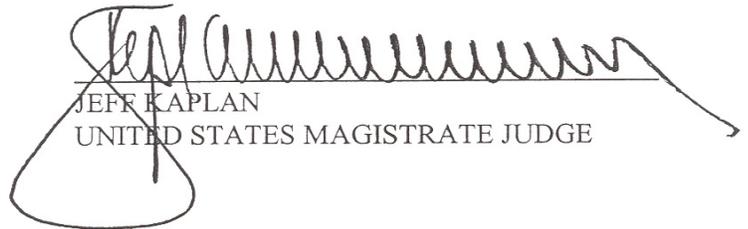
The court further finds that Heard is the principal agent of Chrystler and had actual notice of the Amended Order Appointing Temporary Receiver. (*See* Rec. Mot., Exh. A at 2, ¶ 4). It is clear that Heard acted in concert with Chrystler in failing to return investor funds as required by the court order. Heard was given an opportunity to explain his conduct, but he did not appear at the show cause hearing. Consequently, Heard should also be adjudged in civil contempt and incarcerated until he and his company return the \$107,392.61 in receivership assets. *See* FED. R. CIV. P. 65(d) (injunctions and restraining orders are binding on parties to action and "upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise"); *Travelhost*, 68 F.3d at 961 (injunction binds not only the parties subject thereto, but also non-parties who act with the enjoined party).

RECOMMENDATION

The Receiver's motion for a show cause order [Doc. #296] should be granted. Chrystler, Inc. and Jimmy Heard should be adjudged in civil contempt for failing to comply with the July 19, 2005 Amended Order Appointing Temporary Receiver, which requires all persons with notice of the order to "promptly deliver to the Receiver all Receivership Assets in the possession or under the control of any one or more of them[.]" Heard should be taken into custody immediately and incarcerated until such time as he and Chrystler, Inc. turn over the sum of \$107,392.61 to the Receiver.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party may file written objections to the recommendation within 10 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The failure to file written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: July 18, 2007.


JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE