

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	Civil Action No. 3:05-CV-1328(BD)
	§	
v.	§	ECF
	§	Referred to the U.S. Magistrate Judge
MEGAFUND CORPORATION, STANLEY A.	§	(Jury Trial Demanded)
LEITNER, SARDAUKAR HOLDINGS, IBC.,	§	
BRADLEY C. STARK, CIG, LTD., and	§	
JAMES A. RUMPF, Individually and d/b/a	§	
CILAK INTERNATIONAL,	§	
	§	
Defendants,	§	
and	§	
	§	
PAMELA C. STARK,	§	
	§	
Relief Defendant.	§	

**PLAINTIFF’S RESPONSE TO DEFENDANTS’
MOTION TO VACATE SHOW CAUSE ORDER**

TO THE HONORABLE JEFF A. KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling, the Receiver appointed in this action, (“Plaintiff” or “Receiver”) and files this his Response to the *Motion to Vacate Show Cause Order with Authorities in Support* [Dkt. No. 196] filed by Bradley C. Stark and Pamela C. Stark and, in support of such, would respectfully show the Court as follows:

**I.
INTRODUCTION**

This case began when the Securities and Exchange Commission filed suit against Bradley C. Stark, Pamela C. Stark, and others for their role in a fraudulent investment scheme. The Court

has issued two Orders requiring the Starks to obey ongoing obligations and prohibitions related to this receivership action. In particular, the Order Appointing Receiver and Order Freezing Assets require the Starks to (1) identify and deliver to the Receiver all Receivership Estate assets, whether under the Starks' control or that of any person in active concert or participation with them, (2) make a sworn accounting of current assets and liabilities, and (3) refrain from interfering with this receivership action in any way. *Order Appointing Receiver* [Dkt No. 5] at ¶¶ 3, 5; *Order Freezing Assets* [Dkt. No. 10] at Parts VI, VIII.

The Receiver has learned that the Starks continue to ignore the requirements and prohibitions contained in those Orders. Accordingly, he filed *Plaintiff's Motion for Bradley C. Stark, et al. to Appear and Show Cause Why They Should Not Be Held In Contempt For Violating Court Orders* [Dkt. No. 148]. That motion details the Starks' persistent interference with these proceedings and numerous instances when they disregarded court order. The Receiver, therefore, seeks civil contempt guaranteeing that the Starks: (1) identify all Receivership Estate assets that they transferred or intentionally concealed from the Receiver and the Securities and Exchange Commission; (2) make a sworn accounting of their assets, liabilities, financial transfers involving Sardaukar investors; and (3) refrain from further interfering with the Receivership Proceedings. In addition, the Receiver requests that this Court issue an order coercing the Starks' compliance and requiring Brad Stark to remedy past misrepresentations to this Court as well as Sardaukar's investors.

Furthermore, to the extent that these orders were violated willfully, the Court need not vacate its show cause order and can, instead, amend it to observe the procedural notice requested in opposing counsel's motion.

II. BACKGROUND FACTS

1. In July 2005 the Securities and Exchange Commission initiated this civil action against Brad Stark, Pam Stark (collectively, “the Starks”), Sardaukar Holdings, IBC (“Sardaukar”), and others for operating a *Ponzi* scheme under Brad Stark’s control. *See Amended Complaint* [Dkt. No. 1]. In particular, investors sent funds to Sardaukar’s account at JPMorgan Chase Bank, N.A. with the understanding that Brad Stark would apply them towards various investments. As Sardaukar received investor funds, however, Brad Stark systemically diverted large sums to support an extravagant lifestyle for himself, his friends, and his family.

2. On July 5, 2005, this Court issued its *Order Appointing Temporary Receiver* (“Order Appointing Receiver”), which named Michael J. Quilling as Receiver for Brad Stark, Pam Stark, Sardaukar, and other related individuals and entities. This Order expressly required the Starks to cooperate with the Receiver and to identify and surrender all Receivership Estate assets controlled by them or any person in active concert or participation with them:

All persons, including Defendants and Relief Defendant, and their officers, agents, servants, employees, brokers, facilitators, attorneys, and all persons in active concert or participation with them 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.

* * *

All persons, including Defendants and Relief Defendant, and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Amended Order by personal service or otherwise, are enjoined in from any way interfering with the operation of the Receivership or

in any way disturbing the Receivership Assets and Receivership Records . . .

Order Appointing Receiver [Dkt. 5] at ¶¶ 3, 5 (emphasis added).

3. On that same day, this Court also issued its *Ex Parte Temporary Restraining Order and Order Freezing Assets and Granting Other Emergency Relief* (“Order Freezing Assets”), which required the Starks to preserve and account for Receivership Estate assets:

Defendants and Relief Defendants shall immediately repatriate all funds and assets obtained, directly or indirectly, from the activities described in the Commission’s Complaint, or from one another, that are now located outside the jurisdiction of this Court. Such funds shall be immediately transferred or paid to the Court-Appointed Temporary Receiver. Furthermore, with respect to any other asset owned by the Defendants that is now located outside the jurisdiction of this Court, including, specifically, any monies, securities, real property, or other assets, the Defendants shall immediately identify to the Court-Appointed Temporary Receiver the location of such asset, the price paid or consideration given, and the date upon which it was purchased and/or received.

* * *

Defendants and Relief Defendants shall make an interim accounting, under oath, within ten days of the issuance of this Order or three days prior to any hearing on the Commission’s application for preliminary injunction and other relief, whichever occurs first, detailing by amount, date, method and location of transfer, payee and payor, purpose of payment or transfer . . . (c) all of their current assets wherever they may be located and by whomever they are being held, and their current liabilities; and (d) all accounts with any financial or brokerage institution maintained for the Defendants or Relief Defendants at any point during the period from June 1, 2004 to the present.

Order Freezing Assets [Dkt. No. 10], Parts VI, VIII (emphasis added).

4. Since his appointment, the Receiver has thoroughly investigated the available records and concluded that the Starks are currently not complying with the Order Appointing Receiver and

Order Freezing Assets. First, all parties acknowledge that the Starks have not prepared a sworn accounting of their assets and liabilities. *See Motion to Vacate Show Cause Order* [Dkt. No. 196] at 4 (“The only conduct . . . that can be corrected by remedial action, or compliance by either of the Starks, is the furnishing of an accounting to the Receiver”). Second, the Starks have obviously not contacted the Receiver or the Commission to identify and surrender all Receivership Estate assets—as evidenced by their secret bank account funded through Michael Tschebaum, Palace Investments Inc., and Derek Schenk. *Plaintiff’s Motion for Bradley C. Stark et al. to Appear and Show Cause Why They Should Not be Held in Contempt for Violating Court Orders* [Dkt. No. 148] at ¶¶ 5-9. Finally, the Receiver has learned that Brad Stark continues to deceive the Court as well as Sardaukar’s investors by discouraging any cooperation with the Receiver. *Id.* at ¶¶ 10-13.

5. Accordingly, on May 19, 2006, the Receiver filed a motion for the Defendants to appear and show cause why they should not be held in contempt. *Id.* This Court granted that motion and issued its Show Cause Order on May 22, 2006. *Show Cause Order* [Dkt. No. 149], as amended on May 26, 2006 [Dkt. No. 151].

6. In June of 2006, Defendants obtained new counsel and filed motions to vacate or otherwise continue the Show Cause Order. *Motion to Vacate Show Cause Order with Authorities in Support* [Dkt. No. 158]; *Motion for Continuance of Show Cause Hearing* [Dkt. No. 159]. On June 13, 2006 the Court granted the Defendants’ request for a continuance, but declined to vacate the Show Cause Order because “good cause exists for continuing the hearing.” *Order of June 13, 2006* [Dkt. No. 160].

7. On August 14, 2006 the Court again set the Show Cause Order for hearing. *Order of August 14, 2006* [Dkt. No. 185]. Upon advice of the parties, it set hearing for October 27, 2006.

Order of August 15, 2006 [Dkt. No. 186]; *Order of August 23, 2006* [Dkt. No. 194].

8. Defendants now bring this motion to vacate the Show Cause Order. *Motion to Vacate Show Cause Order with Authorities in Support* [Dkt. No. 196]. Defendants point out that the Court must give them notice that some of the offensive conduct will be redressed by criminal contempt rather than just civil contempt. *Id.* at ¶¶ 3-6. As explained more fully below, the Receiver submits that this is not grounds to vacate the show cause order altogether because all of the Receiver's concerns can be remedied through civil contempt sanctions. In addition, vacating the show cause order is unnecessary since the Court may simply enter notice of criminal contempt through an amended Show Cause Order.

III. ARGUMENTS AND AUTHORITIES

A. **This Court May Proceed With the Show Cause Hearing Because the Receiver Primarily Seeks Remedial Relief in the Form of Civil Contempt.**

There is no need to vacate the Show Cause Order because all of the relief requested can be remedied through civil contempt sanctions. The Show Cause Order specifically intends to address: (1) the Starks' failure to disclose all transfers of Receivership Estate assets to their friends and associates; (2) the Starks' failure to disclose active bank accounts; (3) the Starks' failure to make a sworn accounting of their current assets and liabilities; and (4) the Starks' continued obstruction of these proceedings by misleading the Court and Sardaukar's investors. *Show Cause Order* [Dkt. No. 149].

These grievances can be appropriately addressed through civil contempt. A District Court has the option to remedy violated orders through civil contempt, criminal contempt, or both if it chooses. *Burdine v. Johnson*, 87 F.Supp.2d 711, 714 (S.D. Tex. 2000). The key factor in

distinguishing civil contempt from criminal contempt is whether the Court's penalty is punitive (i.e., absolute) or remedial (i.e., conditioned on the defendant's future conduct). *Lamar Financial Corp. v. Adams*, 918 F.2d 564, 565 (5th Cir. 1990); *see also Hicks v. Feiock*, 485 U.S. 624, 632 (1988) (for purposes of civil contempt, imprisonment is remedial if it stands until the contemnor performs all affirmative acts required by an order).

For example, in *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297 (11th Cir. 1991), the District Court properly used its civil contempt power to address the persistent interference of Bart Chamberlain, a debtor in receivership, and his efforts to frustrate federal agencies and the court-appointed Receiver. In two show cause hearings, the District Court found Chamberlain in civil contempt for: (1) failing to provide information to federal investors; (2) failing to turnover specific assets as previously ordered; (3) transferring and liquidating assets in violation of the Temporary Restraining Order and the Order Appointing Receiver; and (4) engaging in various other efforts to "frustrate the government's discovery and the Receiver's authority." *Id.* at 1300-01. The District Court held that, until Chamberlain fully complied with its orders, the following contempt sanctions would remain in effect: (1) Chamberlain had to surrender to the U.S. Marshall; (2) he could not participate in any court proceedings and could not file papers with the Court Clerk; (3) the Court deemed him to have waived all objections to collection efforts; (4) he had to pay other parties' reasonable expenses and attorneys' fees; and (5) he was prohibited from using any funds or assets, whether or not they were exempt from execution. *Id.* at 1301. The Court of Appeals determined that the District Court did not abuse its discretion in fashioning these remedies. *Id.* at 1306. To the contrary, several other civil contempt remedies would have been appropriate in that case, including coercive incarceration, a daily fine, a compensatory fine, or an order to pay the Receiver's attorney's

fees and expenses. *Id.* at 1304.

Similarly, the case at hand clearly presents this Court with numerous instances of conduct that warrant remedial or coercive action against the Starks. Among other things, the Receiver seeks to have the Starks incarcerated or subject to other sanctions until they accomplish the following:

- (1) The Starks must provide the Receiver with a joint sworn financial statement that completely describes all assets, liabilities, and includes all account statements (from open to close) for any accounts in which they have or had a beneficial interest anywhere in the world from July 2004 to the present;
- (2) The Starks must disclose the location of and be prepared to turn over all furniture and electronics, including computers, which they removed from their apartment against the Receiver's explicit instructions;
- (3) Brad Stark must personally contact his brother, Glenn Stark, and tell him to return the \$87,000.00 received from Sardaukar;
- (4) The Starks must provide the Receiver with the name, address, telephone number, and e-mail address for each and every individual or entity that transferred funds to them or Sardaukar since June 2004 and provide a complete, detailed statement describing every payment made back to any investors since that time, whether paid from funds controlled by the Starks or third parties in concert or participation with them;
- (5) Brad Stark must provide the Receiver with complete copies of all written communications, including e-mails, that he had with any investor going back to the beginning of their relationship;
- (6) Brad Stark must join the Receiver in issuing and signing a letter to be sent to each Sardaukar investor advising them that the Receivership Proceedings—despite his statements to the contrary—are legitimate and that he will cease interfering with the activities of this Court, the Securities & Exchange Commission, and the Receiver; and
- (7) Brad Stark must provide the Receiver with complete copies of any forged bank and/or financial institution account statement in his possession or that he previously created.

The Receiver submits that the Order Appointing Receiver and Order Freezing Assets already

compel the Starks to do most of items listed above and that the last two provisions simply remedy Brad Stark's past attempts to mislead the Court and Sardaukar's investors. Because any sanctions—including incarceration—would terminate once the Starks fully comply with these remedial orders, they are appropriately addressed in a proceeding for civil contempt.

B. Vacating the Show Cause Order is Unnecessary Since the Court May Notify Defendants of Criminal Contempt through an Amended Order.

The Receiver is not opposed to criminal contempt sanctions if the Court concludes that the Starks willfully violated its standing orders. *Cooper v. Texaco, Inc.*, 961 F.2d 71, 72 n. 3 (5th Cir. 1992) (criminal contempt justified when a party willfully intends to violate a reasonably specific order). While criminal contempt must be prosecuted "on notice" under Fed. R. Crim. P. 42(b), the Court need not abandon the scheduled show cause hearing altogether in order to comply with due process. Rather, the Court can simply issue an amended Show Cause Order informing the Starks that they face both civil and criminal contempt for the actions described in the original Show Cause Order. *See* Fed. R. Crim. P. 42(b) (stating that notice of criminal contempt may be given in a show cause order).

**IV.
CONCLUSION**

The Starks have not stated any basis justifying a complete vacatur of the Show Cause Order. As explained above, the Receiver seeks remedies that are all properly addressed through a civil contempt proceeding. Furthermore, to the extent the Starks may have willfully violated this Court's standing order, they may be put on notice of any potential criminal contempt through an amended Show Cause Order.

Respectfully submitted,

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ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

This is to certify that on the 25th day of August, 2006, a true a correct copy of the above and foregoing has been served on the attorneys for the parties in this matter via electronic notice.

/s/ Brent J. Rodine