

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

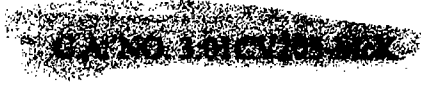
FILED
CHARLOTTE, N. C.

JUN 15 2005

U. S. DISTRICT COURT
W. DIST. OF N. C.

IN RE: ALL FUNDS ON DEPOSIT)
IN ACCOUNT NUMBER 000669829075)
IN THE BANK OF COMMERCE, INC.,)
AT NATIONS BANK, N.A.,)
CONSISTING OF \$18,756,420.97,)
MORE OR LESS.)
GEORGE AND DOLORES ROLLAR,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES OF AMERICA, et al.,)
)
Defendants,)
)
RICHARD VASQUEZ,)
)
Intervener.)
_____)

C.A. NO. 3:98mc96-McK



(CASES CONSOLIDATED)

**OPPOSITION TO RECEIVER'S MOTION TO DISALLOW
CLAIMS OF CLAIMANT OBASI JOHN VALENTINE**

COMES NOW Claimant OBASI JOHN VALENTINE, on behalf of himself and his wholly-owned entity claimants, namely, OVAL; OVAL FINANCIAL & INVESTMENT GROUP, LTD.; OVAL INSURANCE SERVICES; GLOBAL RICHES, ECONOMICS & TREASURES; and OVAL PACIFIC TELESYS CORPORATION (Collectively, "Valentine Claimants"), in Opposition to the Receiver's Second Motion to Disallow Claims.

On May 25, 2005, the Court ordered the submission of any further briefing and evidence in support or opposition to the Receiver's motion by June 16, 2005. Accordingly, the following

memorandum of law as well as the Declaration of Obasi John Valentine and Exhibits thereto are respectfully presented in Opposition to the Receiver's Motion to Disallow Claims:

I.

Valentine Has Properly Complied With Claim Requirements

On or about May 20, 2002, Claimant Obasi John Valentine ("Valentine") executed six (6) Court-Approved Claim Forms for monies due and owing to him and/or his related entities; namely, OVAL; OVAL FINANCIAL & INVESTMENT GROUP, LTD.; OVAL PACIFIC TELESYS CORPORATION; OVAL INSURANCE SERVICES; GLOBAL RICHES, ECONOMICS & TREASURES . The six claims total \$11,380,000 and are broken down in the following net sums claimed by Valentine:

1.	Claim Number One:	\$600,000;
2.	Claim Number Two:	\$800,000;
3.	Claim Number Three:	\$4,200,000;
4.	Claim Number Four:	\$2,000,000;
5.	Claim Number Five:	\$1,980,000;
6.	Claim Number Six:	\$1,800,000

True and correct copies of the foregoing submitted Claims along with the *initial* supporting documentation sent therewith are attached as Exhibits 4, 5, 6, 7, 8 and 9 to the Declaration of Obasi John Valentine filed concurrently herewith.

II.

Valentine is the Sole Owner of All Entities Through Which Contracts Were Entered Into With Gilliland, et al.

Valentine has previously provided his affidavit and supporting documentation confirming his sole ownership of Oval Pacific Telesys Corporation, a Delaware corporation (hereafter, "Oval

Pacific”) [see, Supplemental Valentine Declaration In Support of First Emergency Distribution of Funds, previously filed herein] . Oval Pacific was formed by Valentine in 1995. A true and correct copy of the Certificate of Incorporation and the Written Action of Incorporator electing me as the sole Director of Oval Pacific is attached as Exhibit “1” to the Supplemental Valentine Declaration In Support of First Emergency Distribution of Funds, previously filed herein [Id.] .

The term “Oval” as used in the name of Valentine’s various entities (including Oval Pacific) was chosen by me as a hybrid of Valentine’s name; the “O” deriving from Obasi and the “val” deriving from Valentine surname, Valentine. [Id.] .

At all times, Valentine formed, owned and operated Oval Pacific as its sole shareholder owner, Officer and Director. [Id.] . However, because Valentine did not utilize counsel for the formation of Oval Pacific, he was unaware of the formality requirement of executing the stock certificate confirming Valentine’s shareholder status. [Id.] . Therefore, no stock certificate was ever signed by Valentine in favor of himself and because Oval Pacific was Valentine’s wholly-owned company, there were never any stock certificates, subscription agreements, or shareholder agreements of any kind whatsoever made in favor of any other person or entity. [Id.] . Attached as Exhibit “2” to the Supplemental Valentine Declaration In Support of First Emergency Distribution of Funds, previously filed herein, are copies of the blank Stock Certificates numbers 1-3 as well as the blank Stock Ledger, all of which Valentine received when he formed the corporation. [Id.] .

In addition, Valentine is the sole owner of Oval Financial and Investment Group, Ltd. (“Oval Financial”). Oval Financial was formed by Valentine in September 1995. [see, Valentine Declaration filed herewith]. A copy of the Certificate of Incorporation and the Written Action of

Incorporator electing Valentine as the sole Director of Oval Financial and the transmittal letter thereof is attached as Exhibit "2" to Valentine's Declaration filed herewith.

In February 23, 2003 the Receiver sent correspondence to Valentine inquiring about a bank record he had reviewed which showed a wire transfer in the amount of \$80,000 on August 3, 1998 from "Oval Insurance Services". [see, Exhibit 2 to the Receiver's Second Motion to Disallow Claims]. In response, Valentine communicated to the Receiver that the "Oval Insurance Services" wire was from Valentine's account. [see, Valentine Declaration filed concurrently herewith]. The business name, "Oval Insurance Services" was filed by Valentine on November 11, 1995 as a fictitious business name with the San Diego County Recorder's Office. [Id.]. A copy of Valentine's fictitious business name filing is attached as Exhibit "1" to Valentine's Declaration filed herewith. Oval Insurance Services was never incorporated as any sort of separate entity. Rather, Valentine used the fictitious name "Oval Insurance Services" for a business division of Valentine's wholly-owned company. [Id.].

Valentine is also the sole owner of Global Riches, Economics and Treasures ("GREAT"). [Id.]. GREAT was formed by Valentine because Gilliland mandated and required that an overseas company be formed to receive payments due Valentine or else Gilliland would not authorize payments due to Valentine under their contracts. [Id.]. A copy of GREAT's Certificate of Good Standing, Application for Transfer of Domicile, and the transmittal letter to him thereof is attached as Exhibit "3" to Valentine's Declaration filed herewith. [Id.].

III.

Valentine has Submitted Sufficient Evidentiary Proof of His Ownership of Invested Funds and the Lack of any "Aggregation" Thereof

The law presumes that money deposited in an account bearing the name of the depositor is the property of the depositor. *Farmer's Loan & Trust Co. v. Fidelity Rust Co.* 86 F. 541, 545 (9th Cir. Ct. App. 1898).

In his correspondence dated February 24, 2003 (*supra*), the Receiver identified four (4) wire transfers of monies for which Valentine presented wire transfer evidence attributable to him and/or one of his related entity claimants having wired funds which were deposited into Gilliland account(s) subsequently delivered into the pending Receivership. [*Id.*].¹ The following transfers and deposits were so identified by the Receiver:

1. July 31, 1998 wire transfer from Oval Pacific Telesys Corp. to Sterling Management Services, Inc. in the amount of \$100,000;
2. July 16, 1998 wire transfer from Oval Pacific Telesys Corp. to Sterling Management Services, Inc. in the amount of \$900,000;
3. July 24, 1998 wire transfer from Valentine account to Sterling Management Services, Inc. in the amount of \$99,925;
4. August 24, 1998 wire transfer from Valentine account to Sterling Management Services, Inc. in the amount of \$599,925.

Valentine has previously affirmed and declared that each of the four (4) transfers

¹ There are two additional wire transfers of monies to Gilliland accounts by Valentine identified by the Receiver in his correspondence of February 24, 2003, both of which the Receiver has stated were deposited into accounts not delivered into the pending Receivership and therefore not subject to his claims administration herein. [see, Receiver's Exhibit 2 to Second Motion to Disallow Claims]. Accordingly, the entitlement to such funds will not be addressed herein.

identified by the Receiver and noted in the preceding paragraph derived from monies wholly owned by him, from accounts wholly owned by him, and did not include any monies aggregated from or owned by any other person or entity. [see, Valentine Declaration In Support of First Emergency Distribution of Funds; see also, Supplemental Valentine Declaration In Support of First Emergency Distribution of Funds; see also, Valentine Declaration In Response to Order to Show Cause, all previously filed herein].

The Receiver has also identified the two investment deposits of funds received in Gilliland's (Sterling Asset Management) Bank of Butterfield account 1336717 for which Valentine has been unable to obtain wire transfer confirmations; the first being a deposit of \$200,000 from Oval Pacific and the second being a deposit of \$80,000 from "Oval Insurance Services". [see, Exhibit 1, page three of Receiver's Motion to Approve Aggregate Claim and Segregate Funds for International Investment Group Investors, previously filed herein; see also, Receiver's Second Motion to Disallow Filed Claims, p. 2, ¶4 re: Oval Insurance Services \$80,000 deposit]. Both of these transfers emanated from entities wholly-owned by Valentine (supra). Both of these transfers were of Valentine's funds and contained no aggregated funds of any third party. [see, Valentine Declaration filed herewith].

Attached as Exhibit 10 to Valentine's Declaration filed herewith is a copy of the Receiver's Investor Contact Information including an Investment Summary for Valentine from the Receiver's internet website database. Exhibits 11, 12, 13, 14, 15 and 16 to Valentine's Declaration filed herewith are copies of the Receiver's website Investment Detail for six (6) of the wire transfer proofs Valentine has been able to obtain and forward to the Receiver along with true and correct copies of said proofs. [see, Valentine Declaration filed herewith].

In his Second Motion to Disallow Filed Claims, the Receiver proposes that Valentine be allowed an aggregate net claim of \$443,850 “conditioned on Mr. Valentine providing a complete list, name and address, of all investors whose funds were aggregated within 30 days.” [see, Receiver’s Second Motion to Disallow Filed Claims, p. 4, ¶4 re: John Valentine]. The underpinnings of the Receiver’s “conditional” proposal are his expressed suspicion and/or belief that Valentine may not be entitled to some or all of the monies invested in the Gilliland/Mohr scheme because there may be other persons whose money was “aggregated” with the funds Valentine transferred to the various accounts of Gilliland/Mohr. Notwithstanding his “suspicion”, **the Receiver has not presented any evidence or proof of any kind in support of his argument that monies were aggregated within those invested by Valentine.**

Valentine, on the other hand, has stated under penalty of perjury that the transferred monies which he seeks to recover from the Receivership are monies to which Valentine is the sole claimant, sole owner, and there are no other persons or entities that have any right to claim ownership or entitlement to such monies. [see, Valentine Declaration In Support of First Emergency Distribution of Funds; see also, Supplemental Valentine Declaration In Support of First Emergency Distribution of Funds; see also, Valentine Declaration In Response to Order to Show Cause, all previously filed herein]. The bank accounts from which Valentine transferred money into the Mohr/Gilliland scheme were owned by Valentine wholly-owned companies. [Id.]. With one exception noted in the following paragraph, the monies in the accounts from which Valentine transferred were not aggregated; they were Valentine’s. [Id.].

Valentine has previously provided the Receiver information regarding the fact that there is one entity which did place funds with him for investment in Gilliland’s scheme. The name of

the entity is "Caesar Funding Group". [see, Supplemental Valentine Declaration In Support of First Emergency Distribution of Funds and Exhibits thereto]. Its principals are Corey D. Salankey and Ross P. Richardson. [Id.]. Valentine did on occasion refer to Caesar Funding Group and its principals as his "partners" when corresponding with Mr. Gilliland. [Id.]. However, Caesar Funding Group and its principals do not have any claim to any monies which Valentine is entitled to from the Receivership for the simple reason that they have received a return of all of the money they were or might be entitled to from the Gilliland scheme. [Id.]. Specifically, Caesar Funding Group was paid the sum of \$1.92 million dollars as a full return of its money. [Id.]. Valentine has previously provided the Receiver with bank records confirming the two repayments made to Caesar Funding Group; one in the amount of \$1.2 million dollars and the second in the amount of \$695,000. [Id.]. Exhibit "3" to the Supplemental Valentine Declaration In Support of First Emergency Distribution of Funds is a copy of Caesar Funding Group's letter dated November 9, 1998 wherein Messrs. Salankey and Richardson acknowledge the full satisfaction of Caesar Funding Group. [Id.].

IV.

The Receiver's Motion to Disallow Valentine's Claims Does Not Meet the Required Burden of Proof and Does Not Rebut Applicable Presumptions

The monies invested by Valentine from accounts of his wholly-owned entities are presumed as a matter of law to be owned thereby. *Farmer's Loan & Trust* (supra). There is no aggregation of any third person's or entities' funds therein. (Supra). Therefore, the Receiver's "suspicion" and bare argument that Valentine's claims are "conclusory" are without foundation, evidence or basis in fact. Accordingly, the Receiver has not met his burden on his Motion herein.

In essence, the Receiver asks this Court to disregard all of Valentine's sworn declarations and documentary evidence supporting his entitlement to monies transferred from his accounts without offering any evidence or law supporting such request. The Receiver's argument ignores his obligation as the moving party to establish a right to the relief he seeks. It also presupposes that Valentine must go beyond his burden of meeting the Receiver's evidence with evidence supporting his ownership of the monies. By proffering only his "suspicion" of the aggregation of funds in support of his Motion to Disallow, the Receiver asks this Court to impose upon Valentine the burden of proving a negative. The law does not support such requirement:

In *Colorado Coal & Iron Co. v. U. S.*, the court declared:

'So, where the negative allegation involves a charge of criminal neglect of duty, whether official or otherwise; or fraud; or the wrongful violation of actual lawful possession of property, *-the party making the allegation must prove it*; for in these cases the presumption of law, which is always in favor of innocence and quiet possession, is in favor of the party charged.' *Colorado Coal & Iron Co. v. U. S.* 123 U. S. 307 at 317; citing 1 Greenl. Ev. 80, emphasis added.

V.

Application of the Unclean Hands Doctrine Is Not Warranted In This Matter

The Court opined in its Order dated May 25, 2005 that Valentine's Minnesota convictions "were perpetrated during the same time period that Mr. Valentine avers he legitimately obtained the funds claimed by him in this case." [see, Court Order dated May 25, 2005 at page 3]. This statement is incorrect. Rather, Valentine's dealings with those persons involved in the Minnesota action had no relation whatsoever to Valentine's investment losses sustained in the scheme in this matter. [see, Valentine Declaration In Response to Order to Show Cause]. Nor were any monies at issue in the Minnesota action related whatsoever to those of Valentine's lost herein.

[see, Valentine Declaration In Response to Order to Show Cause]. There is a readily apparent distinction between the two; whereas the Minnesota issues involved charges of legal transgressions between January 1, 2001 and November 1, 2002 [see, Valentine Declaration In Response to Order to Show Cause, and Exhibit 1 thereto], the investments and losses sustained by Valentine in this matter occurred some 4-5 years earlier, in 1997-1998. Valentine's investments with Gilliland/Sterling Asset Management all occurred in 1997 and 1998. Those investments involved Gilliland's operation of what was known as a "Bank Roll Program" otherwise known as "High Yield Bank Trading". None of Valentine's investments in this program involved any monies from any partners or third party investors. [see, Valentine Declaration In Response to Order to Show Cause].

Valentine's current detention arises out of a case brought in Minnesota concerning business investments made by third parties between January 3, 2001 and November 1, 2002. [Id.]. Exhibit 1 attached to Valentine's Declaration In Response to Order to Show Cause makes clear the dates of the alleged transgressions involved in the Minnesota action. [Id.]. The business upon which the Minnesota case was based involved investment, including monies from third party investors, in stocks and international mutual funds. [Id.]. None of the Minnesota investors' monies ever went into the Bank Roll Program now subject to this Receivership action. [Id.].

Valentine did not previously discuss the Minnesota legal proceedings with the Receiver or disclose them in any declarations filed with this Court prior to the order to Show Cause because Valentine did not believe that he was under any legal or equitable obligation to do so. [Id.]. The claim forms and procedures set forth by the Receiver and approved by the Court do not request any such information. Nor has Valentine ever been asked in any manner about the

persons, monies or legal proceedings at issue in Minnesota by the Receiver. [Id.]. Valentine does not and still does not believe they are related or relevant to his personal losses for which he is making claims in this Receivership which he sustained some 4-5 years prior to the investments made by the Minnesota investors. [Id.].

In the case of the Gilliland operations, Valentine has himself been a victim and has personally lost several million dollars of his family wealth to Gilliland's scheme. [Id.]. In response, Valentine has made substantial efforts to help with the recovery of monies from Gilliland's scheme. [Id.]. To that end, Valentine was the first to expose Gilliland's scheme by hiring a battery of attorneys from the United States, Bermuda and the Turks & Caicos Islands. [Id.]. Valentine spent over \$100,000 in legal, court and associated fees and expenses in order to bring the Gilliland operatives and crew to justice. [Id.]. Valentine has also assisted in bringing this matter to justice by sending vital documents he had successfully obtained through his efforts to the FBI which shined a light on Gilliland's scheme and played a key role in helping secure the very funds now held by the Receiver in this Receivership for distribution to victims. [Id.].

The doctrine of unclean hands only applies when the claimant's conduct is directly related to the merits of the controversy between the parties. *Texaco Puerto Rico v. Department of Consumer Affairs* 60 F. 3d 867, 880 (1st Cir. 1995), emphasis added.

In other words, "while equity does not demand that its suitors shall have led blameless lives, as to other matters, it does require that they shall have acted fairly and without fraud and deceit as to the controversy in issue." *Precision Manufacturing Co. v. Automobile Maintenance Machine Co* 324 U.S. 806, 814-815 (1945), emphasis added; accord, *Loughran v. Loughran* 292 U.S. 216, 229; accord, *Warner Brothers, Inc. v. Gay Toys, Inc.* 724 F. 2d 327, 334 (2d Cir. 1983)

["The defense of unclean hands applies only with respect to the right in suit."]; accord, *Pierce v. Apple Valley, Inc.* 597 F. Supp. 1480, 1485 (1984) and *New England Patriots Football Club, Inc. v. University of Colorado* 592 F. 2d 1196, 1199 (1st Cir. 1979) ["The conduct alleged to bar the action must relate to the controversy in issue."]; accord, *U.S. v. Hughes Ranch, Inc.* 33 F. Supp. 1157 (D. Neb. 1999) ["Before the 'unclean hands' doctrine can apply, the government's improper conduct must be related to the matter in which it seeks relief"].

Our Supreme Court has long recognized such a distinction when considering the applicability of the unclean hands doctrine as a bar to relief:

"Courts of equity do not make the quality of the suitors the test. They apply the maxim requiring clean hands only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation. They do not close their doors because of plaintiff's misconduct, whatever its character, that has no relation to anything involved in the suit, but only for such violations of conscience as in some measure affect the equitable relations between the parties in respect of something brought before the court for adjudication [citation omitted]. They apply the maxim, not by way of punishment for extraneous transgressions, but upon considerations that make for the advancement of right and justice." *Keystone Driller Co. v. General Excavating Co.* 290 U.S. 240, 245 (1933).

The burden of establishing the propriety of applying the unclean hands doctrine is upon the party asserting; in this case, the Receiver. *Pierce v. Apple Valley, Inc.* (supra) at p. 1485, citing FRCP 8c); Moore's *Federal Practice* ¶8.27(3). The fact of a judgment in Minnesota does not support the imposition of the unclean hands doctrine to bar Valentine's claims in this action because there the requisite nexus does not exist between the two.

IV.

Valentine Is Entitled to Due Process Which Would be Violated If Valentine's Claims Were Disallowed Upon the Receiver's Current Motion

There are many more wire transfers for which Valentine was and continues to be unable to obtain copies of wire transfers of monies sent to Gilliland or one of his entities through which he operated. [see, Valentine Declaration filed herewith]. Part of Valentine's inability to obtain such bank records is due to the passage of time since the transfers occurred in 1997 and 1998 and certain banks through which the wires were sent have purged their records. [Id.].

The other significant reason for Valentine's inability to obtain records for all of his transfers to Gilliland and/or his entities is due to Valentine's detention wherein he is currently detained at a correctional facility and is therefore unable to search for, locate, and produce his old bank records. [Id.]. Based upon the guidelines at the detention facility where he is detained, Valentine expects that he will be eligible for release to a halfway house or home detention as early as January, 2006. Therefore, Valentine respectfully requests that this Court delay any ruling on his claims for monies for which he has not yet been able to access wire transfer or other bank records until Valentine's release so that he may be given the due process of law. This request is not unreasonable given Valentine's current limited access to counsel and the courts and the extremely valuable claims sought to be disallowed by the Receiver.

Respectfully submitted this 14th day of June, 2005
CHRISTOPHER W. STEWARD, A.P.L.C.
3990 Old Town Avenue, Suite 205A
San Diego, CA 92110
(619) 297-8480 (tel)
(619) 297-9569 (fax)

By, 

Christopher W. Steward
California State Bar No. 171188
ATTORNEYS FOR VALENTINE CLAIMANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, 2005 a true and correct copy of the foregoing document was served via U.S. mail postage pre-paid, on:

Michael J. Quilling, Receiver
QUILLING, SELANDER, CUMMISKEY &
LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, TX 75201-4240
fax# (214) 871-2111

William A. Brafford
Assistant United States Attorney
United States Attorney's Office for the
Western District of North Carolina
227 West Trade Street, Suite 1700
Charlotte, NC 28202
fax# (704) 344-6629

Meagan Watkins
Kilpatrick Stockton LLP
3500 One First Union Center
301 South College Street
Charlotte, NC 28202-6001
fax# (704) 338-5125

Rodney E. Alexander
Mayer, Brown, Rowe & Mawe
214 North Tryon Street, Suite 3800
Charlotte, NC 28202
fax# (704) 377-2033



Christopher W. Steward