

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF NORTH CAROLINA
 CHARLOTTE DIVISION

FILED
 CHARLOTTE, N. C.

MAR 17 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.)

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

GEORGE AND DOLORES ROLLAR,)

Plaintiffs,)

C.A. NO. 3:01CV205-McK

v.)

(CASES CONSOLIDATED)

UNITED STATES OF AMERICA, et al.,)

Defendants,)

RICHARD VASQUEZ,)

Intervener.)

**RESPONSE TO ORDER TO SHOW CAUSE BY
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 Response to the Order to Show Cause issued by the Court on February 24, 2005.

By its terms, the Court ordered Valentine to respond to the Order to Show Cause within 20 days of receipt thereof. By signature below, counsel for Valentine hereby affirms and attests that the Order was received by mail on Monday, February 28, 2005. Accordingly, the following memorandum of law as well as the Declaration of Obasi John Valentine are respectfully presented in Response to the Order to Show Cause:

I.

Valentine Objects to the Issuance of the Order to Show Cause

Based upon the Receiver's recent introduction of documents regarding the judgment and sentencing of Valentine in a Minnesota action, this Court has Ordered Valentine to respond within 20 days as to whether Valentine's claims herein should not be denied in their entirety. In essence, the Court has requested by this 20-day summary proceeding that Valentine establish why the Minnesota action should not support the imposition of the equitable doctrine of unclean hands as a bar to any affirmative relief herein. For all of the legal and factual bases set forth in sections II - IV below, Valentine respectfully objects to this matter proceeding by way of the instant Order to Show Cause.

II.

Valentine Requests More Time to Present His Claims and Rebut the Receiver's Defenses

For all of the legal and factual bases set forth in sections III - IV below, as well as based upon the fact that Valentine is currently detained and maintains only limited access to counsel, Valentine respectfully requests a continuance of 180 days within which to adequately conduct discovery and present legal matters to this Court in support of his claims and in rebuttal to the Receiver's motion to disallow Valentine's claims. .

III.

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

Of course, it is “old hat” that a court called upon to do equity should always consider whether the petitioning party has acted in bad faith or with unclean hands. *Texaco Puerto Rico v. Department of Consumer Affairs* 60 F. 3d 867, 880 (1st Cir. 1995). But even though equitable doctrines are renowned for their elasticity, they are not without all limits. 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* (supra) at 880, 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”].

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, filed herewith]. Nor were any monies at issue in the Minnesota action

related whatsoever to those of Valentine's lost herein. [see, Valentine Dec.].

There is in fact a glaring distinction between the two; whereas the Minnesota issues involved charges of legal transgressions between January 1, 2001 and November 1, 2002 [Valentine Dec, Exhibit 1], the investments and losses sustained by Valentine in this matter occurred some 4-5 years earlier, in 1997-1998. 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 8(c); 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. Accordingly, the Receiver has

failed to meet his burden.

IV.

Due Process Would be Violated If Valentine's Claims Were Summarily Heard & Denied Upon This Order to Show Cause

Generally, if government action will deprive an individual of a significant property interest, that individual is entitled to an opportunity to be heard. *Boddie v. Connecticut* 401 U.S. 371, 379 (1971). Summary proceedings are inappropriate when parties would be deprived of a full and fair opportunity to present their claims and defenses. *SEC v. Wencke* 783 F. 2d 829, 837 n. 9 (9th Cir. 1986).

The test for whether investor claims in an equity receivership such as this matter may be determined through summary, as opposed to plenary, proceedings that a claimant be allowed to conduct discovery, take depositions, and file briefs and exhibits to meet the issues in dispute. *SEC v. Universal Financial* 760 F. 2d 1034, 1037 (9th Cir. 1985); accord, *SEC v. Wencke* (supra) at p. 837 n. 9 [“There are compelling reasons to permit the use of summary ... proceedings in such cases, as long as the requirements of *Universal Financial* are satisfied.”].

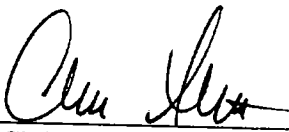
Here, Valentine has been given exactly 20 days to respond to the allegation that his claims should be denied *en toto* based upon unrelated conduct and/or actions. Although Valentine does not agree that the Receiver has met his burden to sustain a finding on this Order to Show Cause that the unclean hands doctrine is applicable, due process requires that he be granted time and procedure in the event this Court is persuaded that the burden has been met.

In such case, Valentine should be given at least 180 days time and be permitted to conduct discovery to identify, investigate, subpoena evidence and depose witnesses deemed

supportive of the claim of unclean hands by the Receiver as well as to identify, locate and procure exculpatory evidence and witnesses to meet such challenge to his equitable standing. Given Valentine's current limited access to counsel and the courts, the gravity of the equitable bar sought by the Receiver and the amount of Valentine's personal property at risk, anything short of this extension of time and procedure would constitute a violation of Due Process.

Respectfully submitted this 16th day of March, 2005

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By, 

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

CERTIFICATE OF SERVICE

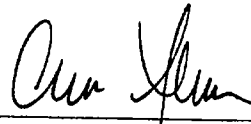
I hereby certify that on the 16th day of March, 2005 a true and correct copy of the foregoing document was served via U.S. mail postage pre-paid, on:

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