

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF NORTH CAROLINA
 CHARLOTTE DIVISION

FILED
 CHARLOTTE, N.C.
 2005 FEB 24 PM 2:04
 UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF N.C.

IN RE: ALL FUNDS ON DEPOSIT IN)
 ACCOUNT NUMBER 000669829075 in)
 THE BANK OF MM APMC BANQUE DE)
 COMMERCE, INC., AT NATIONSBANK,)
 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-K

 C.A. NO. 3:01CV205-K
ORDER

 (CASES CONSOLIDATED)

THIS MATTER is before the Court with consent of the parties for consideration of Claimant Obasi John Valentine’s Motion for Emergency Distribution of Funds (doc. 158).

On October 29, 2001, the Court issued an Order appointing Michael J. Quilling to serve as Receiver in this case. The Receiver’s primary assignment is to identify the sources of deposits into the following four separate accounts controlled by Fred Gilliland: (1) the NationsBank Account; (2) the Bank of Butterfield Account; (3) the Allied Dunbar Account No. 1; and (4) the Allied Dunbar Account No. 2. On February 21, 2002, the Receiver filed his Unopposed Motion to Establish Claim Procedures and to Approve Claim Form (doc.46) which was granted by Order dated February 25, 2002 (doc. 47) . The Order specifically provided that claimants would have 60 days from the date the claim form was sent to them to complete and return the form.

On September 29, 2004, after resolving the vast majority of the claims filed, the Receiver filed a motion seeking to disallow several claims, including those made by Mr. Valentine or his companies (“Valentine Claims”).

At the request of the Receiver, an evidentiary hearing was held on the Motion to Disallow Claims on January 26, 2005. All parties and claimants were notified of the hearing and advised of their right to be present. Present at the hearing were the Receiver, Mike Quilling; Milo Stegner, the Receiver's accountant; Assistant United States Attorney Bill Brafford; Rodney Alexander, counsel for the Rollars; and Meagan Watkins, counsel for Richard Vasquez. Christopher Steward, counsel for claimant Obasi John Valentine, and Christopher Boyden, counsel for claimant ITC, attended by telephone. The parties and claimants were given an opportunity to present evidence and argument regarding the allowance of the claims at issue.

Mr. Valentine, through Mr. Steward, requested that consideration of the Valentine Claims be continued to a later hearing so that Mr. Valentine could provide further information to support his claim. All parties consented to the continuance and the motion was granted (doc. 164). Mr. Valentine's attorney, Mr. Steward, appeared at the hearing by telephone to argue the instant motion for emergency distribution of funds.

At the hearing, the Receiver strongly opposed any emergency distribution to Mr. Valentine on any of the Valentine Claims. The Receiver argued that, unlike other claimants who received emergency distributions, Mr. Valentine has not established his sole ownership of the funds claimed.¹ Second, the Receiver indicated his doubt that the funds were legitimately obtained by Mr. Valentine. In the Receiver's experience, Mr. Valentine appeared to be an "aggregator." An aggregator is a person who aggregates funds from innocent people (or other aggregators) by defrauding them into thinking that he is investing their money legitimately when he is actually running a Ponzi scheme or some other financial scam.

¹Indeed, the Receiver's motion to *disallow* these claims is now pending before this Court.

As the relief sought in this proceeding is equitable, a claimant must have “clean hands” to in order to recover the funds claimed. *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986) (citing *SEC v. Wencke (Wencke II)*, 783 F.2d 829, 837 n. 9 (9th Cir. 1986) (noting that the primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors); *First Empire Bank-New York v. FDIC*, 572 F.2d 1361, 1368 (9th Cir. 1978)(same).

Given the Receiver’s grave doubts about the cleanliness of Mr. Valentine’s hands, and the fact that the Receiver had insufficient time to adequately respond to the motion prior to the hearing², the Court declined to rule on the motion at that time. In fairness to Mr. Valentine, the Court indicated that it would take the matter under advisement and allow Mr. Valentine to supplement the record in further support of the motion. Mr. Valentine then filed a supplemental declaration which avers in conclusory terms that he is the sole owner of the funds and that they were obtained legitimately.

The supplemental declaration fails to mention that, on January 5, 2005, Mr. Valentine was convicted of three counts of fraud in the United States District Court for the District of Minnesota.³ The fraud counts arise from his operation of a financial scam under the guise of Oval Financial Services. Investors lost over \$440,000 to Mr. Valentine’s scam. Mr. Valentine was sentenced to a term of 33 months and has an Order of Forfeiture pending against him in the amount of \$368,578.80. The scams leading to Mr. Valentine’s convictions in Minnesota were perpetrated during the same time period that Mr. Valentine avers he legitimately obtained the funds claimed by him in this case.

²The motion was filed just days prior to the hearing.

³After the hearing, the Receiver discovered this information and filed a Response to the Supplemental Declaration informing the Court of the conviction. The Receiver attached documentation of the conviction and sentence from the court file in Minnesota. Mr. Valentine did not file a Reply or otherwise respond to the Receiver’s pleading.

The Court must assume that certainly Mr. Valentine, and perhaps his counsel, were aware of these facts at the time Mr. Valentine moved this Court for an emergency distribution of over \$100,000. in funds that he claimed are solely and legitimately his. The failure to reveal the conviction and sentence, while simultaneously assuring the Court that the funds claimed here are solely owned by Mr. Valentine and that he was not an aggregator who defrauds investors, is troubling.

As noted, this is a proceeding in equity which bars distributions to claimants with unclean hands. For the foregoing reasons, Mr. Valentine's unclean hands are self-evident. Accordingly, **IT IS HEREBY ORDERED THAT** the Motion for Emergency Distribution of Funds (doc. 158) is therefore **DENIED**.

Further, under these facts and circumstances, it is difficult to conceive of any information that Mr. Valentine could provide to convince this Court not to disallow his claims altogether. This raises the question of whether it is necessary to hold a further hearing on the Receiver's Motion to Disallow Claims as it relates to the Valentine Claims. In an abundance of caution, should Mr. Valentine desire to pursue these claims, **IT IS HEREBY ORDERED THAT** within 20 days of receipt of this Order, Mr. Valentine shall file a brief to show cause, if any, why the issue deserves further consideration. If cause is not shown, the Receiver's Motion to Disallow the Valentine Claims will be granted.

IT IS SO ORDERED, this 24th day of February, 2005.



DAVID C. KEESLER
UNITED STATES MAGISTRATE JUDGE