UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS GROUP, INC.
d/b/a/ PAR FUNDING, et al.,

Defendants.
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PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
RESPONSE TO LISA MCELHONE'S MOTION TO LIFT ASSET FREEZE

I. INTRODUCTION

Based on her most recent filing, it seems Defendant Lisa McElhone has no shame, no respect for this Court's Orders, and no concern for the victims of the massive securities fraud she orchestrated. She is subject to this Court's Final Judgment ordering her to pay $153,224,738.24 in disgorgement and prejudgment interest and $21,850,000 as a civil penalty – all of which will be returned to the victims of her fraud.[1] This Court ordered her to pay that Judgment by December 22, 2022 - which was 302 days ago. And on every one of those 302 days, McElhone has apparently chosen to ignore the Court's Judgment ordering her to pay back the victims of her massive securities fraud.[2] While victims continue to wait to get their hard-earned money back, McElhone comes before this Court to ask that her money be given to her lawyers instead of her victims.

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[1] ECF No. 1451.
[2] ECF No. 1729-2.

And McElhone does this after failing to provide the sworn accounting of her assets this Court ordered her to provide.[3] After thus concealing her assets from the Securities and Exchange Commission for years. After refusing to pay one penny to the victims other agreeing to the turnover of personal property the Commission's collections unit identified within the receivership assets. After living for free in a mansion paid for by the investors through the receivership which paid her mortgage while failing to collect rent from McElhone. After taking more than $100 million in investor funds from the victims.[4] And while currently living in a $ 9,000-per-month penthouse in Philadelphia.[5]

McElhone has utterly failed to meet her burden for lifting the asset freeze and essentially seeking a modification or abeyance of the Final Judgment against her to allow her to pay her lawyers rather than comply with the Final Judgment. The Court should deny the Motion, just as the Court has denied McElhone's prior motion to lift the asset freeze.[6]

II. THE COURT SHOULD DENY THE MOTION TO LIFT THE ASSET FREEZE

A. Legal Standard

The Eleventh Circuit has determined that a district court may exercise its full range of equitable powers, including an asset freeze, to preserve sufficient funds for the payment of a disgorgement award. *FTC v. United States Oil & Gas Corp*., 748 F.2d 1431, 1433-34 (11th Cir. 1984); *see also Levi Strauss & Co. v. Sunrise Int'l Trading Co*., 51 F.3d 982, 987 (11th Cir. 1995). The purpose of such a freeze order is to ensure that "any funds that may become due can be collected. The order functions like an attachment." *S.E.C. v. Unifund SA*L, 910 F.2d 1028, 1041 (2d Cir.1990); *see also*

[3] ECF No. 42.
[4] ECF No. 1.
[5] Exhibit 1.
[6] ECF No. 1566.

Infinity Grp. Co., 212 F.3d at 197 ("A freeze of assets is designed to preserve the status quo by preventing the dissipation and diversion of assets.") (internal citation omitted).

Where, as here, the Defendant consented to the asset freeze [ECF Nos. 221 & 230], the standards for the modification of consent decrees govern. The Eleventh Circuit has determined that the district court may modify a consent decree if the movant shows that: (1) there has been "a significant change either in factual conditions or in law[;]" and (2) "the proposed modification is suitably tailored to the changed circumstances." *Sierra Club v. Meiburg*, 296 F.3d 1021, 1033 (11th Cir. 2002) (quoting *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384, 391 (1992)).

B. McElhone Does Not Meet His Burden For Lifting the Asset Freeze

1. McElhone's Arguments

McElhone does not address these factors, and therefore the Court should deny his Motion. Nor could she meet these factors even if she had argued the correct standard. McElhone asks this Court to release the Haverford home to her, even though this Court has ruled on that property – repeatedly – and it has been turned over to the Receiver for liquidation [Orders at ECF Nos. 1486, 1488, 1503, 1518]. The instant Motion is yet another Motion seeking the same relief this Court has already denied. Despite this Court repeatedly advising McElhone not to seek relief the Court has already denied in an effort to relitigate that which has already been litigated.

McElhone seeks $3 million in cash from the Receivership, which holds exclusively investor funds and provides no basis for her claim to these monies other than she wants them to live and pay lawyers. She is essentially asking this Court to have the investors – McElhone's victims – support her and pay her lawyers. And she provides no legal support for this bold request. Furthermore, the victims have already paid for McElhone's housing at the Haverford home during this case, because rent was not collected from her. *See* ECF No. 1517. McElhone is essentially

seeking access to more of her ill-gotten gains so she can continue to live off the investors just as she did during the years of the securities fraud and during the Receivership when the Receiver paid McElhone's mortgage and she lived for free. The money belongs to the investors, the Court has already ruled, repeatedly, that the asset freeze remains in effect, and the Final Judgment against McElhone remains in effect against McElhone and unpaid. There is absolutely no legal basis whatsoever to release money to McElhone to pay her lawyers under these circumstances. And indeed McElhone provides none in her Motion.

McElhone argues that since the Receivership entities have not yet entered Consents to Judgments, they will never do so – despite knowing through the Commission's repeated filings on that issue that the Receivership entities' Judgments will be addressed at the conclusion of the Receivership. This Court explicitly acknowledged this when closing this case for administrative purposes [ECF No. 1453].

McElhone claims she should get a cut of the investors' money in the Receivership because according to McElhone, there is more than enough to pay any Judgment that the Court might enter against the Corporate Defendants and the investors don't need all that money anyway. This argument is absurd. It is unsupported by the law, the facts, any financial or disgorgement analysis of the Corporate Defendants, or any evidence. Moreover, McElhone bases this argument on her assessment of MCA Receivables and accounts receivables of CBSG which total more than $200 million. As has been well-established, and repeatedly, in this case, those are amounts that have not been collected. They are essentially losses on money CBSG advanced. And the Receivership is closing and those funds have yet to be recovered. As the Commission has explained throughout this case, money owed is not money in the bank. Judgments cannot be paid, and victims cannot be

repaid with IOU's or phantom money. These arguments are the same arguments McElhone has raised – and that this Court has rejected – for more than three years. And yet she raises them again.

Finally, McElhone argues she has a due process interest in challenging any Motion for entry of Consent Judgments against the Corporate Defendants in this case. She provides no support for that argument. But regardless, the Commission has not filed that Motion. When the Commission files that Motion, the Rules will apply just as they do with any other Motion and the Court will rule. That Motion has not been filed, and therefore any argument about it is premature and irrelevant. And has no bearing whatsoever on the Final Judgment on which McElhone is now 302 days in default.

2. The Facts Under the Standard for Lifting an Asset Freeze

McElhone presents no facts showing "a significant change either in factual conditions or in law" or "the proposed modification is suitably tailored to the changed circumstances" – both of which she must prove in seeking a lift of the asset freeze. *Sierra Club*, 296 F.3d at 1033. In fact, the only change in factual conditions is that McElhone has admitted in her Motion that she has assets she has not used to pay the Final Judgment against her. Accordingly, as set forth in the Commission's Contempt Motion filed on this same date, McElhone is in contempt of the Final Judgment against her.

III. CONCLUSION

The Court should deny the Motion for the reasons set forth herein.

OCTOBER 20, 2023

Respectfully submitted,
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