

**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,

**SECURITIES AND EXCHANGE COMMISSION’S REPLY TO LISA
MCELHONE’S RESPONSE TO THE COURT’S ORDER TO SHOW
CAUSE WHY SHE SHOULD NOT BE HELD IN CIVIL CONTEMPT**

Plaintiff Securities and Exchange Commission (the “SEC” or the “Commission”) respectfully submits this reply to Defendant Lisa McElhone’s (“McElhone”) response to the Court’s October 24, 2023 Order to Show Cause why she should not be held in civil contempt for violating the November 22, 2022 Amended Final Judgment (“Amended Judgment”).

BACKGROUND

This Court ordered McElhone to disgorge her ill-gotten gains and pay over \$150 million no later than December 22, 2022—almost one year ago. In her Response, McElhone does not dispute that she owes over \$150 million towards the disgorgement order or that funds exist that could be used to pay

the Amended Judgment.¹ Rather, she claims she cannot pay, because the accounts at issue, the location of which she refuses to provide to the SEC, are frozen. As McElhone points out, however, she previously entered a stipulation with the Commission to release funds from the asset freeze to be used to satisfy the Amended Judgment.² She would prefer that the funds at issue here be used to pay her attorneys, rather than the Court's Amended Judgment. Considering her failure to make all reasonable efforts to satisfy the Amended Judgment, McElhone's conduct warrants an Order holding her in Contempt until these funds are turned over to satisfy the Court's Amended Judgment against her. Moreover, McElhone has not provided any documents in response to the Court's Order to Show Cause of her inability to pay and therefore she should be ordered to provide a detailed accounting of her assets documenting her self-professed inability to pay the Amended Judgment.

ARGUMENT

The Court should hold McElhone in Contempt

On October 24, 2023, the Court ordered Defendant Lisa McElhone to show cause why she should not be held in civil contempt for violating the Amended Judgment.³ In the civil contempt context as discussed in the SEC's

¹ Dkt. No. 1752 at 5 ("Response").

² The only credit towards the Amended Judgment was pursuant to the Court's Order directing turnover and credit of certain assets. *See* Dkt. No. 1525.

³ Dkt. No. 1733.

moving papers, “[a] party seeking civil contempt bears the initial burden of proving by clear and convincing evidence that the alleged contemnor has violated an outstanding court order.”⁴

Here, McElhone’s does not dispute that the Court’s Amended Judgment ordered her to disgorge \$153,224,738.24 (including prejudgment interest) and that she has not satisfied the Amended Judgment.⁵ As a result, McElhone must prove that she made every reasonable effort to comply with the Court’s disgorgement order and that she is unable to make any payment towards the Amended Judgment beyond that which she stipulated to in March 2023 and which leaves a balance due in excess of \$150 million still outstanding.⁶

McElhone does not provide any evidence to demonstrate that she has an inability to pay the Amended Judgment. Nor does she explain why she has not attempted to use the assets identified in the SEC’s moving papers to pay the Amended Judgment.

A. McElhone fails to demonstrate her inability to comply.

To succeed on the inability to pay defense to contempt, McElhone “must also do more than merely assert that [s]he is unable to pay and that [s]he has made all reasonable efforts to do so”, she must also “introduce some

⁴ *CFTC v. Wellington Precious Metals, Inc.*, 950 F.3d 1525, 1529 (11th Cir. 1992).

⁵ Response at 7.

⁶ Dkt. No. 1525. See e.g., *Chicago Truck Drivers v. Brotherhood Labor Leasing*, 207 F.3d 500, 505-506 (8th Cir. 2000).

evidence in support of [her] claim.”⁷ McElhone does not even begin to meet her burden of showing that she made “in good faith all reasonable efforts to comply” with the Judgment.⁸ To meet that burden, McElhone’s response had to show “categorically and in detail” why she is unable to comply with the disgorgement ordered by the Court.⁹ Instead of providing specific evidence justifying her failure to pay disgorgement, McElhone only indicates—without any documentary support—that she obviously cannot pay the judgment because she moved to release funds to pay her attorneys and that the amount at issue will not pay the post-judgment interest for a month.¹⁰

McElhone’s argument is absurd. The fact that the funds identified will not pay a significant portion of the Amended Judgment does not mean that she should keep them and use them as she wishes; her legal obligation is to pay what she can.¹¹ Indeed, she is refusing to pay the Court’s Amended Judgment despite the self-professed ability to pay at least a portion of it.

Although McElhone claims that she is not able to access these funds, that claim is belied by the facts in this matter. On March 8, 2023, the parties

⁷ *United States v. Hayes*, 722 F.2d 723, 725 (11th Cir. 1984).

⁸ *Wellington Precious Metals, Inc.*, 950 F.2d at 1529.

⁹ *Chicago Truck Drivers*, 207 F.3d at 506.

¹⁰ *See* Response at 12.

¹¹ *Piambino v. Bestline Products, Inc.*, 645 F.Supp. 1210, 1214 (S.D.Fla. 1986) (“a person subject to court order must comply to the fullest extent possible, regardless of whether such efforts result in compliance in whole or in part”).

stipulated that two assets held by the Receivership Estate that belonged to McElhone and Joseph LaForte should “be retained by the Receiver and credited towards the disgorgement portion of the Amended Judgment.”¹² Now, rather than seek to use the frozen funds at issue to partially satisfy the Amended Judgment, she seeks to use them for attorneys’ fees. Nonetheless, her self-serving argument that she needs to use these funds for attorneys’ fees is made with no evidence to support it. McElhone has made no showing that these frozen funds are her only asset and she has not provided any financial information to show her inability to pay. Courts consistently hold that conclusory and self-serving assertions—such as McElhone’s—are insufficient to justify the failure to make disgorgement payments.¹³

McElhone also argues for the first time that she need not comply with the Amended Judgment entered against her individually because the Receiver has assets that should be credited to her obligation to pay thereunder.¹⁴ She relies on the recent Second Circuit decision, *SEC v. Govil*, to argue that she should receive credit for what she has turned over to the Receiver.¹⁵ As

¹² Dkt. No. 1524-1.

¹³ See e.g., *Huber v. Marine Midland Bank*, 51 F.3d 5, 10 (2d Cir. 1995) (“Conclusory statements are inadequate to carry this burden.”); *SEC v. Princeton Econ. Int’l Ltd.*, 152 F. Supp. 2d 456, 460 (S.D.N.Y. 2001). See also *Hayes*, 722 F.2d at 725 (“Thus, unless a respondent introduces some evidence to suggest that he has made all reasonable efforts to comply, his claimed inability to produce will not rebut the prima facie showing of non-compliance.”)

¹⁴ Response at 11.

¹⁵ No. 22-1658, 2023 WL 7137291 (2d Cir. Oct. 31, 2023).

mentioned above, the SEC previously agreed to credit McElhone's disgorgement obligation with the value of her individual assets held in the Receivership Estate.¹⁶

If that is her position, then she should specifically state exactly which additional CBSG recoveries made by the Receiver should be attributed toward her individual obligation to pay and request that the amount be offset. This argument does not, however, provide her with a defense to her failure to comply with the Court's Amended Judgment against her. Indeed, assuming *arguendo* that she is entitled to an offset for the Receiver's recoveries related to CBSG (which currently total approximately \$70 million), her obligation to pay is over \$150 million. Thus, she would still owe over \$80 million pursuant to the Court's disgorgement order.¹⁷

B. McElhone is in Contempt.

McElhone is in contempt of the Amended Judgment unless she pays as much as she can, even assuming she cannot pay the entire disgorgement amount.¹⁸ McElhone raised no credible arguments to show that she has met her burden to show "categorically and in detail" why she is unable to comply

¹⁶ See Dkt. No. 1525.

¹⁷ McElhone's argument regarding an offset for the Receiver's recoveries has not been fully explained in her Response and thus the Commission is not in a position to agree or disagree that she is eligible for an offset for all of the Receiver's recoveries in this matter.

¹⁸ *SEC v. Musella*, 818 F. Supp. 600, 602 (S.D.N.Y. 1993).

with the Amended Judgment.¹⁹ There can be no doubt that McElhone is in civil contempt of the Court's Order of Amended Final Judgment dated November 22, 2022, because it was a valid order, McElhone had knowledge of the order, and disobeyed it. Because McElhone's response fails to establish that she can meet her burden of demonstrating an inability to make disgorgement payments, the Commission requests that the Court find McElhone in civil contempt.

To remedy her contempt, the Commission requests that the Court order that the funds at issue be turned over to the Receiver to partially satisfy the Amended Judgment entered against McElhone. The SEC further respectfully requests the Court set a deadline for McElhone to submit a detailed accounting.²⁰

CONCLUSION

For the reasons set forth above and in the Commission's Motion for Order to Show Cause, the SEC again respectfully urges this Court to grant its Motion for an order holding Lisa McElhone in civil contempt for failure to

¹⁹ *United States v. Rylander*, 460 U.S. 752, 755 (1983).

²⁰ *SEC v. Bronson*, 602 F. Supp. 3d 599, 604 (S.D.N.Y. 2022), *aff'd sub nom. United States Sec. & Exch. Comm'n v. Bronson*, 2022 WL 5237474 (2d Cir. Oct. 6, 2022) ("Bronson must produce all financial records and other documents requested by the SEC—including records and documents for Dawn Bronson and V2IP—no later than two weeks from entry of this Order, along with a full accounting of all assets and income."); *SEC v. Showalter*, 227 F.Supp.2d 110, 122 (D.D.C.2002) (ordering accounting).

pay the disgorgement, prejudgment, and post judgment interest required by this Court's November 22, 2022 Amended Judgment and require her to submit a detailed accounting. The Commission further requests that the Court grant such other and further relief as this Court deems just and proper.

Dated: November 22, 2023

Washington, D.C.

Respectfully submitted,

s/MICHAEL J. ROESSNER

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