

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Civil Action No: 09-C-506

WEALTH MANAGEMENT LLC;
JAMES PUTMAN; and SIMONE FEVOLA,

Defendants, and

WML GRYPHON FUND LLC;
WML WATCH STONE PARTNERS, L.P.; WML
PANTERA PARTNERS, L.P.; WML PALISADE
PARTNERS, L.P.; WML L3, LLC; and WML
QUETZAL PARTNERS, L.P.

Relief Defendants.

RECEIVER'S BRIEF IN SUPPORT OF MOTION TO COMPEL DISCOVERY

Faye B. Feinstein (the "Receiver"), as court-appointed receiver for Wealth Management LLC ("Wealth Management"), WML Gryphon Fund LLC ("Gryphon"), WML Watch Stone Partners, L.P. ("Watch Stone"), WML Pantera Partners, L.P. ("Pantera"), WML Palisade Partners, L.P. ("Palisade"), WML L3 LLC, WML Quetzal Partners, L.P. (collectively, the "WM Funds"), and Employee Services of Appleton, Inc., is moving for an order compelling discovery from Wood, Hat & Silver, L.L.C. ("WH&S") and Joseph Aaron, the general partner and managing member of Brown Investment Fund L.P. ("Brown") and Baetis Investment Fund L.P. ("Baetis"), respectively, (1) because she requires discovery from WH&S in order to fulfill her duties under the Order appointing her and (2) because as a limited partner in Brown and Baetis she is entitled under the limited partnership agreements to an accounting and access to financial records of the partnership which operates these Funds.

FACTS

Baetis and Brown are limited partnerships formed in Delaware. WH&S is the General Partner for Baetis and Brown and Mr. Aaron is the managing member of the General Partner. (See Exhibits A and B). Baetis and Brown sold limited partnerships to four Wealth Management limited partners, Gryphon, Watch Stone, Pallisade and Pantera. In turn, Wealth Management solicited funds from investors to purchase interests in these four limited partnerships ("the Wealth Management Limited Partnerships").

Baetis and Brown, at the direction of WH&S, invested in life insurance premium financing investments, which involved loaning initial premiums to elderly insureds who assigned their interests in their life insurance policies to Baetis or Brown. The Wealth Management Limited Partners invested at least \$63,400,000 in Baetis and Brown, which were used to pay these insurance policy premiums. The insureds executed non-recourse notes promising to repay the borrowed premium payments plus interest (usually 9%) from the proceeds of the sale of the assigned insurance policy to buyers on a secondary market following the two-year period of contestability. The Wealth Management Limited Partnerships were to have enjoyed the profits from these sales and repay the borrowed premiums plus interest to its limited partners. Wealth Management marketed these investments as fixed income investments to its limited partners.

During approximately 2005 through 2008, Joe Aaron, James Putman and Simone Fevola, Wealth Management's principals, accepted "commissions" from the life insurance agents who originated the life insurance policies. The Securities and Exchange Commission (the "SEC") has determined that those commissions were not properly disclosed by Messrs. Aaron, Putman and Fevola to the Wealth Management Limited Partnerships or the investors who funded them. As a result of the information uncovered by the SEC during its investigation, the SEC successfully moved for a preliminary injunction which prohibited further violations of the securities laws by

Wealth Management, Putman and Fevola. In addition, the SEC successfully moved for the appointment of a Receiver to take over the liquidation of Wealth Management and its Limited Partnerships. (Case No. 1:09-cv-00506, Docket Entries 8 and 14).

Pursuant to the First Modified Order appointing her, the Receiver was charged with taking all necessary steps to secure the WM Funds', and taking such action necessary to preserve, take control, and prevent the dissipation, concealment or disposition of any assets belonging to the WM Funds. (*Id.* at Docket Entry 14) To that end, the Receiver has subpoenaed the following documents from WH&S and Mr. Aaron:

Production Requests:

- All documents that reflect or relate to loans made to insureds for the purchase of life insurance using funds of Baetis or Brown including, but not limited to, collateral assignments, policy illustrations, promissory notes, financing agreements, medical releases, and life insurance policies.
- All financial records of Wood, Hat & Silver from 2002 to the present
 - 1) Reflecting monies deposited in Baetis or Brown either as investments or loans; and/or
 - 2) Reflecting or relating to monies withdrawn from Baetis or Brown either as redemptions, loans, payments to vendors or suppliers, or as wages to employees, agents or consultants.
- All communications among and between Wood, Hat & Silver, Joseph Aaron, agents, insureds, trustees, insurance agencies, insurance companies, Tom Riek, Beau Gaynor, James Putman, Simone Fevola, or employees or agents of Rangetree or other aggregators.

(Exhibit C). WH&S refused to produce the documents requested and consultation between Receiver's counsel and the attorney for WH&S has failed to reach an agreement on the production of these documents.

Counsel for the Receiver deposed Mr. Aaron on July 28, 2010, and Mr. Aaron testified that the commissions he received were deposited into Baetis and Brown. (Exhibit D, Aaron Tr.,

137:7 - 138:18). However, Mr. Aaron stated that he did not know how all of the commissions, or any related distributions, were recorded. (*Id.*, 138:19 - 139:19). On behalf of the Limited Partners of the Brown and Baetis Funds, the Receiver demanded an accounting and access to the books and records of those Funds, pursuant to express terms in the Brown Limited Partnership Agreement.. Still, WH&S has refused to produce the documents requested.

ARGUMENT

I. The Requested Discovery Is Necessary So That the Receiver May Fulfill Her Duties Under the First Modified Order Appointing the Receiver.

This Court in its First Modified Order Appointing the Receiver instructed her to “engage in an independent inquiry of the WM Funds’ finances and operations, including the identification and location of all assets held or under management”, and to prepare an independent accounting of the WM Funds' assets. Docket Entry 14, ¶ I. Additionally, the Receiver was charged with taking control of the WM Funds' assets, wherever situated (*id.* at II), and taking such action as necessary to prevent the concealment of the WM Funds' assets. *Id.* at II C. Further, the Receiver was charged with tracing the flow of funds between Wealth Management and the WM Funds and all clients (*id.* at III B), and for each of the WM Funds, identifying and determining the location of the WM Funds' assets, and the historical sources and uses of the WM Funds' assets. *Id.* at III D. Finally, the Court ordered that other funds in similar situations as Baetis, Brown and their general partner provide access to their assets, books, or records within their possession that are held for the benefit of the WM Funds' clients or investors (*Id.* at IV A), and that all such business entities that have possession, custody, or control over assets, funds or accounts for the benefit of the WM Funds "cooperate expeditiously" with the Receiver so that she may fulfill her duties under the Order.

Individually and collectively, these provisions require that WH&S produce the requested discovery. This authority provided to the Receiver requires WH&S and Mr. Aaron to produce the financial records of Baetis and Brown so that at a minimum the Receiver can confirm that all of the monies earned by these funds are available to the WM Limited Partnerships and ultimately to their investors. The commissions received by Mr. Aaron were "earned" on behalf of the limited partners of Baetis and Brown, and the Receiver is obligated by this Court's order to confirm that they are paid to the WM Limited Partnerships and ultimately to the investors who funded Baetis and Brown. The refusal of WH&S and Mr. Aaron to provide any financial records other than audited financial statements is unreasonable on its face and is in direct violation of the Receiver's subpoena authority as granted to the Receiver by this Court's Order an applicable law. As representing the only limited partners Baetis, and all but one limited partner in Brown, the Receiver is entitled to review all of the financial records of Baetis and Brown and its general partner.

II. As Limited Partners in Baetis and Brown, the WM Limited Partnerships Are Also Entitled to a Full Accounting.

In addition to the authority of this Court's Order, the Receiver, standing in the shoes of the WM Limited Partnerships, the limited partners of Baetis and Brown, is entitled to inspect and review the financial records of Baetis and Brown as well as those of their general partner.

Article XII of Brown's Second Amended and Restated Agreement of Limited Partnership dated September of 2006 provides that any limited partner may inspect the books and records of the partnership. *See* Article XII, Section 12.1 (Exhibit B, p. 16.) Representing the only limited partners of Baetis, and all but one limited partners in Brown, the Receiver has a clear right to inspect the "information regarding the status of the business and financial condition of the Fund. . . ." Article XII, Section 12.2.2.

While WH&S has provided audited financial statements for some of the years in which Baetis and Brown operated, these statements do not disclose the details of the monies entering these Funds or concerning the expenses and other monies leaving Baetis and Brown. The flat out refusal to disclose even the basic financial records of these funds and their general partner can only suggest that the general partner and managing member must have something to hide. There can be no legitimate reasons why WH&S would not make the financial records and information available to the Receiver representing the overwhelming majority of limited partners to these partnerships.

Dated this 12th day of November, 2010.

MICHAEL H. SCHAALMAN
JANE E. APPLEBY

s/ Jane E. Appleby

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