

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SIMPLE HEALTH PLANS LLC, et al.,

Defendants.

Case No.: 18-cv-62593-DPG

**DEFENDANT STEVEN DORFMAN'S RESPONSE IN
OPPOSITION TO RECEIVER'S MOTION FOR
AUTHORITY TO LIQUIDATE UBS BROKERAGE ACCOUNTS**

Defendant, Steve Dorfman ("**Dorfman**"), through undersigned counsel, files this response in opposition to the *Motion for Authorization to Liquidate Health Benefits One, LLC's UBS Bank USA Brokerage Accounts and Motion for Authorization to Pay and Close Health Benefit One, LLC's Secured Credit Line with UBS* (the "**Motion**") [DE 179] filed by the Receiver. In support of this response, Mr. Dorfman states:

Prior to entry of the *ex parte* temporary restraining order [DE 15], Defendant Health Benefits One ("**HBO**") opened two brokerage accounts with UBS (collectively, the "**Brokerage Accounts**"). Both Brokerage Accounts were pledged to secure HBO's line of credit with UBS (the "**Line of Credit**").

As of the date of the Motion, the Brokerage Accounts, invested almost entirely in blue chip stocks, had a combined value of almost \$5.07 million and the debt on the Line of Credit totaled approximately \$2.96 million. *See* Motion, ¶ 3. Contrary to the Receiver's assertion that there is no equity in the Brokerage Accounts (*see* Motion, ¶4), there is approximately \$2.1 million of equity in the Brokerage Accounts. Furthermore, in 2019 alone, the Brokerage Accounts' value

increased by approximately \$795,000 while the debt on the Line of Credit increased by less than \$73,000. *See* Motion Exhibit A, p. 2, 19, and 31. Accordingly, HBO's passive investments in the Brokerage Accounts netted HBO over \$720,000 this year alone.

Despite the massive increase in the Brokerage Accounts' value, the Receiver seeks to liquidate them. The Motion must be denied for at least three independent reasons: (i) the basis for the Receivership and the Receiver's authority are currently being examined by the Eleventh Circuit Court of Appeals; and (ii) it is premature for the Receiver to liquidate the Brokerage Accounts; and, even if the Court determine.

As Mr. Dorfman discussed extensively in his *Motion to Strike Temporary Restraining Order* [DE 79], *Memorandum in Opposition to a Preliminary Injunction* [DE 104], *Motion to Dismiss* [DE 134], and at virtually every hearing in this proceeding: (i) the FTC is not authorized to obtain legal monetary relief, including disgorgement and restitution, in this proceeding; and (ii) the FTC may not obtain an asset freeze or receivership to restrain the Defendants' assets for the benefit of the unavailable penal relief it seeks.¹ These issues are currently being considered by the Eleventh Circuit Court of Appeals.² In other words, the very foundation of the Receivership and Receiver's authority to take any action in this proceeding is in question. If the appellate court grants Mr. Dorfman's appeal, it will effectively determine that the Receivership and asset freeze in this case should not have been entered. Accordingly, the Receiver should not be authorized to liquidate the Brokerage Accounts prior to final resolution of the appeal.

It is also premature for the Receiver to liquidate the Brokerage Accounts because, although a Preliminary Injunction [DE 139] has been entered, Mr. Dorfman and his co-Defendants have not

¹ For the sake of brevity and out of respect for the Court, Mr. Dorfman refers the Court and all parties to the identified pleadings for a comprehensive discussion on these points.

² *See FTC v. Dorfman*, Case No. 19-11932, 11th Cir.

been found liable by a jury. Prior to entry of a final judgment against the Defendants and favorable ruling for the FTC in the appeal, the Receiver should merely act to preserve the status quo. Otherwise, should Mr. Dorfman prevail at trial or in the appeal challenging the Preliminary Injunction and associated asset freeze and Receivership, the Receiver's actions to liquidate the Brokerage Accounts and any further assets will unjustifiably permanently prejudice Mr. Dorfman and his co-Defendants. Specifically, if authorized, the Receiver's and FTC's proposed actions will deprive Mr. Dorfman and his co-Defendants of the assets (including the Brokerage Accounts) and infrastructure they may need to restart their operations once judgement is entered in their favor in this proceeding and/or the appellate courts determine that the Receivership, asset freeze, and injunction in this proceeding are inappropriate.

Finally, there are more business-savvy strategies of maximizing the value of the Brokerage Accounts while minimizing volatility than liquidation. For instance, instead of liquidating the Brokerage Accounts, the Receiver could reallocate the investments to a portfolio of AAA-rated bonds. This would ensure that the value of the Brokerage Accounts continues to grow while minimizing the risk of volatility in the value of the accounts. Accordingly, to the extent that the Court determines that it is appropriate for the Receiver to alter the investments in the Brokerage Accounts, the Court should direct the Receiver to reallocate those investments to interest-bearing bonds.

WHEREFORE, Mr. Dorfman respectfully requests an Order of the Court, substantially in the form annexed hereto, denying the Receiver's *Motion for Authorization to Liquidate Health Benefits One, LLC's UBS Bank USA Brokerage Accounts and Motion for Authorization to Pay and Close Health Benefit One, LLC's Secured Credit Line with UBS* and for all further relief the Court deems just and proper.

Dated: July 12, 2019

DLA Piper LLP (US)

/s/ Ryan D. O'Quinn

Ryan D. O'Quinn (FBN 513857)

ryan.oquinn@dlapiper.com

Elan A. Gershoni (FBN 95969)

elan.gershoni@dlapiper.com

200 South Biscayne Boulevard

Suite 2500

Miami, Florida 33131

Telephone: 305.423.8553

Facsimile: 305.675.7885

Counsel for Defendant

Steven Dorfman

CERTIFICATE OF SERVICE

The undersigned certifies that he filed this pleading through the court's electronic filing system and that all parties requesting electronic notice of pleadings have been served with the pleading.

/s/ Ryan D. O'Quinn

Ryan D. O'Quinn