

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 18-cv-62593-GAYLES

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**SIMPLE HEALTH PLANS LLC, et al.,**

Defendants.

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**DEFENDANT STEVEN DORFMAN'S EMERGENCY  
MOTION TO DISSOLVE PRELIMINARY INJUNCTION**

**Local Rule 7.1(d) Statement**

In October 2018, the FTC filed a complaint in this action seeking broad monetary relief, proceeding *solely* under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). On October 31, 2018, the Court entered a temporary restraining order, freezing all of Defendant Steven Dorfman's personal assets and imposing a receivership over his privately-held businesses to preserve those assets in the event of a future judgement for money damages. On May 14, 2019, finding a likelihood of success on the FTC's Section 13(b) claims for monetary relief, the Court entered a preliminary injunction which extended the pre-trial asset freeze and receivership as authorized ancillary relief relying on perceived authority from the Eleventh Circuit Court of Appeals indicating that Section 13 of the FTC Act authorized the FTC to obtain, and the Court to issue, equitable monetary relief.

On April 22, 2021, the Supreme Court, by unanimous opinion in *AMG Capital Management v. FTC*, reversed the Eleventh Circuit and other circuits' decisions authorizing monetary relief under Section 13 of the FTC Act. Accordingly, the FTC's authority to seek "retrospective monetary relief" under Section 13(b) and this Court's authority to grant pre-trial restraint of assets ancillary to such retrospective claims has been conclusively rejected. Therefore, Mr. Dorfman is entitled to a dissolution of the May 14, 2019 preliminary injunction, removing the unconstitutional restraints on his assets.

The preliminary injunction's pretrial restraint of assets (asset freeze and receivership) has prejudiced Mr. Dorfman and each of the corporate co-defendants because it unconstitutionally deprives them of property without due process of law. Each day that the preliminary injunction, receivership, and asset freeze has remained in place has caused irreparable harm to Mr. Dorfman and each of the corporate co-defendants. Mr. Dorfman seeks the relief requested herein on an emergency basis to preserve the remaining value of his improperly restrained property and to allow the corporate defendants in this action a fair and proper defense.

Defendant Steve Dorfman ("**Dorfman**"), through undersigned counsel, pursuant to 15 U.S.C. 53(b), i.e., Section 13(b) of the FTC Act, moves to dissolve the preliminary injunction (the "**Preliminary Injunction**") [DE 139] and states:

On October 29, 2018, plaintiff, the Federal Trade Commission (the "**FTC**"), sued Mr. Dorfman and his corporate co-defendants pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). [DE 1]. Therein, the FTC alleges that the Defendants violated Section 5 of the FTC Act, 15 U.S.C. § 45, by engaging in unfair and deceptive trade practices relating to the marketing, advertising, and sale of health insurance products.

Upon *ex parte* motion filed by FTC, the Court relied on Section 13(b) of the FTC Act to imposed a temporary restraining order that restrained all assets (unlimited in amount) owned or controlled by Mr. Dorfman. The *ex parte* temporary restraining order wrested control of the corporate defendants from Mr. Dorfman, depriving them of the ability to engage independent counsel and raise a defense to the unconstitutional actions of a federal agency.

On May 14, 2019, the Court granted the FTC's motion, issuing the Preliminary Injunction now before this Court. The Court relied solely on Section 13(b) of the FTC Act to enter the Preliminary Injunction. The Preliminary Injunction extended the unquantified pretrial restraint of all of the Defendants' assets.

On June 4, 2019, Mr. Dorfman moved for dissolution of the Preliminary Injunction, asset freeze, and receivership. [DE 157]. Therein, Mr. Dorfman argued, among other things, that Section 13 of the FTC Act did not authorize claims for monetary relief and, accordingly, that the FTC could not state a claim for and the Court could not issue preliminary equitable relief ancillary to such claims. *Id.* Because the corporate defendants remained restricted by the Court's *ex parte* order imposing a receivership, no attorney was engaged to appear in this action on behalf of the corporate defendants to object to and defend of the Federal Government's taking of property without due process of law.

On April 22, 2021, the Supreme Court entered its decision in *AMG Capital Management, LLC v. FTC*, --- S.Ct. ----, 2021 WL 1566607 (2021). A copy of the decision is attached as **Exhibit "A."** Therein, a *unanimous* Supreme Court held, in no uncertain terms that Section 13(b) of the FTC Act "does not grant the Commission authority to obtain equitable monetary relief." *Id.* at \*8.

In *AMG* the Supreme Court completely abrogated the entire legal basis for the Preliminary Injunction, asset freeze, and receivership. Accordingly, those provisional remedies must be immediately dissolved as they are inconsistent with now controlling precedent.

**WHEREFORE**, Mr. Dorfman respectfully requests an Order of the Court, immediately dissolving the Preliminary Injunction, asset freeze, and receivership and for all further relief that the Court deems just and appropriate.

**Local Rule 7.1(a)(3) Certificate**

The undersigned certifies that he has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so.

**Local Rule 7.1(d)(1) Certification**

After reviewing the facts and researching applicable legal principles, I certify that this motion in fact presents a true emergency and requires an immediate ruling because the Court would not be able to provide meaningful relief to a critical, non-routine issue after the expiration of seven days. I understand that an unwarranted certification may lead to sanctions.

Dated: April 22, 2021

**DLA Piper LLP (US)**

/s/ Elan A. Gershoni

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: 305.423.8554

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/ Elan A. Gershoni

Elan A. Gershoni