

FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:05-CV-1328-L (BD)
	§	
MEGAFUND CORPORATION, STANLEY A.	§	ECF
LEITNER, SARDAUKAR HOLDINGS, IBC.,	§	
BRADLEY C. STARK, CIG, LTD., and	§	Referred to U.S. Magistrate Judge
JAMES A. RUMPF, Individually and d/b/a	§	
CILAK INTERNATIONAL,	§	
Defendants,	§	
and	§	
	§	
PAMELA C. STARK,	§	
Relief Defendant.	§	

MOTION FOR SHOW CAUSE ORDER AND BRIEF IN SUPPORT
(JIMMY C. HEARD AND CHRYS TYLER INC.)

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling as the Receiver in this action (“Plaintiff” or “Receiver”), and files this motion for an order requiring Jimmy C. Heard and Chrystler Inc. to appear and show cause why they should not be held in civil contempt for violating this Court’s Amended Order Appointing Temporary Receiver (the “Order Appointing Receiver”). In support of such, the Receiver would respectfully show unto the Court as follows:

I.
INTRODUCTION

This Court’s Order Appointing Receiver expressly requires all persons with actual notice of the Order to promptly surrender to the Receiver all Receivership Assets in their possession. *Order Appointing Receiver* [Dkt. 36] at ¶ 3. Attached to this Motion as Exhibit “A” and incorporated for

all purposes is the Receiver's Declaration, which shows that: (1) Jimmy C. Heard and/or Chrystler Inc. (collectively, "Respondents") contributed \$35,000.00 to Sardaukar; (2) in return, the Respondents received \$142,392.61 of Sardaukar investor funds; (3) the Receiver sent Respondents a demand letter for the difference along with a copy of the Order Appointing Receiver; and (4) the Respondents have failed to surrender those assets to the Receivership Estate. Accordingly, and for reasons explained more fully below, the Respondents ought to appear before this Court and show cause why they should not be held in civil contempt for failing to comply with the Order Appointing Receiver.

II. BACKGROUND FACTS

1. The United States District Court for the Northern District of Texas has appointed Michael J. Quilling as Receiver for the Defendants and Relief Defendant in this case. *Receiver's Declaration*, Exhibit "A" at ¶ 1.

2. On July 19, 2005, this Court issued its Order Appointing Receiver, which expressly requires all persons with actual notice of the Order to promptly surrender to the Receiver all Receivership Assets in their possession:

All persons . . . who receive actual notice of this Amended Order . . . shall promptly deliver to the Receiver all Receivership Assets in the possession or under the control of any one or more of them and shall promptly surrender all Receivership Records.

Order Appointing Receiver [Dkt. 36] at ¶ 3.

3. Bradley C. Stark ("Stark") operated a *Ponzi* scheme and fraudulent investment program through an entity under his direction and control called Sardaukar Holdings, IBC ("Sardaukar"). *Receiver's Declaration*, Exhibit "A" at ¶ 2. Investors sent money to Sardaukar's

account at JPMorgan Chase Bank, N.A. believing that Stark would oversee their investments. *Id.* As Sardaukar received contributions, however, Stark diverted large amounts to support an extravagant lifestyle that personally benefitted himself, his friends, and his family. *Id.*

4. Respondents are among those who benefitted from Stark's *Ponzi* scheme. In January 2005, Respondents sent two transfers to Sardaukar totaling \$35,000.00. *Id.* at ¶ 3. In March 2005, Sardaukar transferred \$35,000.00 to Respondent along with an additional payment of \$107,392.61. *Id.* Receivership Estate records indicate that these payments were made out of investor funds. *Id.* Accordingly, Respondents have no legitimate claim to the \$107,392.61 and must surrender those assets, their proceeds, or equivalent value to the Receivership Estate.

5. Upon information and belief, Respondent Jimmy C. Heard is an individual who resides at 1000 Pine Hill Road, Bainbridge, Georgia 39817. *Id.* at ¶ 4. Mr. Heard is also believed to be the principal agent or officer of Chrystler Inc. *Id.*

6. Upon information and belief, Respondent Chrystler Inc. is a Georgia corporation that lists its registered address for service of process as Chrystler Inc. c/o J. Heard, 1000 Pine Hill Road, Bainbridge, Georgia 39817. *Id.* at ¶ 5.

7. On November 13, 2006, Stark joined the Receiver in sending an e-mail to Respondent Chrystler Inc. and Respondent Jimmy C. Heard's wife requesting their current contact information. *Id.* at ¶ 6. The Respondents replied on November 14, 2006, using the e-mail address heardjch@htn.net. *Id.* True and correct copies of those e-mail strings are attached as Exhibits "B" and "C".

8. On February 1, 2007, the Receiver sent demand letters to both Respondents along with a copy of the Order Appointing Receiver. *Receiver's Declaration*, Exhibit "A" at ¶ 7. True and

correct copies of those letters are attached as Exhibits “D” and “E” and are fully incorporated for all purposes. Numerous notices were left at the Respondents’ address but those letters went unclaimed at the Post Office. *Receiver’s Declaration*, Exhibit “A” at ¶ 7. True and correct copies of the returned envelopes are attached as Exhibits “F” and “G”.

9. On March 2, 2007, the Receiver sent a demand letter and copies of the Order Appointing Receiver to to heardjch@htn.net—the e-mail address that the Respondents previously used in correspondence with the Receiver. *Receiver’s Declaration*, Exhibit “A” at ¶ 8. A true and correct copy of that e-mail is attached as Exhibit “H”. Respondents replied on March 9, 2007, indicating that they had notice of the demand and Order Appointing Receiver. *Receiver’s Declaration*, Exhibit “A” at ¶ 8. A true and correct copy of that e-mail is attached as Exhibit “I”.

10. The Respondents have not yet surrendered the Receivership Estate assets in their possession. *Receiver’s Declaration*, Exhibit “A” at ¶ 9. Furthermore, based on their previous correspondence calling the Receiver “the SOB that stole the funds” and a “fraud, thief and lyre” [sic], it is unlikely that the Respondents will cooperate with further collection efforts. *See E-mails from Respondents*, Nov. 14, 2006, Exhibits “B” and “C”.

11. Accordingly, the Respondents ought to appear and show cause why they should not be held in civil contempt for refusing to surrender Receivership Assets totaling \$107,392.61.

III. ARGUMENTS AND AUTHORITIES

Defiance of a Court order is appropriately redressed by finding the responsible party in contempt of Court. Contempt is simply the disregard for Court authority. *Sigety v. Abrams*, 632 F.2d 969, 976 (2nd Cir. 1980). Federal Courts have the inherent power to achieve orderly and

expeditious disposition of their dockets by imposing reasonable and appropriate sanctions for disobedience. *Natural Gas Pipeline Co. of America v. Energy Gathering, Inc.*, 86 F.3d 464, 465 (5th Cir. 1996). Therefore, a party failing to obey a lawful Court Order may be punished for contempt. *Travelhost, Inc. v. Blandford*, 68 F.3D 958, 961 (5th Cir. 1995).

In a civil contempt proceeding, the party seeking relief must establish that: (1) a Court Order is in effect; (2) the Order requires certain conduct by the respondent; and (3) the respondent has failed to comply with the order. *See American Airlines, Inc. v. Allied Pilots Association*, 228 F.3d 574, 581 (5th Cir. 2000), *cert. denied*, 121 S.Ct. 1190 (2001), *citing Martin v. Trinity Industries, Inc.*, 959 F.2d 45, 47 (5th Cir. 1992). The standard of proof is clear and convincing evidence. *Petroleos Mexicanos v. Crawford Enterprises, Inc.*, 826 F.2d 392, 401 (5th Cir. 1987). However, the conduct need not be willful so long as the respondent actually violated the Court's Order. *Allied Pilots*, 228 F.3d at 581. The Fifth Circuit Court of Appeals has further recognized that contempt proceedings are an appropriate mechanism for aiding a court appointed Receiver in performing his duties. *See Santibanez v. Wier, McMahon & Co.*, 105 F.3d 234, 242 (5th Cir. 1997).

The undisputed facts in this case support a finding for civil contempt. The Order Appointing Receiver directs all parties to promptly surrender Receivership Estate assets. *Order Appointing Receiver* at ¶ 3. The Receiver has made demand upon Respondents to surrender \$107,392.61 of investor funds that they received and has provided Respondents with the Order Appointing Receiver. *See Receiver's Declaration*, Exhibit "A" at ¶¶ 7, 8; *see also* Exhibits "D", "E", and "H". Despite those efforts, the Respondents still refuse to surrender those assets to the Receiver. Accordingly, the Receiver respectfully requests the Court's assistance by issuing an Order that would set a date for Respondents to appear in these proceedings and show cause why they should not be held in civil

contempt. Should this Court enter a finding of civil contempt, the Receiver submits that Respondent Jimmy C. Heard, individually and as the principal for Chrystler Inc., should remain in custody until he has surrendered \$107,392.61 under this Court's Order Appointing Receiver. *See, e.g., Hicks v. Feiock*, 485 U.S. 624, 632 (1988) (imprisonment is an appropriate remedy for civil contempt if it stands until the contemnor performs all affirmative acts required by an order).

**IV.
PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, the Receiver prays as follows: (1) that this Court set a hearing for Respondents to appear and show cause why they should not be held in civil contempt for failing to surrender Receivership Assets according to the Order Appointing Receiver; (2) that, following the show cause hearing, this Court find Respondents in civil contempt; (3) that this Court order Respondent Jimmy C. Heard to be held in custody until \$107,392.61 is surrendered to the Receiver along with the reasonable and necessary attorneys fees incurred through this action; and (4) for such other and further relief, general or special, at law or in equity, to which the Receiver may justly show himself entitled.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
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By: /s/ Brent J. Rodine
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ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

Pursuant to Local Civil Rule 7.1, the Receiver would show unto the Court as follows:

On March 16, 2007, the undersigned made numerous attempts to conduct a telephone conference with the Respondents. As of this filing, however, those phone calls and messages were not returned.

/s/ Brent J. Rodine

CERTIFICATE OF SERVICE

On March 16, 2007, a true and correct copy of this motion was sent by first class mail, with full and proper postage prepaid thereon, to:

Jimmy C. Heard
1000 Pine Hill Road
Bainbridge, Georgia 39817

Chrystler Inc.
c/o J. Heard
1000 Pine Hill Road
Bainbridge, Georgia 39817

/s/ Brent J. Rodine