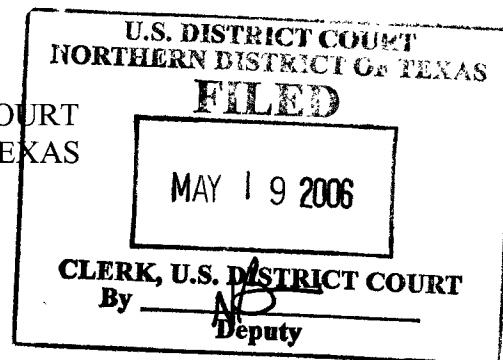


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION, §
§
Plaintiff, §

v. §

Civil Action No. 3:05-CV-1328-L

MEGAFUND CORPORATION, STANLEY A. §
LEITNER, SARDAUKAR HOLDINGS, IBC., §
BRADLEY C. STARK, CIG, LTD., and §
JAMES A. RUMPF, Individually and d/b/a §
CILAK INTERNATIONAL, §

Defendants, §

and §

PAMELA C. STARK, §

Relief Defendant. §

**PLAINTIFF'S MOTION FOR BRADLEY C. STARK, PAMELA C. STARK,
HANS TSCHBAUM, AND MICHAEL TSCHBAUM TO APPEAR AND
SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT
FOR VIOLATING COURT ORDERS AND BRIEF IN SUPPORT**

TO THE HONORABLE JEFF A. KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling, the Receiver appointed in this action ("Receiver"), files this his Motion for Bradley C. Stark, Pamela C. Stark, Hans Tschebaum, and Michael Tschebaum To Appear and Show Cause Why They Should Not Be Held in Contempt for Violating Court Orders and in support of such would respectfully show the Court as follows:

**I.
INTRODUCTION**

This Court has issued two Orders that expressly require Defendants (and those in active

concert or participation with them) to disclose and surrender all Receivership Estate assets and to cease from interfering with the Receiver's duties in any way. Bank records demonstrate that Bradley C. Stark ("Brad Stark") and Pamela C. Stark ("Pam Stark") continue to defy those Orders by: (1) transferring, concealing, and depleting funds belonging to the Receivership Estate; (2) refusing to provide a sworn accounting of their assets; (3) offering perjurious testimony to the Court; and (4) forging documents and submitting them to the Court as financial records. The Starks clearly received assistance in these activities from Hans and Michael Tschebaum. Accordingly, and for the reasons explained more fully below, the Starks and Tschebaums ought to appear in these proceedings and show good cause for disregarding the clear mandate and authority of this Court.

II. BACKGROUND FACTS

Court Orders Relating to the Receivership Estate

1. In July 2005 the Securities and Exchange Commission initiated this civil action against Brad Stark, Pam Stark (collectively, "the Starks"), Sardaukar Holdings, IBC ("Sardaukar"), and others for operating a *Ponzi* scheme under Brad Stark's control. *See Amended Complaint* [Dkt. No. 1]. In particular, investors sent funds to Sardaukar's account at JPMorgan Chase Bank, N.A. with the understanding that Brad Stark would apply them towards various investments. As Sardaukar received investor funds, however, Brad Stark systemically diverted large sums to support an extravagant lifestyle for himself, his friends, and his family. Among those who benefitted from the Sardaukar investment program were Brad Stark's associates, Hans and Michael Tschebaum (collectively, "the Tschebaums").

2. On July 5, 2005, this Court issued its *Order Appointing Temporary Receiver* ("Order Appointing Receiver"), which named Michael J. Quilling as Receiver

for Brad Stark, Pam Stark, Sardaukar, and other related individuals and entities. This Order expressly required the Starks—along with those in active concert or participation with them—to promptly surrender all Receivership Estate assets and records in their possession and refrain from interfering with the Receivership in any way:

All persons, including Defendants and Relief Defendant, and their officers, agents, servants, employees, brokers, facilitators, attorneys, and all persons in active concert or participation with them who receive actual notice of this Amended Order by personal service or otherwise . . . 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.

* * *

All persons, including Defendants and Relief Defendant, and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Amended Order by personal service or otherwise, are enjoined in from any way interfering with the operation of the Receivership or in any way disturbing the Receivership Assets and Receivership Records . . .

Order Appointing Receiver [Dkt. 5] at ¶¶ 3, 5 (emphasis added).

3. On that same day, this Court also issued its *Ex Parte Temporary Restraining Order and Order Freezing Assets and Granting Other Emergency Relief* (“Order Freezing Assets”), which required the Starks to preserve and account for Receivership Estate assets:

Defendants and Relief Defendants shall immediately repatriate all funds and assets obtained, directly or indirectly, from the activities described in the Commission’s Complaint, or from one another, that are now located outside the jurisdiction of this Court. Such funds shall be immediately transferred or paid to the Court-Appointed Temporary Receiver. Furthermore, with respect to any other asset owned by the Defendants that is now located outside the jurisdiction of this Court, including, specifically, any monies,

securities, real property, or other assets, the Defendants shall immediately identify to the Court-Appointed Temporary Receiver the location of such asset, the price paid or consideration given, and the date upon which it was purchased and/or received.

* * *

Defendants and Relief Defendants shall make an interim accounting, under oath, within ten days of the issuance of this Order or three days prior to any hearing on the Commission's application for preliminary injunction and other relief, whichever occurs first, detailing by amount, date, method and location of transfer, payee and payor, purpose of payment or transfer . . . (c) all of their current assets wherever they may be located and by whomever they are being held, and their current liabilities; and (d) all accounts with any financial or brokerage institution maintained for the Defendants or Relief Defendants at any point during the period from June 1, 2004 to the present.

Order Freezing Assets [Dkt. No. 10], Parts VI, VIII (emphasis added).

Transfer of Receivership Estate Assets to Undisclosed Bank Accounts

5. Since his appointment, the Receiver has thoroughly investigated bank accounts of certain individuals who benefitted from Sardaukar's investment scheme. Those records clearly show that the Starks have used the Tschebaums to help transfer, conceal, and deplete Receivership Estate funds in defiance of this Court's Orders. A diagram illustrating these transactions is attached as Exhibit "A" and fully incorporated for all purposes.

6. The Starks opened two accounts at Provident Savings Bank ("Provident Bank") on July 13, 2005—only one week after this Court issued its Order Appointing Receiver and Order Freezing Assets. The first was in Brad Stark's name and the second was held by Pam Stark. Those accounts were clearly funded with assets from the Receivership Estate, laundered through three associates: Michael Tschebaum, Hans Tschebaum, and Derek Smith. The Receiver has sued each of them for their role in these and other fraudulent transfers. *See Michael J. Quilling, Receiver for*

Sardaukar Holdings, IBC and Bradley C. Stark, Plaintiff v. Hans Tschebaum, Michael Tschebaum and Palace Investments, Inc., Defendants, Civil Action No. 3:05-CV-1465 (N.D. Tex.); *Michael J. Quilling, Receiver for Sardaukar Holdings, IBC and Bradley C. Stark, Plaintiff v. Derek Schenk, Individually and d/b/a Halo Film Ventures, Defendant*, Civil Action No. 3:06-CV-0263 (N.D. Tex.).

7. Account records in the Receiver's possession clearly show how Receivership Estate assets were concealed and made their way back to the Stark's accounts at Provident Bank. In the months preceding this lawsuit, Brad Stark wired a total of \$1,002,237.00 from Sardaukar to Palace Investments, Inc. (Palace Investments), an entity owned and controlled by the Tschebaums. *See* Exhibit "A". On July 5, 2005—the very day that the Starks and Sardaukar went into receivership—Stark wired \$100,000.00 of Sardaukar funds to an associate in New York named Derek Smith (a/k/a Derek Schenk). *Id.* Derek Smith forwarded that amount to Palace Investments six days later. *Id.*

8. After the Starks were in receivership and after he knew of the Order Appointing Receiver and Order Freezing Assets, Michael Tschebaum and Palace Investments returned \$103,696.00 to Brad Stark through his account at Provident Bank. *Id.* Brad Stark, in turn, transferred \$13,500.00 of these funds to Pam Stark's account. *Id.*

9. On December 19, 2005, Brad Stark terminated his original account and rolled that balance over into a new one with Provident Bank. *Id.* From there, he sent another \$4,000.00 to Pam Stark. *Id.* The Starks continued to make personal expenditures from these two Provident Bank accounts until the Receiver had them frozen in April 2006.

**Attempts to Obstruct the Receivership Proceedings with
Perjury, Forged Records and False Statements**

10. Brad Stark and the Tschebaums have also attempted to deceive this Court in another action involving Receivership Estate assets by submitting perjury and forged account records to the Court. In *Michael J. Quilling, Receiver for Sardaukar Holdings, IBC and Bradley C. Stark v. Hans Tschebaum, Michael Tschebaum, and Palace Investments, Inc.*, Civil Action No. 3:05-CV-1465 (N.D. Tex.), the Tschebaums offered as exhibits to the Court the sworn declaration of Brad Stark and certain financial records that he purportedly maintained for Sardaukar. Both pieces of evidence, however, have since been exposed as perjurious testimony and a forgery.

11. Brad Stark's Declaration contained statements that directly contradicted Sardaukar's bank records as well as those maintained by Man Financial Corp. ("Man Financial"). In particular, Stark represented that: (1) Sardaukar opened separate accounts at Man Financial for each of its investors; (2) no investor funds were commingled; and (3) no one investor's funds were used to pay returns to another investor. See *Appendix to Defendants' Objection and Response to Motion for Preliminary Injunction* [Dkt. No. 15], Exhibit A-1 at ¶ 5 (Civil Action No. 3:05-CV-1465). When asked to verify Stark's claims, however, Man Financial concluded that individual investor accounts did not exist and that Stark's testimony was untrue. See *Supplemental Appendix to Plaintiff's Reply in Support of the Motion for Preliminary Injunction* [Dkt. No. 17], Exhibit B (Civil Action No. 3:05-CV-1465). Furthermore, Sardaukar's bank records clearly show that investor funds were commingled and used for all distributions to investors.

12. Similarly, the documents Brad Stark offered as Man Financial account records have been exposed as forgeries. As an exhibit to his sworn declaration, Brad Stark offered the Court a series of "Daily Commodity Statements" for an account at ManPro Futures, a division of Man

Financial. *See Appendix to Defendants' Objection and Response to Motion for Preliminary Injunction* [Dkt. No. 15], Exhibit A-1 at ¶ 5 (Civil Action No. 3:05-CV-1465). Once again, Man Financial determined that the account name, account number, and transaction statements were not issued by Man Financial or ManPro Futures. *See Supplemental Appendix to Plaintiff's Reply in Support of the Motion for Preliminary Injunction* [Dkt. No. 17], Exhibit B (Civil Action No. 3:05-CV-1465). The only accounts ever established at Man Financial relating to the Receivership Estate were in Sardaukar's name and it is, therefore, apparent that Brad Stark's exhibit was a forgery and submitted by Stark and the Tschebaums as a fraud upon the Court. *See id.*

13. Finally, Sardaukar investors have informed the Receiver that Brad Stark continues to solicit their help in frustrating these proceedings. Stark assures them that the Sardaukar investment program was legitimate and the Receiver and this Court are solely responsible for holding up payments to investors. He also asks that they not submit claim forms to the Receiver or cooperate with any investigations relating to Sardaukar.

III. ARGUMENTS AND AUTHORITIES

Defiance of a Court order is appropriately redressed by finding the responsible party in contempt of Court. Federal Courts have the inherent power to achieve orderly and expeditious disposition of their dockets by imposing reasonable sanctions for disobedience. *Natural Gas Pipeline Co. v. Energy Gathering, Inc.*, 86 F.3d 464, 465 (5th Cir. 1996). Accordingly, a person who fails 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 simply establish that: (1) a Court Order was in effect; (2) the Order required certain conduct by the

respondent; and (3) the respondent failed to comply with the Order. *See Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 581 (5th Cir. 2000), *cert. denied*, 121 S.Ct. 1190 (2001), *citing Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir. 1992); *Lelsz v. Kavanagh*, 673 F.Supp. 828, 839 (N.D. Tex. 1987). 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 Ass'n*, 228 F.3d at 581.

This Court has inherent authority to punish parties who refuse to surrender Receivership Estate assets according to a Court Order. For example, in *SEC v. AMX Int'l, Inc.*, 7 F.3d 71, 72-73 (5th Cir. 1993), the Fifth Circuit agreed that contempt was an appropriate remedy to enforce disgorgement orders in an SEC proceeding. It reasoned that an order to surrender property is simply an injunction in the public interest (as opposed to a money judgment) and is, therefore, properly enforced by the Court's contempt powers. *Id.* at 76 (noting that incarceration would be appropriate to bring about compliance). The Fifth Circuit also recognizes the use of contempt proceedings to enforce the rights of a court-appointed Receiver in performing his duties. *See, e.g., Santibanez v. Wier, McMahon & Co.*, 105 F.3d 234, 242 (5th Cir. 1997).

Contempt is also an appropriate remedy for perjury and forgery when a party uses it to violate a Court Order or otherwise obstruct the Court. *See* 18 U.S.C. § 401 (granting Federal Courts power to punish misbehavior obstructing the administration of justice and disobeying a lawful order); *In re Michael*, 326 U.S. 224, 228 (1945); *U.S. v. Griffin*, 589 F.2d 200, 206 (5th Cir. 1979) (false testimony can amount to contemptuous conduct when it obstructs the Court in performance of its duty); *Fox Industries, Inc. v. Gurovich*, 323 F.Supp.2d 376, 383 (E.D.N.Y. 2004) (finding contempt

for suborning perjury as well as obstruction and violations of preliminary injunction); *Wiideman v. McKay*, 132 F.R.D. 62, 66 (D. Nev. 1990) (approving contempt for false testimony filed in affidavit); *U.S. v. Griffin*, 641 F.Supp. 1556, 1558 (D.D.C. 1986) (holding defendant in contempt for misrepresentations to the court). Forgery, too, is a contemptuous offense in those cases. *See In re Grogan*, 972 F.Supp. 992, 998 (E.D.Va. 1997) (reciting show cause order for submitting a forged document as an exhibit to a pleading); *see also In re Lapes*, 254 B.R. 501, 503 (Bankr. S.D. Fla. 2000) (contempt found for forging and altering financial documents in addition to violating orders and injunction).

The undisputed facts in this case clearly support a finding for contempt. The Order Appointing Receiver requires the Starks and Tschebaums to surrender all Receivership Estate assets in their possession and refrain from interfering with the Receivership in any way. *Order Appointing Receiver* at ¶¶ 3, 5. Similarly, the Order Freezing Assets requires the Starks to disgorge and account for all such assets in their possession. *Order Freezing Assets* at Parts VI, VIII. The Starks, however, have concealed Sardaukar funds in unabashed defiance of these Orders and, with the Tschebaums' help, continued depleting Receivership Estate assets long after the Court issued its Orders. The Starks have not yet provided the Receiver with a sworn accounting of assets, even though the Court instructed them to do so almost a year ago. Brad Stark and the Tschebaums have even attempted to frustrate the Receiver's efforts by challenging collection actions with perjury and forged exhibits, while Stark still discourages Sardaukar investors from cooperating with the Receiver and various federal agencies. From the very beginning, the Starks and Tschebaums have deceived this Court and obstructed all efforts to enforce the Order Freezing Assets and the Order Appointing Receiver. Accordingly, the Receiver respectfully requests the Court's assistance by having these parties appear

in these proceedings and show cause why they should not be held in contempt.

**IV.
Prayer for Relief**

WHEREFORE, PREMISES CONSIDERED, the Receiver prays that this Court issue an Order: (1) requiring Bradley C. Stark, Pamela C. Stark, Hans Tschebaum, and Michael Tschebaum to appear and show cause why they should not be held in contempt for failing to comply with the Orders of this Court, obstructing the administration of justice, and offering perjury and forged exhibits to the Court; (2) setting a hearing on this matter; (3) requiring Bradley C. Stark, Pamela C. Stark, Hans Tschebaum, and Michael Tschebaum to pay to the Receivership Estate its reasonable and necessary attorneys' fees and expenses incurred in filing this motion; and (4) for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself entitled.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201-4240
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By:



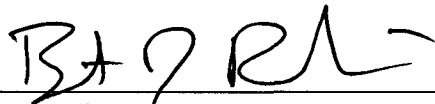
Michael J. Quilling
State Bar No. 16432300
Email: mquilling@qsclpc.com
Brent J. Rodine
State Bar No. 24048770
Email: brodine@qsclpc.com

ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

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

1. On May 18, 2006, the parties conferred by separate telephone conferences and it was determined that this motion would be opposed.
2. Brent J. Rodine participated for the Receiver. Bruce Claycombe participated for Hans and Michael Tschebaum and states that they oppose this motion.
3. Brad Stark and Pam Stark could not be reached by telephone. Alternatively, Mr. Rodine conferred with Chuck Meadows, an attorney who has spoken with Brad Stark in connection with this matter but has not currently entered an appearance for any party. Both sides concluded that Mr. Meadows did not yet have authority to oppose this motion for purposes of Local Civil Rule 7.1.



Brent J. Rodine

CERTIFICATE OF SERVICE

This is to certify that on the 19th day of May, 2006, a true and correct copy of the above and foregoing motion was sent via first class mail, with full and proper postage prepaid thereon, to:

Stephen J. Korotash
Securities and Exchange Commission
801 Cherry Street, Suite 1900
Fort Worth, Texas 76102

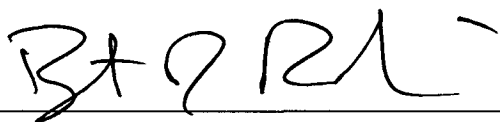
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Brent J. Rodine

Exhibit “A”

EXHIBIT "A"

July 5, 2005 – This Court issues its Order Appointing Receiver and Order Freezing Assets. That day, the Starks transferred a final payment of funds from Sardaukar Holdings to friends who ultimately funded the Starks' new accounts at Provident Bank.

