

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF NORTH CAROLINA
 CHARLOTTE DIVISION

FILED
 CHARLOTTE, N. C.

FEB - 6 2007

U. S. DISTRICT COURT
 W. DIST. OF N. C.

IN RE: ALL FUNDS ON DEPOSIT)
 IN ACCOUNT NUMBER 000669829075)
 IN THE BANK OF COMMERCE, INC.,)
 AT NATIONS BANK, N.A.,)
 CONSISTING OF \$18,756,420.97,)
 MORE OR LESS.)

C.A. NO. 3:98mc96-McK

GEORGE AND DOLORES ROLLAR,)

Plaintiffs,)

C.A. NO. 3:01CV205-McK

v.)

(CASES CONSOLIDATED)

UNITED STATES OF AMERICA, et al.,)

Defendants,)

RICHARD VASQUEZ,)

Intervener.)

**RESPONSE TO RECEIVER’S NOTICE OF RESTITUTION LIEN;
 RESPONSE TO GOVERNMENT’S RESPONSE AND NOTICE REGARDING
 RECEIVER’S FINAL REPORT AND CLAIM OF OBASI JOHN VALENTINE; AND
 RESPONSE TO RECEIVER’S CLARIFICATION OF RECEIVER’S POSITION
 REGARDING VALENTINE CLAIMS BY
CLAIMANT OBASI JOHN VALENTINE**

COMES NOW Claimant OBASI JOHN VALENTINE, on behalf of himself and his wholly-owned entity claimants in Response to the various filings specified above.

The Receiver has made it clear that he views Valentine with “suspicion”. [Receiver’s Notice of Clarification, ¶3, p. 3]. However, lacking any proof whatsoever to support his suspicion, the Receiver posits only conclusory arguments for why Valentine’s claims are either

unproven or undeserving.

Likewise, the Government has no information either disproving Valentine's ownership of the funds held by the Receiver or supporting the Government's argument that Valentine's conviction in Minnesota somehow negates his right to the funds he invested and lost to the Gilliland scam.

Instead both opponents display arguments filled only with passion and prejudice which this Court must not allow to overcome controlling factual evidence and legal principles applicable to this case. The two main arguments offered by the Receiver and the Government are that Valentine has not "proven" his ownership of the funds in the receiver's possession and that Valentine should not receive his monies because of his Minnesota conviction.

I.

VALENTINE HAS "PROVEN" HIS OWNERSHIP OF FUNDS

The Receiver must by now acknowledge that the bank accounts from which funds claimed by Valentine were transferred into the Gilliland scheme were owned by Valentine and/or his wholly-owned entities. The Receiver instead focuses on the "suspicion" that said funds were an aggregation of monies not owned by Valentine.

There is a real problem with the request by the Receiver to deny Valentine's claim based only on his suspicion that someone else might have an ownership claim to the subject funds. The Receiver's argument defies the law and ignores his obligation as the moving party to establish a right to the relief he seeks. The law presumes that money deposited in an account bearing the name of the depositor is the property of the depositor. *Farmer's Loan & Trust Co. v. Fidelity Rust Co.* 86 F. 541, 545 (9th Cir. Ct. App. 1898). By proffering only his "suspicion" of the

aggregation of funds, the Receiver asks this Court to impose upon Valentine the burden of proving a negative. The law does not support such requirement.

In *Colorado Coal & Iron Co. v. U. S.*, the court declared:

'So, where the negative allegation involves a charge of criminal neglect of duty, whether official or otherwise; or fraud; or the wrongful violation of actual lawful possession of property, *-the party making the allegation must prove it*; for in these cases the presumption of law, which is always in favor of innocence and quiet possession, is in favor of the party charged.' *Colorado Coal & Iron Co. v. U. S.* 123 U. S. 307 at 317; citing 1 Greenl. Ev. 80, emphasis added.

The Receiver has never presented any evidence or proof of any kind in support of his argument that monies were aggregated within those invested by Valentine. In the more than nine (9) years since Valentine delivered his monies to the Gilliland scheme in 1997-1998, no person, entity or claimant of any kind whatsoever has ever alleged or claimed in any forum that the Receiver, Valentine or any of his wholly-owned entities owes, holds or is responsible for monies from the period prior to January 2001.

Accordingly, the Receiver has not met his burden herein. In essence, the Receiver asks this Court to disregard all of Valentine's sworn declarations and documentary evidence supporting his entitlement to monies transferred from his accounts without offering any evidence or law supporting such request. This Court cannot assent to the receiver's tactics without any evidentiary basis.

II.

THE DOCTRINE OF UNCLEAN HANDS DOES NOT APPLY

The doctrine of unclean hands urged by the Receiver and the Government based upon Valentine's Minnesota conviction cannot be used as a bar to his claim herein. The doctrine of unclean hands only applies when the claimant's conduct is directly related to the merits of the controversy between the parties. *Texaco Puerto Rico v. Department of Consumer Affairs* 60 F. 3d 867, 880 (1st Cir. 1995), emphasis added. In other words, "while equity does not demand that its suitors shall have led blameless lives, as to other matters, it does require that they shall have acted fairly and without fraud and deceit as to the controversy in issue." *Precision Manufacturing Co. v. Automobile Maintenance Machine Co* 324 U.S. 806, 814-815 (1945), emphasis added; accord, *Loughran v. Loughran* 292 U.S. 216, 229; accord, *Warner Brothers, Inc. v. Gay Toys, Inc.* 724 F. 2d 327, 334 (2d Cir. 1983) ["The defense of unclean hands applies only with respect to the right in suit."]; accord, *Pierce v. Apple Valley, Inc.* 597 F. Supp. 1480, 1485 (1984) and *New England Patriots Football Club, Inc. v. University of Colorado* 592 F. 2d 1196, 1199 (1st Cir. 1979) ["The conduct alleged to bar the action must relate to the controversy in issue."]; accord, *U.S. v. Hughes Ranch, Inc.* 33 F. Supp. 1157 (D. Neb. 1999) ["Before the 'unclean hands' doctrine can apply, the government's improper conduct must be related to the matter in which it seeks relief"].

Valentine's dealings with those persons involved in the Minnesota action had no relation whatsoever to Valentine's investment losses sustained in the scheme in this matter. [see, Valentine Declaration In Response to Order to Show Cause, filed previously herein]. Nor were any monies at issue in the Minnesota action related whatsoever to those of Valentine's lost

herein. [Id.]. There is in fact a glaring distinction between the two; whereas the Minnesota issues involved charges of legal transgressions between January 1, 2001 and November 1, 2002 [Id. at Exhibit 1], the investments and losses sustained by Valentine in this matter occurred some 4-5 years earlier, in 1997-1998.

Our Supreme Court has long recognized such a distinction when considering the applicability of the unclean hands doctrine as a bar to relief:

“Courts of equity do not make the quality of the suitors the test. They apply the maxim requiring clean hands only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation. They do not close their doors because of plaintiff’s misconduct, whatever its character, that has no relation to anything involved in the suit, but only for such violations of conscience as in some measure affect the equitable relations between the parties in respect of something brought before the court for adjudication [citation omitted]. They apply the maxim, not by way of punishment for extraneous transgressions, but upon considerations that make for the advancement of right and justice.” *Keystone Driller Co. v. General Excavating Co.* 290 U.S. 240, 245 (1933).

Finally, the burden of establishing the propriety of applying the unclean hands doctrine is upon the party asserting; in this case, the Receiver. *Pierce v. Apple Valley, Inc.* (supra) at p. 1485, citing FRCP 8©); Moore’s *Federal Practice* ¶8.27(3). The fact of a judgment in Minnesota does not support the imposition of the unclean hands doctrine to bar Valentine’s claims in this action because there the requisite nexus does not exist between the two. Accordingly, the Receiver has failed to meet his burden.

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III.

PROPER CLAIM PAYMENT TO VALENTINE; RESTITUTION

LIEN TREATMENT; NOTICE OF ATTORNEYS LIEN

The Receiver has received Valentine's wire transfer information and claim proofs totaling \$3,299,850.00. [see, Exhibits 10 - 16 attached to Valentine Declaration In Opposition to Receiver's Motion to Disallow Claims, previously filed herein]. Based upon the Court's Order dated November 2, 2004 that claimants be paid 64% of their claims, Valentine is due the sum of \$2,111,904.00.

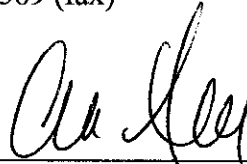
The Receiver has filed Notice of Restitution Lien in this matter pertaining to the Minnesota action wherein a lien in the amount of \$372,278.80 was recorded against Valentine individually on February 10, 2005. The lien does not bear interest. The Government incorrectly argues that there is an additional \$466,150.00 forfeiture judgment against Valentine in the Minnesota action. [see, Government's Response and Notice Regarding Receiver's Final Report and Claim of Valentine, p. 10]. In fact, the September 21, 2004 Preliminary Order of Forfeiture cited by the Government was superceded by the referenced Judgment dated January 5, 2005 Judgment issued in Minnesota which resulted in the \$372,278.80 Restitution Lien. [see, Exhibits A and B to Receiver's Response filed February 7, 2005]. Valentine respectfully submits that the monies owed pursuant to the claims herein should be paid without payment of the Restitution Lien since the monies held by the Receiver were transferred from Oval Pacific Telesys Corporation and the lien is against Valentine individually.

Finally, Notice is hereby given that Christopher W. Steward, Esq., claims and maintains a lien for legal services rendered in this action in the amount of 15% of all monies recovered by or on behalf of Valentine and his wholly-owned entity claimants. This lien arises by written contract entered into in November, 2004. Accordingly, this lien for services rendered predates and is superior to the Restitution Lien recorded February 2005.

Respectfully submitted this 31st Day of January, 2007

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By, _____



Christopher W. Steward
California State Bar No. 171188
ATTORNEYS FOR VALENTINE CLAIMANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February, 2007 a true and correct copy of the foregoing document was served via first class mail, postage prepaid, on:

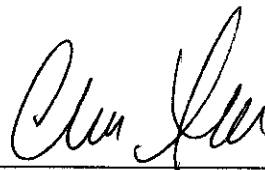
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