

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**KENNY, SNOWDEN &
NORINE**

A LAW CORPORATION
P.O. BOX 994608
REDDING, CA 96099-4608
(530) 225-8990
FAX: (530) 225-8944

JONZ NORINE, SBN: 182220

Attorneys for Defendant Kimberly A. Snowden

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

SECURE INVESTMENT SERVICES,
INC., AMERICAN FINANCIAL
SERVICES, INC., LYNDON GROUP,
INC., DONALD F. NEUHAUS, AND
KIMBERLY A. SNOWDEN.

Defendants.

Case No.: 2:07-cv-01724-LEW-CMK

**REPLY IN SUPPORT OF STAY OF
CIVIL ACTION BY DEFENDANT
KIMBERLY A. SNOWDEN**

**Date: April 6, 2009
Time: 9:00 a.m.
Judge: Garland E. Burrell, Jr.
Courtroom: 10**

_____/

The SEC has opposed Ms. Snowden’s Motion for Stay in a way that is spectacularly unfair and misleading. The SEC, without any basis, argues that had Ms. Snowden not asserted her Fifth Amendment and testified at her deposition, it would “likely only incriminate her”. That allegation crosses the line of permissible argument, and should be rejected altogether by the Court. Likewise, the SEC attempts to paint a picture that Ms. Snowden did nothing during the pendency of this case, and only belatedly makes the motion for a stay. This is also untrue and should be rejected. The SEC was not forthcoming with the Court, because it did not mention the ongoing attempts Ms. Snowden has made at settlement with the SEC, which if successful, would have eliminated the need for a stay.

1 As early as May 5, 2008, the SEC has known that Ms. Snowden is in a strapped financial
2 condition. The SEC has known that she has been unable to defend herself in the civil litigation
3 because of her need to maintain her Fifth Amendment privileges. In acknowledgment of these
4 problems, the SEC provided a nine-page Statement of Financial Condition, and it suggested that Ms.
5 Snowden could complete this document to show that she had no significant assets, so that the SEC
6 might consider settling the civil case. (See Exhibit A, attached to the accompanying Declaration of
7 Jonz Norine.) However, the statement itself was to be certified under penalty of perjury and therefore,
8 would have been a waiver of Ms. Snowden's Fifth Amendment right concerning the underlying
9 criminal case. The SEC would not guarantee to Snowden that the information provided in this
10 statement would not then be transmitted to the U.S. Attorney's Office for review, inclusion, or further
11 prosecution in the underlying criminal case.

12 Ms. Snowden was placed in the untenable position of maintaining her rights to assert her Fifth
13 Amendment privilege in the criminal case, while simultaneously trying to defend or settle the civil
14 case. The Statement of Financial Assets was a declaration under penalty of perjury concerning her
15 financial condition going back as far as January 2000, which is exactly the information the U.S.
16 Attorney's Office would be seeking to further its prosecution of the case.

17 Unless some kind of arrangement could be worked out with the Attorney General's Office
18 concerning use of this information provided to the SEC, Ms. Snowden would not be able to provide it,
19 even though it might allow her to settle and negotiate the SEC civil complaint. This matter was
20 discussed at her deposition with attorneys for the SEC on December 11, 2008. Ms. Snowden's
21 criminal counsel, Scott Tedmon, made arrangements to speak with Assistant U.S. Attorney General,
22 Matt Stegman, who is prosecuting the criminal matter, to discuss limitation of usage of the declaration
23 under penalty of perjury.

24 Following Ms. Snowden's deposition in December of 2008, attorneys for the SEC sent an
25 email with the Statement of Financial Condition, and Proposed Consent and Final Judgment, which
26 might be entered into by Ms. Snowden if the SEC would consider her bankrupt condition. (See
27 Exhibit B1, B2, and B3, attached to the accompanying Declaration of Jonz Norine.) We are informed

28

1 that in discussions with U.S. Attorney's Office, it declined to limit its use of any information obtained
2 in the civil side of the case.

3 Therefore, Ms. Snowden was left in the following position: (1) her criminal prosecution was
4 to go forward, and any information obtained in the civil suit could and would have been used in that
5 prosecution; (2) the settlement being offered by the SEC required Ms. Snowden to provide her
6 financial information under penalty of perjury going back as far as January 2000, which included all of
7 the timeframes concerning the matter subject to the criminal complaint, which could then be used by
8 the U.S. Attorney General's Office; (3) the SEC's proposed settlement was contingent on Ms.
9 Snowden providing this information without restriction, but without an actual agreement that any
10 settlement could be entered into – the SEC attorneys were clear to state that they may recommend a
11 particular settlement agreement, but that was no guarantee it would be approved by the SEC
12 Commissioners; and (4) as part of the proposed settlement, Ms. Snowden would have to consent to a
13 final judgment in the civil case, whereby she would essentially admit the allegations of the civil
14 complaint.

15 Moreover, the SEC could continue to prosecute her. It retained the rights as follows, "If at any
16 time following the entry of this final judgment, the Commission obtains information indicating the
17 defendant's representations to the Commission concerning her assets, income, liabilities, or net worth
18 were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such
19 representations were made, the Commission may, at its sole discretion and without prior notice to
20 defendant, petition the Court for an order requiring defendant to pay the unpaid portion of
21 disgorgement, prejudgment and post-judgment interest thereon, and the maximum civil penalty
22 allowable under the law." (See Exhibit B3, attached to the accompanying Declaration of Jonz
23 Norine.)

24 Ms. Snowden had no alternatives: she could not settle without waiving her Fifth Amendment
25 right, and could no longer proceed in her daily life without the protection of bankruptcy. Therefore,
26 she could not oppose the motion for summary judgment, and upon that basis, requested the stay
27 subject of this motion.

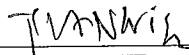
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The SEC maintains that the stay would be unwarranted as it is "against the public interest". It says that it is seeking a permanent injunction against future violations by Snowden and requiring her to disgorge ill-gotten gains. (See Opposition, page 4:25 – page 5:1.) As to the first requested relief, a permanent injunction, Snowden is already enjoined from future violations by the temporary stay. She would not challenge such an injunction anyway. As to the second requested relief, disgorgement of ill-gotten gains, Ms. Snowden is bankrupt. Therefore, there is no compelling public interest in seeing that the civil case proceeds before the criminal case is concluded. The temporary orders preventing her from engaging in security sales will continue and the SEC would not be able to collect any judgment against Ms. Snowden. The SEC has no real public interest in forcing the civil action to move forward ahead of the criminal action, placing Ms. Snowden in this untenable position. For the foregoing reasons, and those cited in Ms. Snowden's moving papers, she respectfully requests the Court to order a stay to allow her rights to be protected.

Dated: March 25, 2009

KENNY, SNOWDEN & NORINE



JONZ NORINE
Attorneys for Defendant
Kimberly Snowden

6779:127038