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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

PLAINTIFF,

v.

AMERICAN PENSION SERVICES, INC., a
Utah Corporation and CURTIS L. DeYOUNG,
an individual,

DEFENDANTS.

**OPPOSITION
TO DeYOUNG'S THIRD MOTION TO
RELEASE FUNDS FOR PAYMENT OF
ATTORNEY FEES**

Case No.: 2:14-cv-00309

Judge Robert J. Shelby

Magistrate Judge Dustin B. Pead

The United States Securities & Exchange Commission ("Commission") respectfully submits this Opposition to Curtis L. DeYoung's ("DeYoung") Third Motion to Release Funds for Payment of Attorney Fees ("Third Motion") (Docket #313).

For the reasons originally set forth in the Commission's Memorandum in Opposition to DeYoung's Second Motion to Release Portion of Revenues and Assets of American Pension Services, Inc. for Payment of Attorney Fees, filed on August 4, 2014, (Docket # 170), which are

incorporated herein by reference, the Commission respectfully requests that the Court deny DeYoung's Third Motion to use APS funds for payment of attorneys fees. As has been explained in detail both by the Commission and by the Court-appointed Receiver, APS funds are extremely limited and should be used to operate the receivership and to repay investors. What limited funds are available to resolve the complex issues pertaining to liquidation of the receivership estate in this matter should not be released to pay for DeYoung's defense costs.

Among other bases identified as supporting his claim for defense costs, DeYoung states that, at this time, no preliminary injunction has been entered and asserts that "Counsel for DeYoung has continued to negotiate with the SEC regarding proposed findings of fact for the Court and the language of the preliminary injunction." Third Motion, p. 3. While it may be accurate to state that the Court has not yet entered its formal findings of fact and conclusions of law, it is not accurate to state that no preliminary injunction has been entered. To the contrary, the Court was quite clear in making its ruling during the July 23, 2014 Hearing that the Commission's preliminary injunction request was granted and went to great lengths to articulate the findings and conclusions underpinning that order.

Moreover, it is not accurate that assert that DeYoung and the Commission have "continued to negotiate" the language of the proposed findings of fact and conclusions of law, as no discussions as to the language of that document have taken place since the Commission submitted its draft to the Court on September 2, 2014. (Docket #196). The parties have been engaged in settlement discussions, and it appears an agreement may have been reached as to the proposed language of that settlement. But those discussions have not included time devoted to drafts of the proposed findings of fact and conclusions of law.

DeYoung has failed to demonstrate any effort to fund his defense outside of previous funds released by the Court. The Commission believes that such a demonstration should, at the very least, be a threshold showing before any discussion takes place as to whether additional frozen APS funds should be accessed. He has not demonstrated any effort to obtain employment to assist in funding his defense, and he is only now suggesting that the Court consider releasing portions of his retirement accounts to supplement these defense costs. The Commission remains opposed to lifting the asset freeze as requested by DeYoung. The Court should avoid adding additional hardship on the already victimized APS investors, even if it is only \$10 per customer, and should require that DeYoung shoulder his defense costs just as every other litigant is obligated to do. To the extent the Court is inclined to continue making funds available for DeYoung's defense, the Commission remains of the opinion that he should be forced to draw down his own retirement account, or other source of available funds, rather than be paid out of the limited funds of APS.

DATED this 17th day of November 2014.

/s/ Daniel J. Wadley

Daniel J. Wadley

Paul Feindt

Cheryl Mori

Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2014, I caused to be filed the forgoing using the Court's CM ECF System. A true and correct copy of the document was served on all parties entitled to service through the Court's CM ECF System.

/s/ Marie E. Iovino
Marie E. Iovino