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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiffs,

vs.

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

Defendants.

**REPLY MEMORANDUM IN SUPPORT
OF DeYOUNG’S THIRD MOTION TO
RELEASE FUNDS FOR PAYMENT OF
ATTORNEY FEES**

Case No.: 2:14-cv-00309

Judge: Robert Shelby
Magistrate Judge: Dustin B. Pead

Defendant Curtis L. DeYoung (“DeYoung”), by and through his counsel, files this Reply Memorandum in Support of his Third Motion to Release Funds for Payment of Attorney Fees (Dkt. 313) and supplement thereto (Dkt. 339) (collectively, “Third Motion to Release Fees”) in response to arguments raised in the the Receiver’s Opposition to Defendant Curtis DeYoung’s

Third Motion to Release Funds for Payment of Attorney Fees (“Receiver’s Opp.”) (Dkt. No. 338).

ARGUMENT

The Receiver’s Opp. misstates a number of facts regarding the transfer of the retirement funds that were held in certain LLCs on behalf of DeYoung, his wife, and two of his daughters. *See* Declaration of Curtis L. DeYoung in Support of Third Motion to Release Funds for Payment of Attorney Fees (“DeYoung Dec.”), filed herewith as Exhibit A. Contrary to the Receiver’s characterization, the LLCs described in the Receiver’s Opp. were not created with the intent of hiding or protecting any retirement funds that were held by DeYoung, his wife, or his two daughters. *Id.* at ¶¶ 5-9. To the contrary, the LLCs were created for the purpose of facilitating standard real investments, characteristic of many other APS account holders’ investments, with those retirement funds. *Id.* The transfer of the funds in separate accounts held at Zions First National Bank to a consolidated account at Brighton Bank was made in order to facilitate the investment of the collective funds. *Id.* at ¶¶ 12-13. In the time since the funds were transferred, DeYoung has made no attempt to withdraw these funds or otherwise move them outside of the reach of the Freeze Order that was entered in this case. *Id.* at ¶¶ 13, 16, 18. DeYoung has not benefited or sought to benefit from the transfer of these funds to the detriment of the investors with APS or any other party. *Id.* at ¶¶ 16-18. The Receiver’s provocative description of these transfers is simply not accurate.

Moreover, the Receiver’s objection to DeYoung’s use of the retirement funds currently held under the Freeze Order is unfounded. Despite the Receiver’s Ex Parte Motion for Leave to File a Civil Action Against Curtis and Michelle DeYoung and Memorandum in Support, the

Receiver has established no basis for holding these retirement funds under the Freeze Order. At best, the Receiver's opposition is premature because no claim to these funds has been established, but the reality is that there is no legal basis for withholding DeYoung's retirement funds under the Freeze Order. This point was essentially conceded by the SEC which argues that DeYoung should use his retirement funds for the payment of his attorney fees. *See* Opposition to DeYoung's Third Motion to Release Funds for Payment of Attorney Fees (Dkt. 337) p. 3 (arguing that DeYoung should be required to use the retirement funds to pay attorney fees). The same is even more true of Michelle's retirement funds and the retirement funds of DeYoung's daughters which are also currently being wrongfully held by the Receiver under the Freeze Order. The Receiver's overreaching attempt to prevent DeYoung from paying his attorney fees is unfounded

Additionally, the Receiver's mischaracterization of settlement as being "DeYoung's willingness to consent to SEC fraud charges" is flat wrong and misleading. *See* Receiver's Opp. pp. 12-13. Likewise, the Receiver's assertion that DeYoung's request should be denied "on the basis that he is willing to quickly and efficiently consent to a finding of fraud by the SEC" completely misrepresents the core element of the settlement agreement from Mr. DeYoung's perspective. *Id.* The settlement agreement that has been substantially agreed to between DeYoung and the SEC is centered upon DeYoung neither admitting nor denying the allegations of the Complaint filed by the SEC. The Receiver's characterization of this agreement as an admission of guilt by DeYoung in order to obtain an advantage in opposing DeYoung's Third Motion to Release Fees is a completely inaccurate statement that is not well taken.

The Receiver's ongoing attempt to vilify DeYoung with inflammatory characterizations of DeYoung's conduct and understated descriptions of his cooperation in this matter are indicative of the Receiver's misguided attempt to prosecute DeYoung for the claims alleged by the SEC. DeYoung's attorney fees at this point are the direct result of the Receiver's disproportionate pursuit of DeYoung and his family members in this matter. These efforts by the Receiver bear the hallmarks of personal punishment that have required the ongoing representation of DeYoung during his participation in these matters. DeYoung should not be punished for responding to the actions of the Receiver by denying him the ability to pay for his representation.

CONCLUSION

For these reasons, in addition to those reasons stated previously, DeYoung respectfully asks this Court to grant DeYoung's Third Motion to Release Funds for Payment of Attorney Fees.

Dated: November 25, 2014.

Respectfully submitted,
Durham Jones & Pinegar

/s/ Paul T. Moxley
Paul T. Moxley
Thomas J. Burns
Z. Ryan Pahnke
Joshua D. Chandler
Counsel for Curtis L. DeYoung

CERTIFICATE OF SERVICE

I hereby certify that on the 25th of November, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification to counsel of record in this matter.

/s/ Paul T. Moxley