

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

**W FINANCIAL GROUP, LLC,
ADLEY H. ABDULWAHAB a/k/a Adley Wahab,
MICHAEL K. WALLENS, SR., and
MICHAEL K. WALLENS, JR.**

Defendants,

Civil Action No.
3:08-CV-0499-N

**PLAINTIFF’S SUPPLEMENTAL MEMORANDUM IN SUPPORT
OF MAINTAINING ASSET FREEZE AND OTHER EQUITABLE RELIEF
AND SEEKING APPOINTMENT OF A RECEIVER**

Plaintiff Securities and Exchange Commission (“Commission”) respectfully submits this memorandum in support of its application for an asset freeze and other equitable relief and the appointment of a receiver. The Commission requests that the Court continue the relief granted in its *Ex Parte* Order Freezing Assets and Granting Other Equitable Relief and, further, that the Court appoint a Receiver to marshal and conserve defendants’ assets during the litigation to ensure that these assets are available to provide monetary relief to defrauded investors.¹

I. INTRODUCTION

A. The Fraud

This matter involves a scheme deliberately aimed at defrauding elderly investors and retirees. Between September 2006 and February 2007, defendants collected more than \$17 million from investors through the offer and sale of so-called Secured Debt Obligations

¹ The Commission did not ask for a temporary restraining order in this case against further violations of the federal securities laws because the Commission believes that defendants ceased the unregistered, fraudulent offer and sale of securities some months ago. Rather, the Commission sole aim in seeking this relief is to ensure that assets remain available to provide monetary relief to victims.

("SDOs"). The scheme targeted investors seeking to place their retirement funds in FDIC insured certificates of deposit. Elderly investors were lured by advertisements for high-yielding CDs; once through the door of WFG's sale agent, they were given promotional materials that represented the SDO's as guaranteed, fully insured by major insurance companies, and protected by collateral. They were told that WFG and its principals had a 17 year track record of financial responsibility and, further, that their funds would be used only for specified purposes. In short, these elderly investors were assured that the SDOs were as safe as FDIC insured CDs, but offered a higher return.

In fact, none of the representations made to WFG investors were true. There was no insurance protecting investors' principal from loss. There was no collateral assigned to investors' accounts. Moreover, defendants did not protect the funds of elderly investor through the prudent investment vehicles described in their promotional materials and agreements; they placed the entire nest eggs of retirees at risk by using investor funds to purchase and operate extremely risky enterprises, such as a retail electrical power company, a home-building company and a low-end used car business.

WFG, rather than having the track record claimed by defendants, was created in 2006 for the purposes of implementing the fraudulent scheme. Furthermore, defendants failed to disclose that one of its principal, Adley Wahab, was on probation for felony forgery during the offer and sale of the SDOs.

B. The Special Master Order

As set forth in the Commission's Memorandum In Support of Motions for Appointment of a Receiver, Order Freezing Assets, Repatriation Order, Order Requiring Accounting and Other Equitable Relief ("June 5 Memorandum"), on March 28, 2008, the Court appointed a Special Master to oversee the liquidation of certain assets by defendants and to take possession of the

proceeds of these sales. The Commission agreed to this relief because the agency believed that the defendants were acting in good faith to provide investors with monetary relief.

C. Request for Emergency Relief

As set forth more fully in the June 5 Memorandum, reports from the Special Master and from third parties convinced the Commission that the protection of investors required more stringent remedies than the appointment of the Special Master. The Commission concluded that defendants had acted deceptively toward the Commission, the Special Master and even their own counsel. Moreover, the Special Master's analysis showed that the assets that defendants offered to voluntarily liquidate will likely yield less than half of the roughly \$13.5 million still owed to WFG investors. For these reasons, the Commission asked the Court to grant further relief, including the freeze order and appointment of a Receiver. In its June 5 Order, the Court froze defendants' assets, but postponed a decision on the Commission's request for a Receiver. Defendants continue to withhold information about other funds and assets they own.

II. EVENTS TRANSPILING SINCE THE COURT'S JUNE 5 ORDER

Between June 11 and June 14, 2008, the Commission effectuated personal service of the Court's June 5 Order and the each of the documents filed by the Commission. [Norris Dec. at ¶ 2, Exh. 1]. Following the Court's rescheduling of the PI hearing, the Commission personally served Wallens Jr., Wallens Sr., and Wahab with the Order extending the asset freeze and other emergency relief [Docket # 26]. The Order extending the asset freeze and other emergency relief [Docket # 26] was served upon the registered agent for W Financial, Russell Mackert, on June 16, 2008. [Norris Dec. at ¶ 3, Exh. 2, APP00002].

On June 12, 2008, the Commission, pursuant to the Court's Order for expedited discovery, noticed the depositions of WFG, Wallens Sr., Wallens Jr and Wahab.² [Norris Dec. at ¶ 4, Exhs. 3-6 APP00002, 00018-00051]. The notices of deposition were accompanied by document requests. The scheduled depositions and requested documents were vital to effectuating the Court's asset freeze, particularly in the absence of a Receiver to take control of funds and assets.

These notices and document requests provided defendants with a full week's notice, rather than the 72 hour minimum required by the Court. Each of the defendants failed and refused to appear for these depositions and they have each failed to respond to the Commission's document requests. [Norris Dec. at ¶¶ 7, APP00003].

III. DEFENDANTS' CONDUCT SUPPORTS THE REMEDIES REQUESTED BY THE COMMISSION

The defendants' conduct both before and after the June 5 Order accentuates the need not only to continue the asset freeze imposed by the Court, but also to appoint a Receiver to marshal and conserve funds and assets for the benefit of investors. Defendants have not, throughout the investigation and litigation, been candid and truthful. With defendants who are predisposed to lie and withhold information, an asset freeze alone gives cold comfort to investors waiting for relief.

As set forth in the Commission's Memorandum and Appendix filed June 5, 2008, the defendants lied to elderly investors about how WFG would use the funds provided by them. Based on the evidence of misuse and misappropriation of money by defendants, is it realistic to expect that defendants will suddenly change course and voluntarily refrain from the dissipation of funds and assets during the course of litigation? The Commission submits that it is neither

² The Commission served the notices and document requests on defendants' counsel of record, David Fielder. Subsequently, the Commission trial counsel spoke to Fielder, who expressed his intent to forward the notices to defendants. [Norris Dec. at ¶ 9].

prudent, nor fair to investors, to leave funds and assets in the control of defendants and leave the hopes of elderly victims in the hands of the men who have already robbed them.

In the course of the Commission's investigation, each of the individual defendants was subpoenaed to testify and provided the opportunity to explain his conduct and provide information about funds and assets available for the possible restitution to investors. Each of the defendants chose, instead, to shield himself from disclosure by asserting the Fifth Amendment privilege against self-incrimination. Of course, based on their invocation of the privilege, defendants in this civil case are subject to an adverse inference. *See Baxter v. Palimigiano*, 425 U.S. 308, 318 (1976). The assertion of the privilege also suggests, however, the inclination of defendants to withhold vital information when it is not in their interest to disclose it.

As the Commission's June 5 submission demonstrated, defendants continued a pattern of deception and non-disclosure after the Court appointed the Special Master. While pledging to act in good faith to rectify the grave harm done to elderly investors, they dissembled and withheld relevant information, particularly information concerning the use of money and their own personal assets.

Finally, after the June 5 Order, defendants had yet another opportunity to explain their behavior during the offer and sale of WFG SDOs and to provide information concerning the location and magnitude of their funds and assets. Again, they demurred, ignoring the obligation to attend their depositions and to produce documents requested by the Commission.

The Commission submits that this pattern of conduct must inform the Court's decision concerning whether to appoint a Receiver. The Commission has offered the Court a plethora of evidence that it is folly to trust that defendants will preserve their funds and assets for the benefit of investors. The defendants, on the other hand, can offer nothing—no genuine change

of heart or redeeming pattern of conduct—that could inspire confidence in their financial honesty or responsibility.

An asset freeze is not self-executing. Should this Court trust defendants such as these to execute the freeze upon themselves? The Commission submits that the answer is clearly: “No.” In the absence of the appointment of a Receiver, the means of investor relief will disappear before they can be discovered and frozen. The Court should, therefore, maintain the asset freeze imposed on June 5 and secure, through the appointment of a Receiver, the availability of the funds and assets to alleviate the victims.

IV. CONCLUSION

For the reasons set forth above, the Commission respectfully requests that the Court grant Plaintiff the requested relief.

Dated and signed on the 20th day of June, 2008.

s/ Jeffrey B. Norris
JEFFREY B. NORRIS
SENIOR TRIAL COUNSEL
Washington, D.C. Bar No. 424258
U.S. SECURITIES & EXCHANGE
COMMISSION
801 Cherry St., 19th Floor
Fort Worth, Texas 76102
Office: (817) 978-6452
Fax: (817) 978-4927
Norrisj@sec.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 2008, I electronically filed the foregoing ***Plaintiff's Supplemental Memorandum in Support of Maintaining Asset Freeze and Other Equitable Relief and Seeking Appointment of A Receiver*** with the Clerk of the Court for the Northern District of Texas, Dallas Division, by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participants.

Jeffrey B. Norris, *Counsel for Securities and Exchange Commission*
Vernon Jones, *Special Master*
David Fielder, *Counsel for Defendants*
John Teakell, *Counsel for Defendants*

s/ Jeffrey B. Norris
Jeffrey B. Norris