

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO.: 08-81565-CIV-HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**CREATIVE CAPITAL CONSORTIUM, LLC,
A CREATIVE CAPITAL CONCEPTS, LLC, and
GEORGE L. THEODULE,**

Defendants.

**PLAINTIFF'S APPLICATION FOR AN ORDER TO SHOW CAUSE
WHY DEFENDANT GEORGE L. THEODULE SHOULD NOT BE HELD IN
CONTEMPT FOR FAILING TO PROVIDE A DETAILED SWORN ACCOUNTING**

I. INTRODUCTION

Plaintiff Securities and Exchange Commission moves this Court for an order to show cause why Defendant George L. Theodule should not be held in contempt for failing to provide the detailed sworn accounting the Court ordered. Rather than provide the required accounting, Theodule simply makes a conclusory statement he does not have records sufficient to make a complete accounting. Additionally, Theodule's accounting discloses minimal information the Commission had not already identified for the Court, and his new disclosures are so general in nature they are of little or no value to the Court or the Commission in determining the funds Theodule received from Creative Capital or his assets -- the very purpose of the sworn accounting.

II. FACTUAL AND PROCEDURAL BACKGROUND

On December 29, 2008, the Commission filed a complaint [DE 1] against Defendants A Creative Capital Concept\$, LLC, Creative Capital Consortium, LLC (collectively "Creative

Capital”) and George L. Theodule. The Commission also filed an emergency motion to appoint a receiver [DE 2] and an emergency motion for a temporary restraining order and other emergency relief [DE 5]. On that same day, the Court entered a temporary restraining order and other emergency relief [DE 7], which, among other things, froze Theodule’s assets and ordered him to provide a sworn accounting within five business days.

Pursuant to its orders of December 29, 2008 [DE 7] and December 31, 2008 [DE 13], the Court held a hearing on January 6, 2009, to determine whether to issue a preliminary injunction against Theodule.¹ At the beginning of the hearing, Theodule’s counsel requested relief from the asset freeze even though Theodule had not yet provided his sworn accounting, and the Commission and the Receiver had identified minimal assets subject to the freeze. The Court denied Theodule’s request.

During the hearing, the Commission offered the exhibits supporting its previous motions [DE 5 and 17] and other evidence previously filed with the Court. It also presented an additional declaration from investor Angela Telasco and testimony from four witnesses. Based on the Commission’s evidence, the Court entered a preliminary injunction against all defendants [DE 21] that reiterated Theodule’s obligation to provide a sworn accounting. The day after the preliminary injunction hearing, Theodule filed Defendant Theodule’s Accounting and Identification of Accounts [DE 20]. Pursuant to Local Rule 7.1.A.3 of the Southern District of Florida, counsel for the Commission and Theodule’s counsel have conferred in a good faith effort to resolve the issues this motion raises, but have been unable to resolve them.

A. Theodule’s Purported Sworn Accounting

Theodule’s purported accounting is merely a bad faith avoidance of the Court’s orders. [DE

¹ The corporate defendants consented to the entry of a preliminary injunction [DE 17-2].

7 and 21]. The Court specifically ordered Theodule to:

- (a) make a sworn accounting to this Court and the Commission of all funds, whether in the form of compensation, commissions, income (including payments for assets, shares or property of any kind), and other benefits (including the provision of services of a personal or mixed business and personal nature) received by him from Creative Capital;
- (b) make a sworn accounting to this Court and the Commission of all assets, funds, or other properties held by him, jointly or individually, or for his direct or indirect beneficial interest, or over which he maintains control, wherever situated, stating the location, value, and disposition of each such asset, fund, and other property; and
- (c) provide to the Court and the Commission a sworn identification of all accounts (including, but not limited to, bank accounts, savings accounts, securities accounts and deposits of any kind) in which he (whether solely or jointly), directly or indirectly (including through a corporation, partnership, relative, friend or nominee), either has an interest or over which he has the power or right to exercise control.

In his filing, Theodule makes the blanket, unsupportable assertion that he does not have sufficient records, or access to them, to provide an accounting. He does not indicate what records he is referring to or where they might be, and he does not explain any efforts he took to obtain them or otherwise comply with the Court's orders. It is abundantly clear from the rest of his sworn accounting that he made no effort to comply with the Orders.

B. Theodule's Disclosure Of Funds He Received Is Bogus On Its Face

Subsection (a) of the Orders required Theodule to disclose all funds he received from Creative Capital. Although the asset freeze order identified 34 bank and brokerage accounts over which Theodule exercised control [DE 7 at pp.3-5], he merely attached *three incomplete monthly statements from a single bank account*, which contained handwritten check marks to identify debits as personal or mixed personal/business [DE 20-2]. He also generally admitted \$300,000 to \$400,000 of personal expenses in broad categories, the majority of which the Commission had already identified [DE 20-3]. Furthermore, Theodule did not identify *any* compensation, salary, etc.

paid to him even though the Commission previously identified at least \$3.8 million transferred to Theodule's personal bank accounts or his family members, and withdrawn via counter debits. Thus, the disclosure of funds he received is bogus on its face and the Court should require him to show cause why he should not be held in contempt for such an inadequate response.

C. Theodule's Asset Disclosures Are Thoroughly Uninformative

It is impossible to derive any worthwhile information from Theodule's asset disclosures required under subsection (b) of the Orders. For example, Theodule simply lists individuals as assets for a combined total of more than \$1.3 million, but offers no explanation whatsoever how those individuals constitute assets/investments Theodule owns [DE 20-4]. Additionally, Theodule claims approximately \$750,000 in assets/investments for Unity Entertainment, \$500,000 of which is "earnest money for houses and cars." Finally, Theodule includes such nonspecific disclosures as "Haitian Restaurant" and "Tennessee Land," which are of no use in determining Theodule's assets. These patently useless disclosures reflect his disregard for the Court's specific orders.

D. Theodule Failed To Adequately Identify Accounts

Pursuant to subsection (c) of the Orders, Theodule was required to disclose all accounts in which he has an interest. While Theodule listed a few additional accounts the Commission had not previously identified, he did not disclose the nature of his interest in multiple seemingly unrelated accounts, nor did he provide account numbers for those accounts, or the balance in any account. Accordingly, his account identification section is also inadequate and the Court should order Theodule to show cause why he should not be held in contempt for violating the Orders.

III. MEMORANDUM OF LAW

Contempt is the disregard of judicial authority. To coerce parties into compliance with judicial authority, courts have inherent power to enforce their lawful orders through civil contempt.

Shilitani v. United States, 384 U.S. 364, 370 (1966); *United States v. Barnette*, 129 F.3d 1179 (11th Cir. 1997). Civil contempt proceedings are useful methods for enforcing judicial orders where there has been a violation of a clear and unambiguous order of which the party to be charged had notice but did not diligently attempt to comply. *Banco Popular of Florida v. Banco Popular de Puerto Rico*, 180 F.R.D. 461, 465-66 (S.D. Fla. 1998) (citing *In re E.I. DuPont De Nemours*, 99 F.3d 363, 372 (11th Cir. 1996)). In seeking civil contempt, the Commission bears the initial burden of proving by clear and convincing evidence that Theodule has violated the Court's orders. *Banco Popular of Florida*, 180 F.R.D. at 465-66 (citing *CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d 1525 (11th Cir. 1992)).

Here, the Commission has clearly demonstrated Theodule has not complied with the Court's orders to provide a detailed sworn accounting. The Orders specifically described the manner in which Theodule must disclose three particular categories: (1) funds he received from Creative Capital, (2) assets/investments in which Theodule holds an interest, and (3) accounts in which he holds an interest or over which he exercises control. As described in detail above, Theodule's purported accounting is woefully deficient in each category; omitting disclosure of the funds he received from Creative Capital, failing to provide any useful information describing his assets/investments; and providing minimal information about the accounts he disclosed. Quite simply, Theodule has disregarded the Court's orders to provide a detailed accounting.

IV. CONCLUSION

Based on the foregoing, the Commission requests the Court issue an order requiring Theodule to show cause why he should not be held in contempt for violating the Court's orders requiring him to provide a detailed sworn accounting.

Respectfully submitted,

January 26, 2009

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on January 26, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Brian K. Barry
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SERVICE LIST

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United States District Court, Southern District of Florida

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