

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

Case No: 8:20-cv-00325-T-35AEP

**BRIAN DAVISON, BARRY M.
RYBICKI, EQUIALT LLC, EQUIALT
FUND, LLC, EQUIALT FUND II, LLC,
EQUIALT FUND III, LLC, EA SIP, LLC,**

Defendants,

**128 E. DAVIS BLVD, LLC, 310 78TH
AVE, LLC, 551 3D AVE S, LLC, 604
WEST AZEELE, LLC, BLUE WATERS
TI, LLC, 2101 W. CYPRESS, LLC,
2112 W. KENNEDY BLVD, LLC,
BNAZ, LLC,
BR SUPPORT SERVICES, LLC,
CAPRI HAVEN, LLC, EANY, LLC,
BUNGALOWS TI, LLC, EQUIALT 519
3RD AVE S., LLC, MCDONALD
REVOCABLE LIVING TRUST, 5123 E.
BROADWAY AVE, LLC, SILVER
SANDS TI, LLC, TB OLDEST HOUSE
EST. 1842, LLC,**

Relief Defendants.

ORDER

THIS CAUSE comes before the Court for consideration of Defendant Barry M. Rybicki's Motion to Modify Asset Freeze to Permit Access to Funds for Legal Defense Costs. (Dkt. 43) On February 28, 2020, this Court granted the Parties' joint motion to extend and modify the asset freeze imposed on February 14, 2020. (Dkts. 11, 31) The Court's release of funds was for the sole purpose of allowing Defendant Rybicki to

cover his legal expenses in this action, not to permit his counsel to recover debts previously incurred before the freeze order. To have done so would have effectively elevated counsel's creditor status above all other creditors of the Defendant and the Defendant entities.

Any funds paid to counsel from the unfrozen assets may **only** be used toward legal fees incurred on or after February 14, 2020 — when the asset freeze was imposed in this lawsuit — not toward any legal fees previously incurred. Further, the unfrozen assets may only be used if counsel intends to represent Defendant Rybicki in this action. Any past due legal expenses that were incurred before the asset freeze must be dealt with in the normal course as with any other creditor. If counsel does not wish to undertake the representation of Defendant Rybicki going forward, they must return any money they received from the unfrozen assets to allow Defendant Rybicki to retain a different law firm.

Accordingly, upon consideration of the foregoing, it is hereby **ORDERED** that:


1. To the extent that the Motion to Modify Asset Freeze to Permit Access to Funds for Legal Defense Costs, (Dkt. 43), is seeking the Court's assistance in directing the SEC and/or the Receiver to unfreeze and release the \$75,000 referenced in this Court's February 28, 2020 Order, the Motion is **GRANTED.**¹ **These funds shall only be used for Defendant Rybicki's legal expenses incurred ON OR AFTER THE DATE THE ASSET FREEZE WAS IMPOSED BY THE COURT, and only at reasonable local rates not to exceed \$400.00 per hour for the most experienced counsel and**

¹ The Court assumes this has already been accomplished, but it includes this directive in an abundance of caution.

\$320.00 for a second lawyer. Further the unfrozen assets may only be used by counsel who intend to stay on for the defense of this case. The funds may not be used to defend Defendant Rybicki in the separate civil, putative class action case, nor may the funds be used to recoup fees for work performed prior to the asset freeze. If counsel does not intend to stay on as counsel in the case, the funds must be returned immediately and in full, no matter when they were incurred.

2. Counsel who intend to stay on as counsel in the instant case shall provide a budget for the case and submit it to the Court for review, *in camera*. Thereafter, the Court will determine whether additional funds are needed and should be paid from the assets frozen by the Court's prior Orders.

DONE and ORDERED in Tampa, Florida, this 11th day of March, 2020.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person