

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No: 8:20-cv-325-T-35AEP

BRIAN DAVISON, BARRY M. RYBICKI,
EQUIALT LLC, EQUIALT FUND, LLC,
EQUIALT FUND II, LLC, EQUIALT
FUND III, LLC, EA SIP, LLC, 128 E.
DAVIS BLVD, LLC, 310 78TH AVE, LLC,
551 3D AVE S, LLC, 604 WEST
AZEEL, LLC, 2101 W. CYPRESS, LLC,
2112 W. KENNEDY BLVD, LLC, 5123 E.
BROADWAY AVE, LLC, BLUE WATERS
TI, LLC, BNAZ, LLC, BR SUPPORT
SERVICES, LLC, BUNGALOWS TI, LLC,
CAPRI HAVEN, LLC, EA NY, LLC,
EQUIALT 519 3RD AVE S., LLC,
MCDONALD REVOCABLE LIVING
TRUST, SILVER SANDS TI, LLC, and
TB OLDEST HOUSE EST. 1842, LLC,

Defendants.

ORDER

THIS CAUSE comes before the Court for consideration of the Defendant Brian Davison's Motion to Reconsider and Supporting Memorandum of Law, (Dkt. 193), and the response in opposition thereto. (Dkt. 197) Upon consideration of all relevant filings, case law and being otherwise fully advised, the Court **DENIES** Defendant's Motion.

On July 31, 2020, the Court held a hearing to determine whether the temporary restraining order granted on February 14, 2020 should be converted into a preliminary injunction. On August 17, 2020, the Court entered an Order granting the Securities and

Exchange Commission's request for a preliminary injunction. (Dkt. 184) The Court's Order concludes that "the Defendants appear to have had equally shared responsibilities and acted in concert to successfully perpetrate the Ponzi scheme." (Id.) In the instant motion, Defendant alleges that "the Court's Order of August 17, 2020 was premised on two, but related, inadvertent errors regarding Davison's involvement in the selling process and misstatements as to whether or not the securities were registered." (Dkt. 193 at 4)

I. LEGAL STANDARD

"Reconsideration of an Order is generally only appropriate to (1) account for an intervening change in controlling law; (2) consider newly available evidence; or (3) correct clear error or prevent manifest injustice." Accredited Home Lenders, Inc. v. Santos, No. 6:10-cv-858-Orl-35, 2010 WL 4642557, *1 (M.D. Fla. July 1, 2010). Reconsideration of a previous order is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources. Burger King Corp. v. Ashland Equities, Inc., 181 F. Supp. 2d 1366, 1370 (S.D. Fla. 2002); Strubel ex rel. Strubel v. Hartford Ins. Co. of the Midwest, No. 8:09-CV-01858-T-17, 2010 WL 2985654, at *2 (M.D. Fla. July 26, 2010). "The burden is upon the movant to establish the extraordinary circumstances supporting reconsideration." Mannings v. School Bd. of Hillsboro County, Fla., 149 F.R.D. 235, 235 (M.D. Fla. 1993).

"In order to demonstrate clear error, the party must do more than simply restate his previous arguments, and any arguments the party failed to raise in the earlier motion will be deemed waived." O'Neill v. Home Depot U.S.A., Inc., 243 F.R.D. 469, 483 (S.D. Fla. 2006); see Z.K. Marine, Inc. v. M/V Archigetis, 808 F.Supp. 1561, 1563 (S.D. Fla. 1992) (stating that a motion for reconsideration "should not be used as a vehicle to

present authorities available at the time of the first decision or to reiterate arguments previously made[.]”). “The motion must set forth facts or law of a strongly convincing nature to demonstrate to the court the reason to reverse its prior decision.” Carter v. Premier Rest. Mgmt., No. 2:06CV212FTM99DNF, 2006 WL 2620302 (M.D. Fla. Sept. 13, 2006).

II. DISCUSSION

Defendant alleges that the Court made inadvertent but clear errors of fact related to his role in the sale of unregistered securities. First, Defendant alleges that the Court’s Order is erroneous because the Securities and Exchange Commission (“SEC”) “[had] alleged – repeatedly – that Davison did not bear responsibility for the sales process, and that Defendants did not have ‘equally shared responsibilities’ or ‘act in concert.’” (Dkt. 193) Second, Defendant states that the “disclosure documents provided to investors, and included in the submissions made by the SEC, clearly disclose that the securities were not registered.” (Id.)

Defendant’s first assertion of error fails. Defendant’s argument concerning the level of his involvement in the Ponzi scheme was previously raised, almost verbatim, in his Memorandum of Law in Opposition to [the] SEC Order to Show Cause. (Dkt. 160 at 3) The Court expressly rejected that argument in its Order granting the SEC’s request for entry of a preliminary injunction. (Dkt. 184) In his motion for reconsideration, Defendant cites to portions of the amended complaint to argue that the Court’s Order misrepresents his responsibility in the scheme. The statements Defendant relies upon do not constitute “newly available evidence” because the amended complaint was filed more than a month prior to the Court’s Order. In addition, the Court’s Order references portions of the

amended complaint in support of its conclusion. Defendant does not allege a change in controlling law, and he fails to demonstrate the existence of clear error. Defendant's mere disagreement with the Court's conclusion that "Defendants appear to have had equally shared responsibilities and acted in concert," does not provide sufficient grounds for the Court to grant his motion for reconsideration. (Dkt. 184)

Defendant's second allegation of error also fails. In his plea for reconsideration, Defendant argues that the "disclosure documents provided to investors, and included in the submissions made by the SEC, clearly disclose that the securities were not registered." (Dkt. 193 at 4) In its response in opposition, Plaintiff states that "Davison's argument that the disclosure documents provided to investors state that they were unregistered somehow corrects Davison's sales of these unregistered securities under Section 5 is without legal support." (Dkt. 197 at 4) Plaintiff is correct. See SEC v. Calvo, 378 F.3d 1211, 1215 (11th Cir. 2004) (citing to Swenson v. Engelstad, 626 F.2d 421, 424 (5th Cir. 1980)) (holding that "the Securities Act of 1933 imposes strict liability on offers and sellers of unregistered securities...")


In addition, Defendant fails to provide any new evidence, allege a change in controlling law, or provide adequate support for his assertion of clear error. Instead, Defendant repeats the same argument found in his Memorandum of Law in Opposition to [the] SEC Order to Show Cause. (Dkt. 160 at 7) In support of his argument, Defendant points to language from subscription agreements accessible to the Court prior to its previous Order. In its Order, the Court concluded that both "Davison and Rybicki are controlling individuals of Defendant EquiAlt and the other Corporate Defendants." (Dkt. 184 at 4) Based upon the evidence available, which included the subscription

agreements, the Court found that “the Commission has demonstrated a substantial likelihood of proving that it will prevail on its Section 5 and Section 10(b) claims based on the affirmative evidence developed to date demonstrating fraud, the sale of unregistered securities, and representations to investors that were materially false.” (Id. at 3) The Court also concluded that the SEC will likely be able to prove that the unregistered securities “were falsely touted to investors as ‘secure’” and that Defendants Davison and Rybicki also falsely touted that the ‘investments’ had earned millions of dollars....” (Id.) Defendant does not set forth any additional facts or provide any relevant case law to convince the Court to reverse its decision. Defendant merely attempts to rehash an argument that was already considered and rejected by the Court. As such, Defendant has failed to demonstrate that reconsideration of the Court’s Order, (Dkt. 184), is appropriate.

Upon consideration of the foregoing, it is hereby **ORDERED** as follows:

1. Defendant’s Motion for Reconsideration, (Dkt. 193), is **DENIED**.

DONE and **ORDERED** in Tampa, Florida, this 3rd day of December, 2020.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person