

**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;

Defendants, and

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

**RECEIVER'S OPPOSITION TO DEFENDANT RYBICKI'S
RENEWED MOTION TO MODIFY ASSET FREEZE**

Burton W. Wiand, as Receiver over the assets of the Corporate and Relief Defendants,¹ files this Opposition to Defendant Barry Rybicki's Renewed Motion to Modify Asset Freeze.

¹ The ("Receiver" and the "Receivership" or "Receivership Estate") has been expanded to include not only the Corporate and Relief Defendants but also the following entities: EquiAlt Qualified Opportunity Zone Fund, LP; EquiAlt QOZ Fund GP, LLC; EquiAlt Secured

BACKGROUND

On April 5, 2021, Defendant Barry Rybicki (“Rybicki”) filed his original Motion to Modify Asset Freeze seeking this Court’s approval of the lifting of the asset freeze to obtain \$140,000 in attorney’s fees from those assets frozen by this Court since the onset of this case in February 2020 (Doc. 287). The Receiver and the SEC both opposed this initial motion in April 2021. In late October 2021, Magistrate Judge Porcelli denied the motion without prejudice given the pending settlement talks between Rybicki and the SEC (Doc.430). Rybicki had specifically excluded the Receiver from participating in these settlement discussions and mediation.

Rybicki was at the center of the distribution of over \$180 million of unregistered securities sold by a sales force of unregistered and unlicensed sales agents that he personally recruited and oversaw. This scheme resulted in tens of millions of investor losses that will never be recovered. As part of the settlement agreement reached with Rybicki, the Receiver waived his claims against Rybicki wherein he could have pursued these remaining investor losses.

During the course of this case, Rybicki has already been allowed to take \$105,000 for attorney’s fees and \$15,800 for experts from his assets frozen at

Income Portfolio REIT, Inc.; EquiAlt Holdings LLC; EquiAlt Property Management LLC; and EquiAlt Capital Advisors, LLC [Doc. 184, at 6–7] and EquiAlt Fund I, LLC [Doc. 284].

the commencement of this litigation. Additionally, EquiAlt paid \$50,000 in a retainer to his counsel just one day before the asset freeze was entered in this case. Upon information and belief, Rybicki has started a new business and pursuant to the terms of the settlement has been allowed to keep several hundred thousand dollars in equity in his home.

Rybicki's Violations of Asset Freeze

Over the course of this case, despite the imposition of an asset freeze, Rybicki has chosen not to follow the Court's direction regarding this issue. First, in May 2020, he negotiated the sale of one of his vehicles without discussing the matter with the SEC or the Receiver. Ultimately, the Receiver was brought into the conversation and secured the funds received from the sale. Second, it came to the Receiver's attention that in 2017, Rybicki and his wife had deeded a house to his son Ryan Rybicki subject to a Deed of Trust. Contrary to the terms of the Asset Freeze, Rybicki and his wife released the Deed of Trust in May 2021. With the assistance of Rybicki and his counsel, the Receiver has secured this property but the Release of the Deed of Trust should never have occurred.

Assignment with the Receiver

Although the Receiver was excluded, at Rybicki's request, from the settlement discussions and mediation, as part of the discussions surrounding the proposed Final Judgment, Rybicki negotiated an Assignment of assets to

the Receiver. Rather than reiterate the information regarding that settlement with the SEC, the Receiver refers the Court to the SEC's Opposition to Rybicki's motion (Doc. 538). However, the greatest takeaway from that discussion is that the value of the monies/assets that Rybicki has agreed to turnover in settlement of the SEC's claims falls far short of the claims asserted by the SEC. The Final Judgment is in excess of \$10 million but Rybicki's assets that he has agreed to turn over to the Receiver are less than \$5 million. The Receiver agreed to this Assignment of assets for the benefit of the defrauded investors. These assets include the bank accounts and investment accounts that Rybicki references in his proposed order. Pursuant to the Court's Judgment and the terms of the Assignment executed by the Receiver, Rybicki and his wife, these accounts are the property of the Receiver on behalf of the defrauded investors. However, after the Court approved the Judgment and the Assignment, Rybicki now seeks to access funds in those accounts and reduce them by over \$200,000 to pay for his attorney's fees. The Receiver and more importantly, the defrauded investors, should not be required to pay for Rybicki's attorney's fees. It is not equitable nor is there any justification for Rybicki to receive additional funds that would otherwise go to his victims. Absent direction from the Court, the Receiver is unwilling to provide any further support to Rybicki and opposes any modification of the asset freeze that would be detrimental to the recovery of the defrauded investors.

CONCLUSION

Based on the foregoing, the Receiver opposes Rybicki's Renewed Motion to Modify Asset Freeze.

Respectfully submitted,

/s/ Katherine C. Donlon

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Attorneys for Burton W. Wiand Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 21, 2022, I electronically filed the foregoing with the Clerk of this Court by using the CM/ECF system which will send notification of electronic filing to all counsel of record.

/s/ Katherine C. Donlon

Attorney