

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No: 8:20-cv-00325-MSS-MRM

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, et al.,

Relief Defendants.

**RECEIVER'S UNOPPOSED MOTION FOR LEAVE TO RETAIN
JARED J. PEREZ P.A. AS CO-COUNSEL**

Burton W. Wiand, as Receiver over the assets of the above-captioned corporate and relief defendants (the "**Receiver**"), moves the Court for leave to retain Jared J. Perez P.A. ("**Perez P.A.**") as co-counsel to Johnson Cassidy Newlon & DeCort and Guerra King to represent the Receiver. In support of his unopposed motion, the Receiver states as follows:

1. On February 14, 2020, this Court appointed Burton Wiand as Receiver

over the Corporate and Relief Defendants in this action. [Doc. 11]

2. In that same Order, the Court approved the retention of the law firm Wiand Guerra King (n/k/a Guerra King) to act as counsel for the Receiver. [Doc. 11 at ¶16]

3. The Court later granted the Receiver's motion to retain Johnson Cassidy Newlon & DeCort ("JCND") as co-counsel because lead counsel, Katherine Donlon, had left Guerra King and moved to JCND. (Doc. 282)

4. Since the date of the Receiver's appointment, Jared J. Perez, formerly of the Guerra King firm, has acted as co-counsel for the Receiver.

5. Mr. Perez left the Guerra King firm and formed the firm of Jared J. Perez P.A. last month.

6. Given Mr. Perez's knowledge regarding this matter and his expertise in receivership and federal court practice, the Receiver believes that it is in the best interest of the Receivership that Mr. Perez continue to provide legal services to the Receiver in this case.

7. Mr. Perez's rate at Perez P.A. will be the same as those approved by the Court previously.

8. Further, given the roles of the various legal professionals providing

services to the Receiver, it is not anticipated that there will be any duplication of services provided by the two firms.

MEMORANDUM OF LAW

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate

courts. *See United States v. Branch Coal*, 390 F.2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

Based on the discretionary powers of this Court in receivership and Mr. Perez' role in this case, the Receiver requests that the Court grant the Receiver leave to retain Perez P.A. as co-counsel providing legal services to the Receiver.

CERTIFICATION UNDER LOCAL RULE 3.01(G)

Undersigned counsel has conferred with counsel for the SEC and there is no objection to the relief sought.

[Signatures to follow]

Respectfully submitted,

s/Katherine C. Donlon

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Counsel for Receiver Burton W. Wiand

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2022, I electronically filed the foregoing with the Clerk of Court by using the Court's CM/ECF system, thereby serving this document on all attorneys of record in this case.

/s/ Katherine C. Donlon

Attorney