

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CIVIL ACTION NO. 20-cv-00325-MSS-MRM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN DAVISON, et al.,

Defendants.

**PLAINTIFF'S SUPPLEMENTAL BRIEFING REGARDING MOTION TO
EXTEND AND MODIFY ASSET FREEZE**

Pursuant to the Court's Order of March 2, 2023 (Doc. 821), Plaintiff Securities and Exchange Commission hereby files its Supplemental Briefing Regarding the Motion to Extend and Modify Asset Freeze (Doc. 746). As explained below, the SEC takes no position on Moses & Singer LLP's Notice of Charging Lien (Doc. 755) beyond noting that the Notice of Charging Lien may affect Bank of America's ability to release the funds to Davison as set forth in the Proposed Order when faced with the prospect of a looming charging lien.

I. PROCEDURAL BACKGROUND

On February 18, 2020, this Court entered an Order granting an asset freeze over all of the assets and bank accounts of Defendant Brian Davison, including those at issue here. (Doc. 10). After more than a year of litigation, the SEC and

Davison reached a settlement which was memorialized in a Consent and Final Judgment filed with the Court. (Doc. 353). The Court subsequently entered the Final Judgment against Defendant Brian Davison on August 16, 2021. (Doc. 355-1). The Final Judgment requires Davison to assign and turn over certain accounts and assets to the Receiver and when that is completed the amounts due as monetary remedies (disgorgement, interest and civil penalties) would be “deemed satisfied.” The Final Judgment also provides that once Davison satisfies the obligations to turn over certain assets, the asset freeze entered against Davison “shall be lifted.” (Doc. 355-1 at p. 11, Section V).

The issues currently pending before the Court arise out of the Receiver’s efforts to collect the last remaining assets that Davison has yet to produce as specified in the Final Judgment, specifically 480 Platinum American Eagle Coins and 3 Gold American Eagle coins (hereinafter “the Coins”). As detailed in their briefs (Docs. 792 & 796), the SEC and Receiver allege either the Coins or their equivalent value (somewhere between \$430,000-\$500,000), should be given to the Receiver from Davison’s assets to complete his obligations under the Final Judgment. In turn, Davison alleges the Final Judgment should be deemed satisfied without the turnover of the Coins or their equivalent. (Doc. 768). The motions and

briefs regarding how to resolve the Coin debate stand alone and can be resolved independently without regard to the other issues pending before the Court.¹

It was the dispute over the Coins, however, that led to the issue on which the Court now requests additional briefing- what should happen to Davison's assets that are not subject to turnover to the Receiver under the Final Judgment once the asset freeze is lifted. Monies which under the terms of the Final Judgment would revert back to Davison once he has satisfied his obligations of turning over the Coins.

II. THE REQUEST TO MODIFY THE ASSET FREEZE

The Final Judgment specifically states:

ASSET FREEZE

IT IS FURTHER ORDERED AND ADJUDGED that, upon receipt of confirmation from the Commission and the Receiver that Davison has satisfied his obligations under Section II of this Final Judgment, the Asset Freeze this Court previously entered against Davison shall be lifted and extinguished in its entirety.

¹ The pending Motions regarding the dispute over the Coins include Davison's Renewed Motion to Alter or Amend the Final Judgment (Doc. 768); Receiver's Opposition to Davison's Renewed Motion (Doc. 792) and SEC's Opposition to Davison's Renewed Motion (Doc. 796).

Final Judgment (Doc. 255, p. 11, Section V). The Final Judgment does not direct that once the asset freeze is lifted that Davison's assets be sent to any particular law firm or account. Nor does the Final Judgment provide a specific amount of money to be returned to Davison or create a source of funds for recovery for Davison. It simply states that once Davison has complied with turning over specific assets to the Receiver, the asset freeze over any remaining assets held by Davison shall be lifted.

Although the asset freeze is not to be lifted until Davison satisfies his obligations under Section II of the Final Judgment (which is the subject of the Coin dispute), the SEC agreed as an accommodation to Davison that certain monies held in excess of the value of the Coins could be unfrozen and no longer be subject to the asset freeze. Thus, the SEC, the Receiver and Davison's current counsel, Stanley Padgett, agreed that monies held in excess of the value of the disputed Coins, currently held by Bank of America in account xxx8041 under the name of the Brian D. Davison Revocable Trust, (approximately \$322,480), could be released from the asset freeze.

To achieve this end, the parties agreed to file an agreed Order to modify the asset freeze to provide that the money held in Bank of America account xxxx8041 no longer be frozen. The SEC filed the agreed upon proposed Order on December

23, 2022. (Doc. 746-1). The language of the agreed Order was agreed to by both the SEC and Davison. The proposed order lifts the asset freeze over Bank of America account xxx8041 and directs Bank of America to “mail a check for the proceeds of that account made payable to Brian Davison, to Davison’s counsel, Stanley Padgett” and gives the Padgett’s law firm’s address. The proposed order does not direct that the funds be placed in any particular law firm’s trust account—only that the check be made payable to Davison and be mailed to his current lawyer, Stanley Padgett, at Padgett’s law firm address.

The SEC has complied with the terms under the Final Judgment and has agreed to modify the asset freeze to lift the freeze as to one bank account, to be paid to Brian Davison, to the address he requested. No party or law firm has objected to the asset freeze being lifted as to Bank of America account xxxx8041. The only dispute regarding account xxxx8041 is what should happen to the monies in the account once the freeze is lifted now that Davison’s former counsel, Moses & Singer, has filed a Notice of Charging Lien over those funds. It is important to note that the charging lien does not involve the SEC, the money it is owed by Davison, or the Final Judgment. Instead, the SEC ends its involvement with the issue once the asset freeze is lifted.

III. THE PRACTICAL IMPLICATIONS OF LIFTING THE ASSET FREEZE

Although the SEC takes no position on the issues surrounding the charging lien or whether it is appropriate², the dispute over the distribution of Bank of America account xxx8041 does have practical implications in this case. Should the Court enter the proposed Agreed Order Extending and Modifying Asset Freeze, the burden would then shift to Bank of America to determine whether they would distribute the monies to Davison as directed in the Order, hold the monies until the Charging Lien issue is resolved (so as to avoid liability should the charging lien be found to be appropriate), or interplead the funds with the Court. Thus, to avoid additional time, expense and unnecessary litigation, the SEC suggests two options to the Court: 1) do not enter the Order lifting the Freeze over Bank of America account xxx8041 until the charging lien issue has been resolved, or 2) enter the Order lifting the Freeze but direct that the monies be held in one of Davison attorney's trust accounts but not distributed until the charging lien issue has been resolved or until otherwise directed by the Court. The SEC believes either option will save the Court and the parties resources, time and avoid further delay.

² Beyond the statements made above, the SEC has no position regarding the dispute between Defendant Davison and his various counsel as to what happens to Davison's funds once the asset freeze is lifted. Thus, the SEC takes no position as to the Notice of Charging Lien (Doc. 755) or the associated briefs.

March 9, 2023

Respectfully submitted,

By: s/Alise Johnson
Alise Johnson
Senior Trial Counsel
Fl. Bar No. 0003270
E-mail: johnsonali@sec.gov
Lead Attorney

Attorney for Plaintiff
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1950
Miami, Florida 33131
Telephone: (305) 982-6300

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2023, a true and correct copy of the foregoing has been filed via the Court's CM/ECF system.

s/Alise Johnson
Alise Johnson
Senior Trial Counsel