

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, and

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

Relief Defendants.

ORDER

THIS CAUSE comes before the Court for consideration of the Estate of Judith Essling’s Motion to File a Late Proof of Claim Form, (Dkt. 819), and the Receiver’s Response. (Dkt. 856) Upon consideration of all relevant filings, case law, and being otherwise fully advised, the Motion is **DENIED WITHOUT PREJUDICE**.

Under 28 U.S.C. § 1654, a party “may plead and conduct *their own* cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.” Earlier this month, the Eleventh Circuit applied § 1654 to a case captioned Iriele v. Griffin, No. 21-12570, --- F.4th ----, 2023 WL


2964512, at *4 (11th Cir. Apr. 17, 2023), that involved a pro se executor of an estate. The Eleventh Circuit held that “an executor may not represent an estate *pro se* where there are additional beneficiaries, other than the executor, and/or where the estate has outstanding creditors.” Iriele, 2023 WL 2964512, at *4. The Eleventh Circuit added that a district court should offer a pro se party the chance to cure the defect. Id.

Here, Mr. Essling’s motion is not properly before this Court for consideration for several reasons. On February 27, 2023, Mark Essling moved this Court for permission to file a late proof of claim form on behalf of the Estate of his mother, Judith Essling. (Dkt. 819) As a threshold matter, Mr. Essling is not admitted to practice before the Middle District of Florida and has not sought leave to appear pro hac vice. He also admits that there is no “estate” of Judith Essling because probate has not been commenced; therefore, he has not been retained by the “estate” to represent it here. Moreover, even if this Court recognizes Mark Essling as the named Executor of Judith Essling’s Estate there are other beneficiaries named in Judith’s Last Will and Testament, so he cannot appear in this case pro se on behalf of the estate. See Iriele, 2023 WL 2964512, at *4. Therefore, Mr. Essling’s Motion is due to be **DENIED WITHOUT PREJUDICE**.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Mark Essling’s Motion to File a Late Proof of Claim Form, (Dkt. 819), is **DENIED WITHOUT PREJUDICE**. Mr. Essling may renew his motion once the estate been established and

it has acquired Counsel. The Receiver is on notice that the estate will likely be pursuing its claim.

DONE and ORDERED in Tampa, Florida, this 26th day of April 2023



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

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Counsel of Record