

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

Case No. 8:20-cv-325-MSS-MRM

BRIAN DAVISON, et al.,

Defendants.

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**DEFENDANT BRIAN DAVISON’S OBJECTIONS TO
REPORT AND RECOMMENDATION ON
RECEIVER’S MOTION FOR ORDER TO SHOW CAUSE
AND DAVISON’S MOTION TO AMEND JUDGMENT**

Defendant Brian Davison, pursuant to 28 U.S.C. § 636, files these objections to the portion of the Magistrate Judge’s Report and Recommendation dated May 16, 2023 (Doc. 918) which recommended denial of Davison’s Renewed Motion to Alter or Amend the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(1) and 60(b)(5) (Doc. 768).

The Report and Recommendation recognizes that the Receiver has received net proceeds of sale of assets turned over by Davison that exceed the total amount of the Final Judgment but reaches an incorrect and unsupported conclusion that the only way Davison could satisfy the Final Judgment was by the turnover of assets. (R&R, p. 5). The plain language of the Final Judgment does not support that conclusion.

The Final Judgment states that “Davison is liable to the Commission . . . for a total of \$27,013,060” (Doc. 355-1 at 5) and goes on to provide that “any obligation of Davison to satisfy the disgorgement, prejudgment interest, and civil penalty payments, due to the Commission as set forth above, **shall be deemed satisfied . . .**” by the turnover of certain assets. (Id. at 5-6) (emphasis added). The highlighted language does not make the turnover of assets **the only way** Davison can satisfy the Final Judgment; only one way in which he can do so. The Commission has entered into hundreds if not thousands of similar agreements over the years. If it wanted only the assets and not the face amount of the judgement, the burden of precise language is on the government, not Davison.

Because the Magistrate Judge began his analysis with the incorrect assumption that Davison could only satisfy the Final Judgment by the turnover of assets, he improperly distinguished the Fifth and Eleventh Circuit cases cited by Davison related to the Receiver receiving a financial windfall. (R&R at 6). Neither the Receiver nor the Commission deny that the assets already turned over by Davison have produced net proceeds of sale in excess of the total sum awarded in the Final Judgment.

As support for his Report and Recommendation, the Magistrate Judge cited the portion of the Final Judgment providing that once Davison turns over property and assets, “he relinquishes all legal and equitable right, title and interest in the property and assets (‘Fund’), and no part of the Funds shall be returned to him.” (Doc 355-1 at 9) (R&R at 5). **That language has no application as Davison has not requested the**

return of any of the assets he turned over or of any proceeds of the sale of those assets in excess of the amount of the Final Judgment.

Legal Standard

A party objecting to a magistrate judge's report and recommendation must do so within fourteen days after receiving a copy of the report. 28 U.S.C. § 636(b)(1)(C). The district court reviews de novo those portions of a Report and Recommendation to which a party objects. *Id.*; see also *Harman v. Standard Ins. Co.*, 564 F. Supp. 3d 1187, 1189 (M.D. Fla. 2021). The district judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." § 636(b)(1)(C). "The [district] judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." *Id.*

Mr. Davison objects to and seeks de novo review of the portion of the Magistrate Judge's Report and Recommendation recommending denial of Davison's Renewed Motion to Alter or Amend the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(1) and 60(b)(5) (Doc. 768).

Conclusion

The Report and Recommendation's factual and legal errors related to Davison's Renewed Motion to Alter or Amend the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(1) and 60(b)(5) (Doc. 768) require the Court to reject that portion of the Report and Recommendation entirely. Davison respectfully asks that the Court sustain these objections to the Report and Recommendation and enter an order granting Davison's

Renewed Motion to Alter or Amend the Final Judgment pursuant to Fed. R. Civ. P. 60(b)(1) and 60(b)(5) (Doc. 768).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via the Court's CM/ECF system on this 30th day of May 2023.

/s/ Stanley T. Padgett
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