

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No: 8:20-cv-394-T-35SPF

KINETIC INVESTMENT GROUP, LLC,
MICHAEL SCOTT WILLIAMS, KINETIC
FUNDS I, LLC, KCL SERVICES, LLC,
SCIPIO, LLC, LF42, LLC, EL MORRO
FINANCIAL GROUP, LLC, KIH, INC.,
and BRANCH BANKING AND TRUST
COMPANY,

Defendants.

ORDER

THIS CAUSE comes before the Court for consideration of Defendants' and Relief Defendants' Emergency Motion for Clarification or, in the Alternative, Partial Modification of the Orders Granting the SEC's Emergency Motions for Asset Freeze and Appointment of Receiver, (Dkt. 49), and the responses in opposition thereto filed by Plaintiff, the SEC, and the Receiver. (Dkts. 51, 54) Upon consideration of all relevant filings, case law, and being otherwise fully advised, the Court **GRANTS IN PART AND DENIES IN PART** the Emergency Motion. The Court **STRIKES** the unauthorized reply, (Dkt. 64), filed in support of the motion without leave in violation of Local Rule 3.01(c).

I. BACKGROUND

On February 20, 2020, the SEC filed a Complaint against the Defendants, Kinetic Investment Group, LLC and Michael Scott Williams ("Williams"), and Relief Defendants, Kinetic Funds I, LLC, KCL Services, LLC d/b/a Lendacy, Scipio, LLC, LF42, LLC ("LF42"),

El Morro Financial Group, LLC, and KIH, Inc. f/k/a Kinetic International, LLC, based on the Defendants' alleged violation of numerous securities laws, as well as motions seeking an asset freeze and appointment of a receiver. (Dkts. 1, 2, 3) The Court set a hearing on the motions for February 28, 2020, which was continued to March 6, 2020 at the Parties' request.¹ (Dkts. 6, 9)

At the hearing on March 6, 2020, the Court heard oral argument on the motions for asset freeze and to appoint a receiver. (Dkt. 32) At the hearing, Defendants argued that the asset freeze sought by the SEC was overbroad. This argument was rejected by the Court.

MR. MALINA: By paying off, Your Honor, the loan to LF42, LF42 shouldn't be within the reach of even the request for relief. Mr. Williams advises that KIH, which is an international finance entity in Puerto Rico that has been working on an international exchange and has as an asset technology, certain technologies, these are -- the people who are working on that, if these entities are frozen aren't going to continue to do that. It's going to harm assets to these entities that are no longer traced to the loans at issue. I think, yes, by paying off the loan that he paid off yesterday, there is no reason to reach into KIH or LF42 because that loan has been paid off. And that is part of what they want to freeze, and that's the only money arguably traceable to -- at issue here is no longer an issue.

THE COURT: All right. Anything else from the defense?

MR. MALINA: Thank you, Your Honor.

THE COURT: Well, I am so grateful to both sides for the very high level of presentation. And I do understand that when you appoint a receiver, just the temple comes down, and sometimes maybe the temple was going to be fine before that happened. But I'm granting the order for an asset freeze, and I'm granting the order for a receiver. And I'll tell you why.

Mr. Williams was a fiduciary. The evidence shows, I think it's unrebutted, that when a dollar came in, it bought a security worth a dollar, but about a third of that was borrowed money. That wasn't the investors' money. That was the money they borrowed from the broker, and about a third of that went to unsecured loans at Lendacy.

Of the Lendacy money, about half of those loans went to fiduciary himself. And a significant portion of that went to what some people might call real estate speculation in the Caribbean. Now I know that bank is a

¹ This case was transferred from the Honorable Judge William F. Jung to the undersigned on May 5, 2020 after Judge Jung entered an Order of Recusal. (Dkt. 62, 65)

fabulous place. I looked at the website you told me to look at. And I'm sure with the economy going, you know, everything would be fine. When the sun shines, it's all good.

But if you step back and say a man who – whatever you want to call it. Promoter is a pejorative word. A man who is a fiduciary that's taking in pension money is using about a sixth of the money for his own benefit in an unsecured loan, most of which is real estate or business speculation in the islands, just that's what happened.

So notwithstanding this remarkable legal presentation by the defense team, I'm entering the order. I'm not requiring a sworn affidavit.

I am telling the receiver that I'm inviting the defense to file a motion if there's some reason that some of these companies shouldn't be frozen. They mentioned two. There's of course restitutionary issues. There's tracing money issues. So although I'm not requiring Mr. Williams to file a sworn accounting, it's probably greatly in his interest to satisfy the receiver if he wants to free up some of this and might want to be getting on that right away.

So here's your orders. And they're so entered. Thank you very much.

(Dkt. 58 at 86:7–88:11)

The Court then granted the SEC's Emergency Motion for Asset and Other Relief Freeze ("Asset Freeze Order") and Emergency Motion for Appointment of Receiver ("Receiver Order") (collectively, "March 6, 2020 Orders"). (Dkts. 33, 34) The Asset Freeze Order, which is materially identical to the proposed order filed by the SEC with its motion, is broad reaching as acknowledged by Defendants at the hearing. (Dkts, 33, 2-62) It orders that:

Defendants and Relief Defendants, their . . . attorneys . . . hereby are, restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of Defendants and Relief Defendants.

(Dkt. 33 at ¶ A) It further specifies that:

[a]ny financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control

of Defendants or Relief Defendants, directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this order by personal service, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of such funds or other assets

(Id. at ¶ B)

The Receiver Order appoints a Receiver over Defendant Kinetic Investment Group, LLC and the Relief Defendants “with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, causes in action and any other property of the Defendant and the Relief Defendants; marshal and safeguard all of their assets; and take whatever actions are necessary for the protection of the investors” (Dkt. 34 at 1–2) It defines “Recoverable Assets” as those assets of the Relief Defendants that: “(a) are attributable to funds derived from investors or clients of the Defendant; (b) are held in constructive trust for the Defendant; (c) were fraudulently transferred by the Defendant; and/or (d) may otherwise be includable as assets of the estates of the Defendant” (Id. at 2) The Receiver Order freezes all Recoverable Assets. (Id. at 3)

On April 23, 2020, Defendant Williams filed the instant Emergency Motion for Clarification or, in the Alternative, Partial Modification of the Orders Granting the SEC’s Emergency Motions for Asset Freeze and Appointment of Receiver.² (Dkt. 49) Therein, Williams seeks an order from this Court clarifying that the Asset Freeze Order does not

² The Motion purportedly is brought on behalf of all Defendants and Relief Defendants; however, the Receiver, who now represents the interests of Defendant Kinetic Investment Group, LLC and the Relief Defendants pursuant to the Receiver Order, (Dkt. 34), opposes the requested relief. (Dkt. 54) Thus, the Court treats the Motion as being brought only on behalf of Defendant Williams.

encompass certain funds or, in the alternative, unfreezing and releasing funds that are “untainted by the alleged wrongdoing at issue.” (Id. at 2)

Specifically, Williams explains that on March 5, 2020, one day prior to the hearing on the asset freeze motion, approximately \$3.4 million was obtained by Relief Defendant LF42 through Mr. Williams. These funds were purportedly “derived from the publicly-known sale of LF42’s ownership interest in [Obsidian Technologies, LLC f/k/a] Silexx Financial Systems, LLC (“Silexx”) to the Chicago Board Options Exchange in November 2017.”³ (Id. at 2, 6) This money was transferred pursuant to a Distribution Agreement to Greenberg Traurig, counsel for Defendants and Relief Defendants, to be held in trust on behalf of Williams and LF42. (Id. at 6, Dkt. 49-1) That same day, Greenberg Traurig, at the direction of Williams, wired approximately \$2.9 million of these funds to Defendant Kinetic Investment Group, LLC’s BMO Harris bank account (“Kinetic Account”), and retained \$500,000 in its trust account for payment towards Defendants’ and Relief Defendants’ attorneys’ fees and Williams’ defense of a parallel investigation. (Dkt. 49 at 7) Significantly, AFTER the entry of the March 6, 2020 Orders, a portion of the \$500,000 was disbursed from the trust account by Greenberg Traurig to pay itself for Defendants’ and Relief Defendants’ defense fees and costs, perhaps incurred before the Asset Freeze Order was entered or perhaps also incurred on the day the Order was entered. (Id. at 3 n.2) Williams offers that Greenberg Traurig “will replenish these fees if this Court (a) determines that Defendants’ and Relief Defendants’ interpretation of the March 6[, 2020] Orders is incorrect and (b) declines to modify the March 6[, 2020] Orders as requested” (Id.)

³ Williams claims he owned, either “directly or through LF42,” a 40% equity interest in Silexx. (Dkt. 49-1)

Additionally, on March 5, 2020, Williams made transfers from the Kinetic Account to pay off or pay down⁴ LF42's Lendacy loan and pay down several other Lendacy loans received personally by Williams and Relief Defendant Scipio, LLC. (Id. at 7) Williams also transferred approximately \$460,000 from the Kinetic Account to an account held by LF42, which at the time was under his control. (Id.) In the response, the Receiver asserts that Williams then caused nearly \$400,000 of this money to be transferred to various other accounts, including \$248,000 to his personal account, \$60,000 to his wife, \$25,000 to Pyram King LLC's Banco Popular account, and \$15,000 to Rex Tenax, LLC's Banco Popular account. (Dkts. 54 at 8–9; 53-5) Williams concedes that he funded the Pyram King Account with approximately \$25,000 of the Silexx sale funds on March 5, 2020 and concedes that he withdrew approximately \$9,000 from this account to pay for his living expenses after the March 6, 2020 Orders were entered. (Dkt. 49 at 10) However, he asserts that Pyram King, LLC and Rex Tenax, LLC have no relationship to Kinetic Funds or any Relief Defendant, and he asserts, despite the Receiver's contention otherwise, that "no monies from Kinetic Funds or from any Relief Defendant were transferred to or from the Rex Tenax account." (Dkt. 49 at 9)

Based on the contention that the Silexx sale money, which was paid to LF42 and Williams, is "untainted," Williams and his counsel contend that these funds are not "engulfed in" the March 6, 2020 Orders. (Id. at 2–3) Relying on this contention and without seeking prior clarification, Williams and his counsel disbursed approximately \$200,000 to Greenberg Traurig and a consultant from the \$500,000 held in trust by Greenberg Traurig

⁴ The Court notes that, though Williams represents that the LF42 loan was paid off in its entirety on March 5, 2020, the Receiver's First Interim Report indicates that "a significant portion of transfers to or for Williams' and/or LF42's benefit remain[s] outstanding." (Dkt. 60 at 62)

after entry of the March 6, 2020 Orders. (Dkts. 49 at 3 n.2; 51 at 10) Williams also concedes that since entry of the Orders he has paid for “his monthly living expenses via a combination of \$9,000 from the Pyram King Account, credit cards, and rental income of approximately \$1,500 that he received from a tenant currently residing in real property he owns.” (Dkt. 49 at 16)

Upon review of the record, including the March 6, 2020 Orders and hearing transcript, the Court **DENIES** the Motion for Clarification to the extent that Williams seeks clarification that the Asset Freeze Order does not encompass the Silexx sale proceeds that are now in the hands of LF42, Kinetic, or under control of Williams or any Relief Defendant or their agents, including, without limitation, the \$500,000 deposited with Greenberg Traurig and the \$25,000 in the Pyram King Account. The Order needs no clarification in this regard.

As of the date of the March 6, 2020 Orders, the \$3.4 million from the Silexx sale proceeds had been distributed among various accounts after originally being transferred to Greenberg Traurig’s trust account for the benefit of Williams and LF42. The \$500,000 that remained in the trust account at the time of the March 6, 2020 Orders and that was being held for the benefit of Williams and LF42 and any other portion of those funds then in the control of Williams are facially covered by the Asset Freeze Order, which covers all assets of Defendant Williams and Relief Defendant LF42 regardless of the source. (Dkt. 33) Both Williams and LF42 are expressly subject to the Asset Freeze Order, and any funds held “for the benefit or under the control of Defendants [including Williams] or Relief Defendants [including LF42], directly or indirectly, held jointly or singly, and wherever located” were subject to that Order. (Id.) Nowhere in the record is there an exemption

from this freeze for LF42 generally or for assets derived from the Silexx sale proceeds specifically.

In fact, defense counsel argued at the March 6, 2020 hearing that LF42 should be exempt from the Asset Freeze Order by virtue of its having paid off its Lendacy loan in full one day prior to the hearing. The Court denied this request. (Dkt. 58 at 86:7–88:11) The Court, however, expressly invited Defendants “to file a motion if there’s some reason that some of these companies shouldn’t be frozen. They mentioned two”—one of which was LF42. (*Id.* at 88:2–4) Despite the clear directive from the Court to file a motion if there was some reason LF42’s assets should be unfrozen, no such motion was filed prior to the dissipation of approximately \$200,000 to Greenberg Traurig from its trust account for payment of legal fees and expenses. This was a violation of the March 6, 2020 Orders. Thus, Greenberg Traurig is **DIRECTED** to return the funds to the trust account within **THREE (3) DAYS** of the date of this Order.

The Banco Popular accounts, including the Rex Tenax and Pyram King accounts, are also clearly subject to the Asset Freeze Order as they are under Williams’ control. (Dkt. 49-3) Again, the Asset Freeze Order directs that “[a]ny financial or brokerage institution . . . holding any such funds or other assets, in the name, for the benefit **or under the control** of Defendants [including Williams] or Relief Defendants . . .” shall be frozen. (Dkt. 33) (emphasis added) Further, Williams’ use of the \$1,500 derived from tenant payments and his incurring credit card charges without prior authorization are in clear contravention of the Asset Freeze Order, which prohibits Williams from “transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, . . . or charging upon or drawing from

any lines of credit” (Id.) As Williams’ accounts are frozen, the Court will not order him to return these assets. However, Williams **SHALL NOT** dissipate any further assets or incur any further debt without seeking prior authorization.

The Court **GRANTS IN PART and DENIES IN PART** the Defendant’s alternative request to modify the March 6, 2020 Orders. Williams requests that the Court modify the March 6, 2020 Orders to: (1) unfreeze all of LF42’s assets, including its bank accounts and the remaining Silexx sale funds held by it and its attorneys, (2) allow Williams to access \$5,000 per month to pay for his monthly living expenses and pay for attorney’s fees using the Silexx sale funds, (3) and unfreeze the Rex Tenax and Pyram King accounts, as well as Williams’ personal Banco Popular account, which he represents contains a balance of approximately \$1,500 and claims was not derived directly or indirectly from any Kinetic investor or Lendacy funds. (Dkt. 49 at 10, 12–23)

The Court **DENIES WITHOUT PREJUDICE** Williams’ broad requests to unfreeze all of LF42’s assets and to unfreeze the Silexx sale proceeds that remain under his or his attorneys’ possession and/or control. Questions remain regarding whether LF42 continues to retain ill-gotten funds after its purported repayment of its Lendacy loan and whether the Silexx sale proceeds—initially transferred to **both** LF42 and Williams and subsequently distributed by Williams through the accounts of Defendants or Relief Defendants before making their way into any third-party accounts—are tainted by wrongdoing and are eligible for disgorgement.

The Court also **DENIES WITHOUT PREJUDICE** Williams’ request for a reasonable amount of funds to be released for payment of Williams’ living expenses and attorney’s fees. The Court will by separate Order permit a modification of the Asset Freeze

Order to release a reasonable amount for Mr. Williams' living expenses on agreement of the Parties and will enter an Order permitting a reasonable amount to be unfrozen for attorney's fees needed to defend the case (at local rates and with a realization that a showing has been made that the assets in the possession of Williams that are covered by the Asset Freeze Order are likely tainted funds that he can no longer freely use for his personal benefit) after review of a reasonable proposed budget, which budget shall not include monies spent on ancillary proceedings and investigations. The Parties are **DIRECTED** to confer on the issue of any modification of the Asset Freeze Order and file a joint motion and proposal for modification if such relief is sought.

The Court **GRANTS** Williams' request to unfreeze the Rex Tenax and Pyram King Banco Popular accounts, to the extent stated herein. Specifically, Williams represents that the Rex Tenax account is "funded from services rendered by Mr. Williams' business partner that are wholly unrelated to the services rendered by Kinetic Funds, Lendacy, or any Relief Defendant." (*Id.* at 21–22) Williams also represents that "no investor monies were used for the creation of Pyram King, LLC or the publication, printing, or marketing of Mr. Williams' novel." (*Id.* at 22) Neither Rex Tenax, LLC nor Pyram King, LLC is named as a Relief Defendant. As such, the Court finds that these accounts may be unfrozen, so that the third-party entities can continue to operate their businesses.

However, any monies transferred to these accounts from the Silexx sale proceeds, i.e. the \$16,000 that purportedly remains in the Pyram King account after Mr. Williams' \$9,000 disbursement and the \$15,000 in the Rex Tenax account, **SHALL IMMEDIATELY** be transferred to the trust account of Greenberg Traurig to be held for the benefit of Williams until otherwise ordered. Once these potentially Recoverable Assets have been

withdrawn, the Court sees no reason for these third-party accounts to remain frozen. Upon receipt of Notice that the funds have been returned to the Greenberg Traurig trust account and upon receipt of a Proposed Order, the Court will enter an Order that may be presented to Banco Popular that the remaining funds in those two accounts are unfrozen and no longer subject to the Court's March 6, 2020 Orders.

The Court **DENIES WITHOUT PREJUDICE** Williams' request to unfreeze his personal account at Banco Popular.

Accordingly, it is hereby **ORDERED** that:


1. The Motion for Clarification is **DENIED** because the March 6, 2020 Orders were **CLEAR**.
 - a. Within **three (3) days** of the date of this Order, the law firm of Greenberg Traurig and/or the consultant shall return any disbursements paid from the \$500,000 held in its trust account for the benefit of LF42 and Williams. Those funds shall remain frozen and may not be disbursed absent express Orders of this Court.
 - b. Williams **SHALL** refrain from further dissipating frozen assets and incurring debt of any kind without prior written authorization of the Receiver or the Court.
2. The Alternative Motion for Partial Modification of the Orders Granting the SEC's Emergency Motions for Asset Freeze and Appointment of Receiver, (Dkt. 49), is **GRANTED IN PART AND DENIED IN PART**.
 - a. The freeze of the Pyram King, LLC and Rex Tenax, LLC Banco Popular accounts shall be lifted to permit the Receiver to transfer to

Greenberg Traurig's trust account \$16,000 from the Pyram King account and \$15,000 from the Rex Tenax account, which funds were derived from the Silexx sale proceeds and transferred through the Kinetic Account and LF42 into those accounts. Upon receipt of a Notice filed by Greenberg Traurig that the funds have been returned to the Greenberg Traurig trust account and upon receipt of a Proposed Order, the Court will enter an Order that may be presented to Banco Popular that the remaining funds in the Pyram King account and Rex Tenax account may be unfrozen and will no longer be subject to the Court's March 6, 2020 Orders. The remaining requests for modification of the March 6, 2020 Orders are **DENIED WITHOUT PREJUDICE**.

3. Plaintiff's Motion for Order to Show Cause, (Dkt. 52), is **UNREFERRED** and is **DENIED** and the Order to Show Cause, (Dkt. 61), is **VACATED**.
 - a. The Court does not intend to further sanction Williams or his counsel if the withdrawals are returned and no further assets are dissipated without authorization. As such, the Show Cause Hearing scheduled before Magistrate Judge Flynn on May 21, 2020 is **CANCELLED**.
4. The Parties are directed to confer within **seven (7) days** of the date of this Order to discuss a modification of the March 6, 2020 Orders that would release a reasonable amount of funds for payment of Defendants' and Relief Defendants' attorney's fees and Williams' living expenses. Thereafter, the Parties shall file a joint motion and proposal for modification.

5. Michael Williams' Reply in Support of his Emergency Motion, (Dkt. 64), is **STRICKEN**. The Court notes that, in the reply, Mr. Williams requests an *in camera* discussion with the Court, SEC, and Receiver regarding a concern for his personal safety. To the extent he seeks relief from the Court regarding his personal safety and departure from Puerto Rico, Williams is directed to file, and the Clerk is directed to accept, a motion **UNDER SEAL** detailing his concerns and the relief sought. The Court will address the matter on the sealed written submission or at a hearing if warranted.

DONE and **ORDERED** in Tampa, Florida, this 8th day of May, 2020.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person