

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KINETIC INVESTMENT GROUP, LLC and   CASE NO.: 8:20-cv-394  
MICHAEL SCOTT WILLIAMS,

Defendants, and

KINETIC FUNDS I, LLC,  
KCL SERVICES, LLC d/b/a LENDACY,  
SCIPIO, LLC, LF 42, LLC, EL MORRO  
FINANCIAL GROUP, LLC, and KIH, INC.,  
f/k/a KINETIC INTERNATIONAL, LLC,

Relief Defendants.

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**RECEIVER’S REPLY IN RESPONSE TO DEFENDANT MICHAEL SCOTT  
WILLIAMS’ OPPOSITION TO THE RECEIVER’S “MOTION TO  
APPROVE PRIVATE SALE” [D.E. 275]**

Mark A. Kornfeld, as Court-Appointed Receiver of Defendant Kinetic Investment Group, LLC and Relief Defendants (the “Receiver”), by and through the undersigned counsel and pursuant to Middle District Local Rule 3.01, hereby files a Reply to MICHAEL SCOTT WILLIAMS (“Williams”), Opposition to Receiver’s “Motion to Approve Private Sale of Puerto Rico Real Properties and Parking Spaces and Proposed Publication, Marketing, and Overbid Procedures Associated with the Sale of the Real Properties” (“Opposition,” D.E. 277) and states as follows in support:

## PRELIMINARY STATEMENT

Williams opposes the Receiver's Motion (D.E. 275) seeking approval to sell two condominiums and associated parking spaces in Puerto Rico ("Real Property") for over two million dollars (\$2M). Williams' scatter-shot Opposition requires the Receiver now to waste valuable resources in reply and unduly delays the seven-figure recovery benefitting the Receivership Estates.

Williams' Opposition is ill-conceived for a number of independent reasons: (1) the Real Property is property of the Receivership Estates as Williams purchased it with Kinetics' investor monies for his own personal use; (2) the Receiver has clear and unmistakable title to the Real Property, as Williams voluntarily turned over title to the Receiver and expressly waived any and all ownership interest in the Real Property; and (3) Williams' principal "equitable" arguments - that there has been no finding or judgment of wrongdoing nor any order of disgorgement in the pending SEC enforcement proceeding against him<sup>1</sup> - are ultimately of no moment as to the Receiver's Motion.

For these reasons and those set forth in more detail below (as well as in the Receiver's Motion), the Opposition should be rejected out-of-hand, and the Receiver's Motion should be granted.

## ARGUMENT

### **I. Williams' Opposition is a Hodge Podge of Irrelevancy.**

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<sup>1</sup> To date, the Receiver had recovered approximately twenty million (\$20m) for the benefit of the Receivership Estates.

Williams' Opposition is all over the place. He randomly posits that the Receiver's Motion should be either denied or delayed based on assertions that include:

- Williams fleeing Puerto Rico amidst purported death threats (DE 277, p.6);
- the Receiver not deposing him after he asserted his rights against self-incrimination under the Fifth Amendment for fear he might be indicted (*Id.*, p. 9);
- Williams having sufficient collateral to cover the "loan" he purportedly took to buy the Real Property (*Id.*, p. 11), as well as the undisputed fact that the Receiver seeks approval to sell the Real Property for more than the original purchase price;
- the Receiver's liquidating of certain portfolio assets in March 2020 during the early days of the Covid pandemic. (*Id.* pp. 7-12); and,
- it being "premature" to sell the Real Property due to the ongoing enforcement proceeding with the SEC. (*Id.*, pp. 7-10) <sup>2</sup>

None of these points are even tangentially relevant to the Receiver's Motion. As this Court previously ordered, "[t]he Receiver is authorized to locate, list for sale, ... and take all necessary and reasonable actions to cause the sale ... of all real property in the Receivership Estates, ...". (D.E. 34. ¶ 32). The Court further ordered that "the Receiver will be authorized to sell and transfer clear title to, all real property in the Receivership Estates." (*Id.*, ¶33).

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<sup>2</sup> Far from being "premature," time is actually of the essence as the sale of the Real Property is "as is," and will increase eventual distributions to claimants by nearly an additional ten percent (10%). Efforts to market and sell the Real Property were substantially delayed for over a year due to the pandemic and the requirements the Receiver needed to clear to perfect title in Puerto Rico.

The only pertinent question then is simply whether the Real Property belongs to the Receiver such that he can sell it for the benefit of the Receivership Estates in accordance with his duty to marshal and safeguard assets and take all necessary actions for the protection of investors. (*Id.*, p.2.) The straightforward answer to this simple question is a resounding yes.

**II. Because Williams’ Paid for the Real Property with Funds He Took from Investors, it is Receivership Property.**

Williams concedes he bought the Real Property with funds supposedly “borrowed” from the entity he controlled known as Lendacy. (D.E. 277, p.3). At the time of the purchase, Williams took for himself over \$1.5m of investor monies, as the only source of Lendacy capital was money deposited by investors whom Williams owed a fiduciary duty. Williams’ “loan” was not an arms-length transaction, was not disclosed to investors, and was only “papered” well after the purchase occurred. (See D.E. 72, ¶¶ 14-23; see also D.E. 60, ¶¶ 39-43.) Williams’ purchase of the Real Property for personal use was also not tied to any seven-figure investment he purportedly had made in Kinetics. Williams readily states in his Opposition that he supposedly made \$1.5m investment almost a year after he had already purchased the Real Property. (D.E. 277, p. 4.) Because Williams purchased the Real Property with funds attributable to investors, the Real Property became Receivership Property to be managed by the Receiver for the benefit of the Receivership Estates.<sup>3</sup>

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<sup>3</sup> As a court of equity, a court has the ability to use summary proceedings to obtain possession of property. See *e.g. SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992).

### III. Williams Buries the Lead: He Already Turned Over Title to the Real Property to the Receiver and Waived All Claims of Ownership to Same.

In May 2020, the Receiver petitioned the Court for “Possession of and Title to Residential Real Property Purchased by Defendant Williams,...”. (D.E. 72.) In footnote one to his Opposition, Williams casually recognizes the Receiver’s initial Motion and how the parties resolved it. (D.E. 277, n.1.)

Williams never contested the Receiver’s May 2020 motion on the merits, nor did he assert any “equitable” arguments. Rather, in July 2020, Williams entered into a Joint Stipulation with the Receiver that clearly states that “Title to the [Real Property] shall be immediately transferred to the Receiver, who may take any and all necessary steps necessary to formalize this transfer of ownership. . .” and, “Mr. Williams will use reasonable and best efforts to cooperate with the Receiver to effect the transfer of ownership of the [Real Property] to the Receiver.” (D.E. 103, ¶¶ 5, 6.)

The Court granted the Receiver’s turnover Motion (D.E. 72) in accordance and consistent with all of the terms set forth in the parties’ Stipulation (D.E. 103.) (See D.E. 105.) Because Williams turned over title to the Receiver, his ownership/primary residence arguments are meritless.

Further, Williams knowingly and expressly waived and released the very claims he now advances in his Opposition:

- By this Stipulation, Mr. Williams expressly acknowledges **that he has no ownership, property, or other legal rights or interests in the [Real Property] and waives any claim to the contrary.** (D.E. 103, ¶ 7.)(emphasis added);

- ..., the Receiver may immediately take any and all steps necessary to evict the tenants and/or sell or encumber the [Real Property], ...” (*Id.*, ¶ 19.); and,
- To the extent the Receiver files any motion to ... sell or encumber the [Real Property, Williams is free to respond to such motion but agrees that any arguments about the propriety of or the basis for turnover, ... to the Receiver ... are precluded and moot as a result of this Stipulation. (*Id.*, ¶ 20.)

The plain and unambiguous language of the waiver by Williams ends this inquiry.<sup>4</sup>

Because title to the Real Property lies with the Receiver, and Williams waived any claims to “ownership” or otherwise, Williams can not now be heard to complain or object to the Motion for approval to sell the Real Property. Said Motion (D.E. 275) should therefore be granted.

#### **IV. The Receiver’s Duty to Marshal Assets for the Receivership Estates is Not Dictated by the Timing of the Enforcement Proceeding Against Williams.**

Williams advocates that “[a]s a matter of equity ... it would be manifestly unfair (and contrary to concept of cause-and-effect”) to sell his primary residence before there has been a trial or a finding that he had actually done anything wrong.” (D.E., p.7.) Williams also strains to argue the sale of this Real Property would offend equitable principles relating to “disgorgement” and “net profits.” (D.E., pp 10-14.) Not so. First, the Court appointed the Receiver because it was deemed “necessary and appropriate for the purposes of marshaling and preserving all assets of the Defendant that were. . . fraudulently transferred by the Defendant.” (D.E. 34, p.2.) Second, the Real Property is not Williams’

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<sup>4</sup> A court will enforce the plain and unambiguous terms of a release and waiver. *E.g. Waters v. Int’l Precious Metals Corp.*, 237 F.3d 1273, 1277 (11th Cir. 2001) *In re Deepwater Horizon Belo Cases*, No. 3:18-CV-2075, 2021 WL 5890401, at \*7 (N.D. Fla. Oct. 26, 2021).

primary residence; it is Receivership Property. Third, it is antithetical to equity for investors and valid claimants to be further deprived of substantial Receivership Property in deference to the alleged fraudster. Fourth, Williams' five-page argument about "disgorgement" and net profits is a classic red herring which has literally nothing to do with the proposed sale of the Real Property. Lastly, the Receiver's duties, as ordered by this Court, are in no way predicated upon a final judgment or an order of disgorgement in the SEC enforcement proceeding. The Court should not subject investors to undue risk that will be caused by any further delay in closing on the sale of the Real Property with a ready, willing and able buyer.

WHEREFORE, Mark A. Kornfeld, Court-Appointed Receiver, respectfully moves this Court to enter an Order granting the Receiver's Motion (D.E. 275) and grant any other relief this Court deems just and equitable.

**LOCAL RULE 3.01(g) CERTIFICATION**

Pursuant to Local Rule 3.01(g), the undersigned certifies that counsel for the Receiver conferred with counsel for the Commission and counsel for Defendant Michael Williams prior to filing this Motion. Counsel for the Commission has no objection to the relief requested in this Motion. Defendant Michael Williams objects to the relief requested.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 2, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to the following counsel of record:

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