UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
v.	**Case No. 1:15-cv-659-JMS-MJD**
VEROS PARTNERS, INC, MATTHEW D. HAAB, JEFFERY B. RISINGER, VEROS FARM LOAN HOLDING LLC, TOBIN J. SENEFELD, FARMGROWCAP LLC, PINCAP LLC, and	
Defendants,	
PIN FINANCIAL LLC,	
Relief Defendant.	

PLAINTIFF'S RESPONSE TO VEROS PARTNERS, INC.'S
MOTION TO MODIFY PRELIMINARY INJUNCTION

Plaintiff United States Securities and Exchange Commission (the "SEC" or "Commission"), for its response to Defendant Veros Partners, Inc.'s Motion to Modify Preliminary Injunction [Filing No. 91], states as follows:

Preliminary Statement

It is understandable why Defendant Veros Partners, Inc. ("Veros") desires to proceed with the asset purchase proposals described in its motion. However, as explained more fully below, Veros has not brought before the Court all of the relevant facts and documents which should be considered in connection with its motion, including that Matthew Haab's current

business partner will be a chief beneficiary of the proposed transactions. Nor has Veros attempted to show that it can satisfy the applicable legal standard: *i.e.*, that modifying the asset freeze in the best interests of Veros' investors. *See e.g., SEC v. McGinn*, 2014 WL 675611 at *3 (N.D.N.Y. Feb. 21, 2014) (denying motion to release assets because illegally diverted funds far exceeded the value of frozen assets), *SEC v. Forte*, 598 F.Supp.2d 689, 692 (E.D. Penn. 2009) (declining to release frozen assets because investor losses dwarfed defendants' assets). Accordingly, Veros cannot satisfy its burden of persuasion and the motion should be denied.

Argument

I. Veros Partners Has Not Provided This Court with All of the Relevant Facts.

Veros described its request that the Court modify the asset freeze in order to allow Veros to accept two offers for the sale of certain assets used in its dental consulting practice and use the proceeds to significantly reduce the amount of money its owes a lender, MainSource Bank. However, Veros' Motion omits a number of significant facts that are necessary for the Court to gain a complete understanding of the proposed transaction(s).

First, the proposed transactions are not an arms-length sale of assets to third parties. One of the proposed purchasers, Trueblaze, LLC, ("Trueblaze") is owned and operated by Adam Decker, a Vice-President of Veros who has a significant ownership in the company. The other proposed purchaser, MW Banks Consulting, LLC ("Banks"), is owned and operated by three former employees of Veros: Amber Banks, Mylene Egenolf and Wendy Day York. Veros did not disclose that, essentially, the proposed transactions are an agreement between Defendant Matthew Haab and his business partner (Decker), and another agreement between Haab and Decker and their former employees.

Second, Veros does not say whether the $305,000 price at which it intends to sell these assets constitutes fair market value, or a discount, or a premium. Veros does not disclose whether it has solicited or received any other offers to purchase these same assets in an effort to validate or increase the purchase price. Veros does not estimate whether the proposed purchase price for these assets will adequately compensate the firm for the consulting revenue it expects to lose in connection with the proposed sale. Veros further does not describe the source(s) of the funds which Trueblaze and Banks will use to pay the proposed purchase price; so Veros cannot assert that these funds were not derived from Veros revenues during the farm loan offering frauds, and therefore contain no commingled investor assets. Accordingly, the Court has no basis to conclude that the proposed transaction is appropriate, fair and reasonable either to Veros, to the proposed purchasers or to the investors in Veros' private offerings.

Third, the "written offers" from Trueblaze and Banks actually are comprehensive written agreements which were signed by each of the parties to the proposed transactions, dated as of July 1, 2015 and contain "closing" dates of July 17, 2015.[1] The language Veros uses to describe the assets it desires to sell is drawn from Section 1 of the Trueblaze agreement and Section 1.01 of the Banks Consulting agreement. However, these transactions presumably have not closed, and no money has been exchanged, because all parties recognize that they cannot proceed without this Court's approval.[2]

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[1] Although these agreements contain confidentiality clauses, Veros quoted from these agreements in its motion and disclosed the price to be paid by each purchaser. The SEC requested and received copies from Veros in connection with this motion. The Receiver previously had received copies of the same documents. Presumably, Veros could have obtained the consents of Trueblaze and Banks to provide copies to this Court for review, if it wished to do so.

[2]The Preliminary Injunction expressly prohibited Defendants from selling, assigning, pledging, encumbering or disposing of any of their assets, including their frozen bank accounts. [Filing No. 48, Section III A., at page 5] No subsequent order has lifted this freeze.

Fourth, Veros does not disclose that both the Trueblaze and Banks agreements expressly require the approval of the SEC. (*See* Section 16(c) of the Trueblaze agreement and Section 2.02(c) of the Banks agreement) They *also* require the approval of the Receiver and Veros' lender, MainSource Bank. Veros' motion does not claim that the SEC has approved the transaction it is now proposing. So by their own terms, these agreements are not final or enforceable. Veros does not explain why the parties believe they can, or should, repudiate this single provision of the agreements and proceed to finalize or close on these agreements without the approval of the SEC.

Fifth, Veros states that it "has been in extended negotiations with counsel for both MainSource and the SEC" on this issue. [Filing No. 91 at ¶ 17] However, Veros does not explain why those negotiations were unsuccessful. Very simply, the SEC wanted the majority of the proceeds from the proposed agreements to be placed in escrow for the benefit of Veros' investors, and the remainder paid to MainSource. However, MainSource did not agree. Veros now asks this Court to resolve this dispute by modifying an asset freeze intended to protect its own investors, and dissipating the unfrozen assets, without providing any benefit to its investors – who are facing losses of more than $8 million on their private farm loan investments. The SEC will not consent to the proposed transaction unless the payout structure is modified so that Veros' investors can receive a significant portion of the proceeds.

Sixth, Veros did not disclose that Matthew Haab and Adam Decker both have provided MainSource bank with personal guarantees in connection with the loan from MainSource Bank.[3] (*See* Filing No. 95-2 at page 1, and Filing No. 95-4 at page 2, referencing guarantees dated November 18, 20013) So this proposed transaction will not only pay approximately half of a

[3] Veros provided copies of the guarantees to the SEC upon request in connection with this motion.

$600,000 debt which Veros owes its lender, the transaction will *also* reduce by half the amount which Haab and Decker may be required to pay MainSource Bank if Veros cannot.

If approved by this Court, the proposed transactions will immediately confer an immediate and substantial financial benefit on Defendants Veros and Matthew Haab, by reducing the amount they owe the bank. However, that obligation may be illusory, as Haab's assets likely will remain frozen past November 18, 2015, the date on which Veros' loans with MainSource are due. So for an immediate payment on the Veros debt, the bank would be forced to look to Decker, whose assets are not frozen, under the personal guaranty. If approved by the Court, the proposed transaction will confer an immediate and substantial financial benefit on Decker, by reducing the amount he owes the bank, and simultaneously will allow him to begin using assets formerly owned by Veros in connection with a personal business.

All of these facts should have been disclosed by Veros in connection with this motion, and also should be considered by the Court in ruling on Veros' motion.

II. Veros Partners Has Not Established That Modifying the Asset Freeze Is in the Best Interest of the Defrauded Investors.

In its Preliminary Injunction Order this Court found that:

> the Commission had demonstrated that: (i) it is likely to succeed on the merits of its claim against defendants; (ii) there is a reasonable likelihood that the violations alleged in the Complaint will be repeated absent an injunction; (iii) the likelihood of harm to the public absent an injunction outweighs the likelihood of harm to the defendants with an injunction in place; and (iv) the injunction is in the public interest.

[Filing No. 48 at 1-2.] In the Preliminary Injunction Order, the assets of Defendant Veros were frozen, including the assets at issue in Veros' motion. Specifically, it was ordered that

> Defendants and each of their officers, agents, servants, employees and attorneys . . . shall hold and retain funds ***and other assets of defendants*** and presently held by them, . . . in whatever form such assets may presently exist and wherever

> located, and shall prevent any withdrawal, sale, payment, . . . transfer, dissipation, assignment, pledge . . . of any such funds or other assets, which are hereby frozen.

[Filing No. 48 at 5, emphasis added] Veros' Motion does not dispute that the assets it seeks to sell are not subject to the asset freeze. [*See* Filing No. 91]

The fact that the assets used in Veros' dental consulting practice currently are not under the control of the Receiver, and were not used in the private farm loan fraud scheme described in the Amended Complaint, is of no legal consequence. A defendant's assets can be frozen regardless of whether they were derived from, or can be traced to, the illegal activity. *SEC v. Grossman*, 887 F. Supp. 649, 661 (S.D.N.Y. 1995) ("It is irrelevant whether the funds affected by the Assets Freeze are traceable to the illegal activity. . . "); *SEC v. Current Fin. Servs.*, 62 F.Supp.2d 66, 68 (D.D.C. 1999); *SEC v. Bremont*, 954 F. Supp. 726, 733 (S.D.N.Y. 1997).

The purpose of an asset freeze is to ensure the availability of assets to compensate defrauded investors, and pay a civil penalty, in the event the SEC prevails in this action. *SEC v. McGinn*, 2014 WL 657611 at *3 (N.D.N.Y. Feb. 21, 2014) (*citing SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2d Cir. 1990); *SEC v. Infinity Group Co.*, 212 F.3d 180, 197 (3d Cir. 2000)). In fact, a court "has a duty to ensure that Defendants' assets are available to make restitution to the alleged victims." *SEC v. Dobbins*, 2014 WL 957715 at *2 (N.D. Tex. April 14, 2004) (*citing FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1031 (7th Cir. 1988)).

Accordingly, before a district court decides to release assets frozen for the benefit of investors, a defendant must "establish that [the] modification is in the interest of the defrauded investors." *See, e.g., SEC v. Forte*, 598 F.Supp.2d at 692 (refusing to release assets because it was not in the interest of the investors, and the frozen assets would not cover the amounts the investors lost); *SEC v. Dobbins*, 2004 WL 957715 at *2 ("the Court must assess whether a modification of the Preliminary Injunction is in the best interests of the defrauded investors");

SEC v. McGinn, 2014 WL 675611 at **3-5 (denying motion to modify asset freeze because investors "have a heightened interest in having those assets maintained without further diminution pending the outcome of the action").

Veros' motion displays no recognition of this legal standard, let alone cites cases where a district court properly lifted an asset freeze under the circumstances presented here: *i.e.*, to assist defendants in reducing a loan balance they owe, and reducing the amount of a business partner's personal guaranty, when the defendants currently are paying nothing to investors and lack to the resources to repay the amounts owed to the investors. In fact, it seems patently obvious that Veros' proposal would harm investors, rather than benefit them. Modifying the Preliminary Injunction Order and lifting the asset freeze so that the dental consulting assets can be sold, and all of the proceeds paid to MainSource Bank, will ensure that these assets are never available to repay the investors defrauded by Defendants.

IV. MainSource Bank's Response

MainSource Bank is not party to this case, and has not been granted leave to intervene in this matter. The SEC does not object to MainSource filing a brief and being heard on an issue which affects the bank and its state law and contract rights. However, if MainSource wishes to file motions, participate in discovery, or request that the Court modify the Preliminary Injunction in order to assist the bank in recovering funds owed to it by Veros, then the SEC hereby objects that these activities constitute improper consolidation of the bank's private dispute with Veros with this action.[4]

[4] Section 21(g) of the Securities Exchange Act of 1934 prohibits consolidating or coordinating, securities enforcement cases with other action, even when they involve common questions of fact, without the SEC's consent. *See* 15 U.S.C. § 78u(g); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 332 n. 17 (1979) (consolidation of a private action with one brought by the SEC without its consent is prohibited by statute."). In interpreting this section, various courts have

The crux of MainSource Banks' "Response" to Veros' motion, which actually is a supplement to that motion, is that the District Court, and all of the parties, should defer to the bank's state law and contract rights as a secured creditor of Veros. And the bank further contends that the Receiver in this matter has a fiduciary duty to act in the bank's best interests in this matter, even over the objections of the SEC. These arguments are meritless. Veros' motion offers no criticism of the Receiver, and the funds which MainSource wishes to apply to the Veros debt, have not been transferred to Veros and still belong to the other parties to the proposed transaction(s).

MainSource selectively quotes *PNC Bank, N.A. v. OCMC, Inc.*, 2010 U.S. Dist. LEXIS 98368 (S.D. Ind. Sept. 20, 2010), a case in which a bank filed suit and requested that a receiver be appointed over a company that had defaulted on its loan agreements. *Id*. at 5. The receiver was given the authority to liquidate the defaulting company for the benefit of its secured creditors. *Id*. at 6. In that context, the receiver clearly owed fiduciary duties towards the company's creditors, including the bank. *Id*. at 17.

There is no such order in this case. The Receiver in this matter has been appointed for the purpose of:

> marshaling and preserving all of the assets of Defendants **Veros Farm Loan Holding LLC, FarmGrowCap LLC, PinCap LLC** and all of the private offerings in which Defendant **Veros Partners, Inc.**, controls investor funds ("Receivership Assets"), . . .
>
> [Filing No. 34 at 1].

"come[] to the inescapable conclusion that Section 21(g) bars intervention." *SEC v. Cogley*, 2001 WL 1842476, at *3 (S.D.Ohio Mar. 21, 2001); *see also SEC v. Nadel*, 2009 WL 3126266, at *1 (M.D. Fla. Sept. 24, 2009); *SEC v. Homa*, 2000 WL 1468726, at *2 (N.D. Ill. Sept. 29, 2000). In one case, the Exchange Act has been described as an "impenetrable wall" to intervention that can only be overcome by Commission consent. *SEC v. Wozniak*, 1993 WL 34702, at *1 (N.D. Ill. Feb. 8, 1993).

MainSource Bank concedes that it is a creditor of Veros Partners, Inc. **not** a creditor of Veros Farm Loan Holding LLC, FarmGroCap LLC, PinCap LLC or the other private offerings. MainSource points to no language in the Agreed Order Appointing Receiver giving the Receiver the responsibility take any action on behalf of the bank or any secured creditors of Veros. The Receiver does not even control Veros Partners, Inc., but rather certain of its assets, investments and accounts. The Court, and the SEC, are responsible for the freeze imposed on the assets MainSource desires Veros to sell.

III. Potential Hearing Dates

In its Motion, counsel for Veros states that he is unavailable for a hearing on August 18, 19, or 20. Accordingly, the SEC suggests that, if this matter is set for hearing, that it be scheduled for August 13, 14, 17 or 24th. Counsel for the SEC is not available on August 21st, or from August 25th through 31st.

VI. Conclusion

WHEREFORE, Plaintiff U.S. Securities and Exchange Commission respectfully requests that this Court deny Defendant Veros Partners, Inc.'s Motion to Modify Preliminary Injunction.

Dated: August 7, 2015.

Respectfully submitted,

By: ***/s/Robert M. Moye***

Robert M. Moye (MoyeR@sec.gov)
Nicholas J. Eichenseer (EichenseerN@sec.gov)
Doressia L. Hutton (HuttonD@sec.gov)
Kathyrn A. Pyzska (PyzskaK@sec.gov)
U.S. SECURITIES AND EXCHANGE COMMISSION
175 West Jackson Blvd., Suite 900
Chicago, IL 60604
(312) 353-7390

Attorneys for Plaintiff U.S. Securities and Exchange Commission

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2015, I filed ***Plaintiff's Opposition to Veros Partners, Inc.'s Motion to Modify Preliminary Injunction*** via CM/ECF, which will notify all counsel of record.

/s/Robert M. Moye
Robert M. Moye