

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO.: 20-cv-81205-RAR

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, et al,

Defendants.

**DEFENDANTS' COMPLETE BUSINESS SOLUTIONS GROUP, INC. AND FULL
SPECTRUM PROCESSING, INC.'S RESPONSE TO PLAINTIFF'S EXPEDITED
MOTION TO AMEND RECEIVERSHIP ORDER [ECF 105]**

Defendants, Complete Business Solutions Group, Inc. d/b/a Par Funding and Full Spectrum Processing, Inc. ("the Companies") submit this Response to Plaintiff's Expedited Motion to Amend Receivership Order, ECF 105, and states as follows:

There comes a time in every case where the litigation should be conducted in Regular Order, instead of on a constant emergency/expedited basis. That time has come with the SEC's latest Expedited Motion.

After commencing this case on July 24, and insisting on July 27 that the Defendants not be permitted to meaningfully participate at the temporary restraining order stage of this proceeding, and then after ten days of constant pressure on Defendants to respond to the SEC's constant demands, on an immediate basis, Plaintiff filed this Expedited Motion, which seeks to radically

change the structure of the Receivership Order that was entered on July 27 and the TRO Order that was entered on July 28.

The Court should not react immediately and should provide the Defendants with a meaningful opportunity to respond to a request that is a radical departure to the scope of the Receivership Order, that the Court reaffirmed on August 4. The simple fact is that the Court did not grant the SEC the overbroad powers that it sought in its proposed “Model” receivership order. The Court refused to simply rubber-stamp the SEC’s “Model” Order.

Rather than working within the confines that the Court set forth in the actual Receivership Order, the SEC has, from July 27 forward, acted as if the Court had granted it the overbroad powers that it sought in the rejected “Model.” Now the SEC insists that its “Model” order be imposed on the Defendants, on an expedited basis.

Fox Rothschild files this response because the Expedited Motion is directed, in large part, at this Firm, as counsel for the two entities in this case. *See* Expedited Motion at pp. 4-5. As it relates to Defendant’s right to have independent counsel continue to represent their companies, the Motion does not seek a clarification at all. Instead, the SEC seeks, on an expedited basis, a reconsideration of the actual Receivership Order, which is subject to the stringent test that the SEC must establish either changed material circumstances, or that the Court’s got it wrong when it entered the Receivership Order. Neither test can be met.¹

¹ On August 4, the SEC, throughout that lengthy hearing, argued that the Court did not need to make any decision to related to the scope of the Order. To the SEC, the Order was just fine, and the Court did not make any rulings regarding the scope of the Order despite the valid concerns raised by the Defendants regarding the damage that the SEC was causing to Defendants’ businesses. A mere three days later, the SEC now claims that the Receivership Order needs to be reconsidered and its Model Order entered on an expedited basis.

The event that apparently prompted the request for expedited reconsideration of the Receivership Order is a legal issue that Fox Rothschild was required to raise as the SEC continued to insist that this Firm withdraw from all representation in this matter. Yesterday, we filed a Notice of Independent Counsel's Continuing Role for the Companies, ECF 100, in which we explained the communications that we had with the Receiver and the SEC, raising legitimate legal and ethical issues that required either an agreement between the SEC/Receiver and the owners and managers of the businesses, or a ruling of this Court. In support of the legitimate legal issues that concerned this Firm's duties to its existing clients, we cited binding Fifth Circuit legal authority that must be considered by this Court, as well as applicable ethical rules that mandate that this Firm not simply abandon its clients just because the SEC demands it.²

We informed the Court that this is a fight between the SEC and the owners of the companies. As we said in our Notice, we raised the issue and are seeking guidance, either through a resolution by the Parties, or an Order of this Court. ECF 100, at p. 5. Late last night, SEC counsel asked one question in response to that Notice; who are the owners of the businesses. We responded that the legal owner is a trust. As a follow-up, SEC counsel has been in communication with counsel who represent the Trust that was named in this case.

That was the sole communication by the SEC before the Expedited Motion was filed. The SEC totally ignored the Court's admonition on August 4 that all the Parties in this case must

²Undersigned counsel's reliance on binding authority and applicable ethical rules is not the complete expression of the legal issues that will need to be considered by this Court on this issue. The Notice was simply a good-faith marker to inform the Receiver and the SEC that Fox Rothschild could not simply walk away from its clients because the SEC demands it. The Defendants have the right to further brief this issue before their counsel is required to terminate our representation in this case.

properly use the Meet and Confer requirements of the Local Rules of this Court. The SEC is bound by those rules as much as the Defendants.³

The SEC seeks to litigate an important and complex issue that directly affects rights of the Defendants, such as the right to control the attorney-client privilege and the decision as to whether they have the right to independent counsel for their companies. In a footnote, ECF 105, at n. 6, the SEC addresses this issue to undersigned counsel when the SEC knows full well that it is the Defendants who own and manage the companies who must litigate this issue. It was our ethical and legal duty to raise the issue, but it is not our role to ultimately litigate the issue.⁴ In response to Fox Rothschild's reasonable and responsible Notice to this Court, the SEC engages in a barrage of cheap shots against this Firm.⁵ The SEC should confine itself to litigating serious issue on the

³ The SEC's Certificate of Conferral, ECF 105, at p. 7, only refers to its communications with the Receiver's counsel, who, unsurprisingly, agrees with the requested relief, and with counsel for Mr. Vagnozzi. The SEC did not mention any effort to confer with the Defendants, or with undersigned counsel, because it did not do so. This Court should not reward the SEC for blatantly violating the meet and confer rules.

⁴ The SEC also suggests that Fox Rothschild had a conflict of interest because, after the Companies and the Defendants who own and manage the Companies, learned of the filing of the Complaint, they requested this Firm to ask the Court to apply Due Process in considering the TRO and in addressing the scope of the TRO. ECF 105, a pp. 3-4. There was absolutely no conflict of interest in a single Firm representing the Companies, and the owners and managers of the Companies, at that time. *See* Florida Rules of Professional Conduct 4-1.13(e). *See* ECF 100, describing the events preceding and succeeding the entry of the TRO.

⁵ The SEC attacks this Firm by misstating and distorting events that occurred on the morning of July 28 in a proceeding before another federal District Court. ECF 105, at p. 5. That court called an emergency status conference at the request of the attorney/protagonist, who has been behind all the events leading to this enforcement proceeding. At that status conference, the Court was informed of this enforcement proceeding. The Court ultimately rejected Mr. Heskin's emergency request. A transcript of that proceeding will show this Court precisely what happened at that status conference. As for the claim that a "Receivership entity" was appearing before that Philadelphia Federal Court, the SEC continues to ignore the fact that the Receivership Order, by its express terms, only became effective **if** this Court entered a TRO. The TRO was entered on the evening

merits.⁶ Fox Rothschild is not the Defendant in this case. We are a law firm fulfilling our duties properly, and transparently. The SEC is simply trying to drive counsel out of this case, as an adjunct to all the other draconian relief that they insist must be employed to “protect the investors.” Due Process is of no regard to the SEC.

The Defendants should be given a reasonable opportunity to respond to relief requested in this Expedited Motion. The Court has scheduled the Order to Show Cause hearing on the SEC’s motion for a preliminary injunction for August 18, 2020 and has set forth a briefing schedule for that hearing. As this case is past the temporary restraining order stage, the Defendants should have the right to a reasonable opportunity to respond to this Motion. They are already preparing a response to the Receiver’s Expedited Motion of yesterday, ECF 10, that is due today pursuant to the Court’s scheduling Order. It is patently unreasonable to allow the SEC and Receiver to tag team the Defendants in a constant barrage of Expedited Motions, especially when there are no exigencies that even require expedited consideration.⁷

of July 28, twelve hours after the Philadelphia status conference concluded. These distortions are a result of the SEC accepting, without any critical analysis, the protests of an attorney who has been on a litigation mission against these Companies

⁶ The SEC asserts that we are improperly holding funds. What the SEC fails to inform the Court, is that immediately after the August 4 hearing, we notified the Receiver’s counsel, in writing, of the precise amounts of money legitimately owed to this Firm for work performed prior to July 28, as well as additional funds that were paid in advance for future work that the Firm was required to perform. It was only when the Court subsequently entered an Order staying nationwide litigation that this Firm was relieved of that responsibility. This Firm is well aware of the legal standards governing a law firm’s right to be paid for the legitimate work it performed before the TRO was entered, and the obligation to turn over unearned funds. We have no doubt that this issue can be properly resolved with the Receiver, without the need for further Court intervention.

⁷ If the Court determines that the SEC’s request to add entities related to Mr. Vagnozzi to the TRO must be resolved on an expedited basis, the Court should consider entering an expedited briefing

Finally, the Expedited Motion is not limited to the issue related to Fox Rothschild's continued role, if any, in representing the Companies. The SEC submitted a proposed "Model" Order to the Court, which includes provisions already rejected by the Court, including the power to immediately put these companies in bankruptcy, ECF 105-6, p. 15 of 19. The Receiver agrees with this proposed relief, despite his commitment to the Court on August 4, that he was not looking to put these companies into liquidation. The simple fact is that liquidation is exactly what the SEC demanded from the very first telephone call with undersigned counsel in this case. The SEC may continue to deny making that demand, but its actions establish the intent of this enforcement proceeding. The Receiver has waited a mere three days since making his commitment to this Court to join in this requested relief.

Before this Court entertains a reconsideration of the Receivership and TRO Orders that rejects the carefully balanced Order that the Court entered, award the SEC with the "Model" Order that it has never stopped demanding, all the Defendants should be given a fair opportunity to respond to this Expedited Motion. As for Fox Rothschild, we await further instruction, based on an agreement of the Parties, or an Order of this Court, as to this Firm's continued representation of the Companies.

schedule for that portion of this Motion. But, the request to expand the receivership to "clarify" the Receiver's powers and duties does not warrant expedited briefing.

Respectfully submitted,

FOX ROTHSCHILD LLP

*Attorneys for Complete Business Solutions
Group, Inc. d/b/a Par Funding and Full
Spectrum Processing, Inc.*

One Biscayne Tower, Suite 2750
2 South Biscayne Blvd.
Miami, Florida 33131
Telephone: (305) 442-6547

By: /s/ Joseph DeMaria

Joseph A. DeMaria, B.C.S.

Florida Bar No. 764711

Email: JDeMaria@FoxRothschild.com

Sec. Email: mmiller-hayle@foxrothschild.com

Brett Berman, Esq.

2000 Market Street, 20th Floor

Philadelphia, PA 19103,

Tel: (215) 299-2000

Email: bberman@foxrothschild.com

CERTIFICATE OF SERVICE

I hereby certify that on **August 7, 2020**, I electronically filed the foregoing with the Clerk
of the Court using CM/ECF.

/s/ Joseph A. DeMaria

Joseph A. DeMaria