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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

In the matter of: THOMAS LAURENCE HAMPTON, CRD#2470192, and STEPHANIE YAGER, husband and wife, TIMOTHY D. MORAN, CRD#2326078, and PATRICIA MORAN, husband and wife, PATRICK MORAN, CRD#1496354, and KELLY MORAN, husband and wife, HAMPTON CAPITAL MARKETS, LLC, an Arizona limited liability company, Respondents	DOCKET NO. S-20823A-11-0407 **SECURITIES DIVISION'S MOTION TO SET A STATUS CONFERENCE AND ORDER LIFTING THE STAY** (Assigned to Administrative Law Judge Marc E. Stern)

Arizona Corporation Commission
DOCKETED
MAY 3 2013
DOCKETED BY

SUMMARY.

The Securities Division ("Division") of the Arizona Corporation Commission files this Motion to set a status conference and requests an order lifting the stay in this proceeding due to a material change in circumstance. Specifically, a criminal action has been taken only against Thomas L. Hampton ("Mr. Hampton"). Currently, there is no additional evidence that any other named Respondent has been charged or indicted criminally in this matter, thereby removing the need for an indefinite stay, as was ordered here.

RELEVANT PROCEDURAL HISTORY.

On August 20, 2012, Respondent Timothy D. Moran ("Tim") and Patricia Moran filed a Motion to Stay this administrative proceeding ("Motion to Stay") because they argued there exists a "reasonable fear of criminal prosecution" and to protect them from having to choose between

invoking their Fifth Amendment right to remain silent or to take the stand and testify in their own defense. Respondent Patrick Moran ("Pat") and Kelly Moran filed a motion seeking joinder to Tim and Patricia Moran's Motion to Stay on the basis that they will require the testimony of Thomas L. Hampton and Tim, and that the proceedings not be bifurcated. Tim, Patricia, Pat, and Kelly Moran will be collectively referred to as the "Moran Respondents."

On September 6, 2012, the Division filed a response to the Motion to Stay. The Division argued that Arizona courts have held that a person does not have a constitutional right to stay a civil action pending the resolution of a related criminal matter. *See State ex rel. Corbin v. Goodrich*, 151 Ariz. 118, 125, 726 P.2d 215, 222 (Ct. App. 1986). The Division further argued that the case law revealed that a party seeking a stay must prove how their rights would be unduly or substantially prejudiced by proceeding forward, absent a stay of the administrative proceeding. *See State v. Ott*, 167 Ariz. 420, 428, 808 P.2d 305, 313 (Ct. App. 1990). The Division also argued that public policy usually favors a continuation of the proceedings to allow for a speedy resolution. *See Keating v. Office of Thrift Supervision*, 45 F.3d 322, 325-326 (9th Cir. 1995)(the public's interest in a speedy resolution of the controversy and agency's concern for efficient administration would have been unnecessarily impaired had the proceeding been stayed, and any delay would have been detrimental to public confidence in the enforcement scheme for thrift institutions).

On September 18, 2012, counsel for Respondents Tim and Patricia Moran filed a reply in support of their Motion to Stay and stated that "the test is whether there is a realistic threat of criminal prosecution" in order to grant a stay.

On November 2, 2012, by Ninth procedural order, it was ordered that this proceeding be stayed and that the Division shall file a motion for a status conference to be scheduled upon a change in the circumstances which caused the stay to be instituted herein.

ARGUMENT.

A status conference is appropriate because a material change has occurred in this case. On December 18, 2012, by a sealed complaint, a criminal action was instituted against Mr. Hampton

by the United States Attorney's Office in the United States District Court in the Southern District of New York. As evidenced by the attached documents, in case no. 13-CR-301-RWS, on April 19, 2013, Mr. Hampton waived prosecution by indictment and consented to a proceeding by information instead. Filed concurrently therewith, the information charges one count of commodities fraud in connection with Mr. Hampton's investment scheme related to Hampton Capital Markets, LLC. (Exhibits A & B). More importantly, by consent to proceed before a United States Magistrate Judge on a felony plea allocution, also entered on April 19, 2013, a criminal plea agreement was accepted by Mr. Hampton. (Exhibit C). Sentencing will occur at a later date.

Since the stay was issued in this matter, the Division has not been provided with any new information or evidence that any other named Respondent has been, or even will be, charged or indicted criminally in this matter. More importantly, as evidenced by Respondent Tim's Motion to Stay and supporting affidavits of his attorneys, their last known communications with the criminal division of the United States Attorney's Office occurred in December of 2011.[1] The mere possibility of a future criminal proceeding should not continue to shield the Respondents from this administrative proceeding. This possibility grows even more remote with each passing day, especially in light of the fact that a criminal action has only been taken against Mr. Hampton to date.

A "stay in a civil case is an extraordinary remedy." *State ex Rel. Stovall v. Meneley*, 22 P.3d 124, 136 (Kan. 2001). To continue the stay allows Respondents to maintain a "privileged litigating status because of [Respondents'] own delinquencies." *See Arden Way Assocs. v. Boesky*, 660 F.Supp. 1494, 1497 (S.D.N.Y. 1987)(The defendant, Mr. Boesky, also claimed that his assertion of his Fifth Amendment privilege would hamper his ability to effectively respond to the civil suit. In response, the court noted that, "It is plainly ludicrous for Mr. Boesky to argue that it is 'unfair' to compel him to face the civil law suits against him which are the creations of his own alleged misconduct. The plight which he imagines that he is in stems solely from his own

[1] Each affidavit cited December 2012 in error since the motion was filed in August 2012 and the attached email correspondence was dated December 22, 2011.

activities... The only unfairness that the Court perceives is the moving party's assertion that it would be unfair to treat him normally. The defendant seems to be seeking privileged litigating status because of his own delinquencies. 'That defendant's conduct also resulted in a criminal charge against him should not be availed of by him as a shield against a civil suit and prevent plaintiff[s] from expeditiously advancing [their] claim'"). Mr. Hampton, who was criminally charged and consented to a plea agreement, never filed a request to stay this administrative proceeding nor argued any substantial prejudice. In light of Mr. Hampton's actions and the lack of a criminal indictment against the Moran Respondents, this administrative proceeding should be allowed to continue forth.

If the stay is not lifted, the Division may be forced to wait a total of seven years for the Arizona criminal statute of limitations to expire, which would be burdensome. *See* A.R.S. 13-107(B)(1)(Statute of limitations for class 2 through class 6 felonies is seven years). The Division would be prejudiced since evidence and witness testimony will be greatly hindered with the passing of seven years since memories may be forgotten, elderly witnesses may pass away, and other circumstances may make witnesses unavailable. *See Avant! Corp. v. Superior Court*, 94 Cal.Rptr.2d 505, 512 (Cal App. 2000) (to wait for the result of the related criminal action "would increase the danger of prejudice resulting from the loss of evidence, including the inability of witnesses to recall specific facts, or the possible death of a party").

CONCLUSION.

The Division requests that its motion to set a status conference be granted and an order removing the stay be issued, based on the duration of time that has passed in this matter and the consent to an entry of a plea agreement by Mr. Hampton in the criminal action. Furthermore, the Division has not been provided with any new information or evidence that any other named Respondent has been, or even will be, charged or indicted criminally in this matter. As such, this proceeding should be allowed to continue forth.

RESPECTFULLY SUBMITTED this 3rd day of May, 2013.

ARIZONA CORPORATION COMMISSION

By _____
Phong (Paul) Huynh
Attorney for the Securities Division of the
Arizona Corporation Commission

ORIGINAL AND EIGHT (8) COPIES of the foregoing
filed this 3rd day of May, 2013 with:

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

COPY of the foregoing hand-delivered
this 3rd day of May, 2013 to:

Marc E. Stern
Administrative Law Judge
Arizona Corporation Commission/Hearing Division
1200 W. Washington St.
Phoenix, AZ 85007

COPY of the foregoing mailed
this 3rd day of May, 2013 to:

Thomas Hampton and Hampton Capital Markets, LLC
9026 E. Calle De Las Brisas
Scottsdale, AZ 85255

Stephanie Yager
9026 E. Calle De Las Brisas
Scottsdale, AZ 85255

Mr. Timothy Moran and Ms. Patricia Moran
4545 E. Joshua Tree Lane
Scottsdale, AZ 85253

Michael D. Curran
3200 North Central Avenue
Suite 1800
Phoenix, Arizona 85012
Attorneys for Patrick and Kelly Moran

By: Paul Huynh

EXHIBIT A

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: APR 19 2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

THOMAS HAMPTON,

Defendant.

WAIVER OF INDICTMENT

13 Cr.

13 CRIM 301

The above-named defendant, who is accused of violating Title 7, United States Code, Sections 6o(1), 13(a)(1), and 13(a)(5), being advised of the nature of the charge and of his rights, hereby waives, in open Court, prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

Dated: New York, New York
April 19, 2013

THOMAS HAMPTON

JUDGE SWEET

MEI LIN KWAN-GETT
Attorney for Thomas Hampton

Witness

EXHIBIT B

JUDGE SWEET

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

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UNITED STATES OF AMERICA

- v. -

THOMAS HAMPTON,

Defendant.

----------x

INFORMATION

13 CRIM 301

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: APR 19 2013

COUNT ONE

(Commodities Fraud)

The United States Attorney charges:

Relevant Entities And Individuals

1. At all times relevant to this Information, THOMAS HAMPTON, the defendant, was the Managing Director of Hampton Capital Markets, LLC ("Hampton Capital" or the "Fund").

2. Hampton Capital was an Arizona limited liability company that, at all times relevant to this Information, had its principal office in Scottsdale, Arizona.

3. As Managing Director of Hampton Capital, THOMAS HAMPTON, the defendant, was responsible for investment decisions for the Fund, which included buying and selling futures contracts.

4. At certain times relevant to this Information, Hampton Capital had more than $4 million in assets under management.

The Scheme To Defraud

5. From at least in or about September 2010, up to and including in or about September 2011, THOMAS HAMPTON, the defendant, made false representations to investors concerning the value of their investments in Hampton Capital.

6. During this time period, THOMAS HAMPTON, the defendant, executed trades on behalf of Hampton Capital, including trades in S&P 500 E-mini futures contracts ("S&P 500 E-mini futures"). S&P 500 E-mini futures are futures contracts that are tied to the S&P 500 stock index, and they are traded on the Chicago Mercantile Exchange.

7. As a result of these trades executed by THOMAS HAMPTON, the defendant, the Fund began losing money. Instead of disclosing the losses to investors, HAMPTON provided monthly statements to investors that concealed these losses, and instead falsely reflected a positive return for the Fund for each month. As a result, Hampton Capital investors were led to believe that their investments were earning money, whereas in truth and in fact, and as HAMPTON well knew, the Fund and the investors were suffering severe losses.

8. As a result of the material misrepresentations and omissions made by THOMAS HAMPTON, the defendant, many

investors in Hampton Capital did not seek to redeem or withdraw their investments, indeed investors provided additional investment capital to Hampton Capital. As a result of the scheme, investors lost millions of dollars.

Statutory Allegation

9. From at least in or about September 2010, up to and including at least in or about September 2011, in the Southern District of New York and elsewhere, THOMAS HAMPTON, the defendant, a principal of Hampton Capital and a commodity pool operator and associated person of a commodity pool operator, willfully and knowingly, by use of the mails and of the means and instrumentalities of interstate commerce, directly and indirectly (a) employed devices, schemes, and artifices to defraud clients and participants, and prospective clients and participants; and (b) engaged in transactions, practices, and courses of business that operated as a fraud and deceit upon clients and participants, and prospective clients and participants, to wit, HAMPTON falsely represented to investors that the Fund's investment in S&P 500 E-mini futures, among other instruments, had increased in value, when in fact the Fund's investments had decreased in value.

(Title 7, United States Code, Sections 6o(1), 13(a)(1), and 13(a)(5); 18 United States Code, Section 2.)

FORFEITURE ALLEGATION

10. As a result of committing the offense alleged in Count One of this Information, to wit, commodities fraud, in violation of Title 7, United States Code, Sections 6o(1), 13(a)(1), and 13(a)(5), and Title 18, United States Code, Section 2, THOMAS HAMPTON, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and (D), and Title 28, United States Code, Section 2461(c), any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the said offense.

Substitute Asset Provision

11. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third person;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty; it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b), and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981, and
Title 28, United States Code, Section 2461.)

PREET BHARARA MPG
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

THOMAS HAMPTON

Defendant.

INFORMATION

13 Cr.

(7 U.S.C. §§ 6o(1), 13(a)(1), and 13(a)(5); 18 U.S.C. § 2.)

PREET BHARARA
United States Attorney.

4/19/13 - Filed Information.
Filed Waiver of Indictment.
Judge Francis
E.D.N.Y.

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

- against -

THOMAS HAMPTON

Defendant.

----------x

CONSENT TO PROCEED BEFORE
A UNITED STATES MAGISTRATE
JUDGE ON A FELONY PLEA ALLOCUTION

13 ~~CRIM~~ 301 ( )

Before:

U.S.M. J.

The undersigned defendant, advised by his or her undersigned attorney, consents to a United States Magistrate Judge presiding over the proceedings required by Rule 11, Fed, R. Crim. P., for me to enter a plea of guilty in my case, or to change my plea, if one has been previously made, from not guilty to guilty. I understand that if my plea is accepted, my sentencing will take place before the United States District Judge who is assigned, or who is to be assigned, to my case.

I understand that I have the absolute right to insist that all Rule 11 proceedings be conducted before an Article III Judge, and hereby represent and confirm to the Magistrate Judge that no threats or promises, or other improper inducements, have been made to cause me to consent to this procedure, and that I do so voluntarily.

IN WITNESS WHEREOF we have executed this consent this 19th day of April, 2013 at New York, New York.

x _____
Defendant

x _____
Attorney for Defendant

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: APR 19 2013

Accepted by: _____
United States Magistrate Judge