

United States District Court
for the
Southern District of Florida

Federal Trade Commission, Plaintiff)
)
v.) Civil Action No. 11-61072-Civ-Scola
)
American Precious Metals, LLC, *et*)
al., Defendants)

Order Granting Motion for Equitable Lien

This matter is before the Court on the Federal Trade Commission’s (“FTC’s”) Motion for Equitable Lien on the Homestead of Defendant Sam J. Goldman. (ECF No. 339). The FTC filed this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act

Goldman to: (1) hire his own forensic accountant to rebut the FTC's forensic accountant's report; (2) file affidavits rebutting facts asserted by the FTC; and (3) submit supporting documents." (Def.'s Am. Mot. for Extension of Time at 3, ECF No. 346.) In his second request for extension of time, Goldman stated that "Defendant, Sam Goldman is still preparing his Affidavit, and may need to retain the services of a Forensic Accountant to complete his affidavit." (Second Mot. for Extension of Time at 2, ECF No. 351.) The Court granted both requests for extension of time. (ECF Nos. 350, 353.) However, Goldman's response does not include an affidavit, the report of a forensic accountant, or any supporting documentation.

Although Goldman is correct that courts do at times conduct evidentiary hearings to determine whether a plaintiff is entitled to an equitable lien, Goldman has not established that there are any disputed facts that would warrant an evidentiary hearing. Florida law requires that the plaintiff show by a preponderance of the evidence that fraudulently obtained funds can be directly traced to the investment, purchase or improvement of the homestead. *See In re Financial Federated*, 347 F.3d at 888 (noting that the Florida Supreme

Accordingly, the Court **grants** the Plaintiff's motion for an equitable lien. The Court **orders** as follows:

A. Definitions:

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proceeds of the sale to pay any valid liens, including the FTC's Equitable Lien. The Liquidator shall make the transfer to the FTC by electronic fund transfer or certified or cashier's check, in accordance with instructions provided by the FTC. Defendant Goldman retains the right to assert a claim to any net sale proceeds in excess of the sales price over these sums.

4. The Liquidator shall have all necessary powers to operate and otherwise manage the Property, including, without limitation, the following powers and responsibilities:

and taking any other actions necessary to efficiently manage the Property and to maintain its value.

6. The Liquidator shall take all necessary action to procure appropriate insurance for the Property, naming the Liquidator and the FTC as insureds. The Liquidator may as an option keep in force the existing insurance coverage(s), each of which shall name the FTC and the Liquidator as additional insureds thereunder.
7. The Liquidator shall keep a true and accurate account of any and all receipts and expenditures and periodically file with the Court a Liquidatorship Report under oath, accurately identifying all such revenues received and expenditures made, including adequately detailed information concerning income, expenses, payables and receivables. These periodic filings shall be served by the Liquidator on the FTC and Defendant.
8. The Liquidator is entitled to reasonable compensation for the performance of duties undertaken pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by him. The Liquidator's compensation and the compensation of any persons hired by him are to be paid solely from the proceeds of the sale of the Property, and such payments shall have priority over all other distributions except for any transfer fees, recording fees, or other payments owed through the transfer of the Property at the time of its sale.
9. The Liquidator shall file with the Court and serve on the parties a request for the payment of reasonable compensation at the time of the filing of periodic reports and no less than every sixty (60) days. The Liquidator shall not increase the fees or rates used as the bases for such fee applications without prior approval of the FTC and the Court. The Defendant shall have no right to object to the Liquidator's fees or compensation.
10. The Liquidator shall file with the Court and serve on the parties a request for the payment of reasonable compensation at the time of the filing of periodic reports and no less than every sixty (60) days. The Liquidator shall not increase the fees or rates used as the bases for such fee applications without prior approval of the FTC and the Court. The Defendant shall have no right to object to the Liquidator's fees or compensation.

- b. cooperate with the advertising, marketing, showing for sale, transfer, and sale of the Property, as well as the satisfaction

