

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

3:16-CV-438-PK

v.

OPINION AND
ORDER

AEQUITAS MANAGEMENT, LLC, AEQUITAS
HOLDINGS, LLC, AEQUITAS COMMERCIAL
FINANCE, LLC, AEQUITAS CAPITAL
MANAGEMENT, INC., AEQUITAS
INVESTMENT MANAGEMENT, LLC, ROBERT
J. JESENİK, BRIAN A. OLIVER, and N. SCOTT
GILLIS,

Defendants.

PAPAK, Magistrate Judge:

Plaintiff the Securities and Exchange Commission (the "SEC" or the "Commission") filed this action against defendants Aequitas Management, LLC ("Aequitas Management"), Aequitas Holdings, LLC ("AH" or "Aequitas Holdings"), Aequitas Commercial Finance, LLC ("ACF"), Aequitas Capital Management, Inc. ("ACM"), Aequitas Investment Management, LLC ("AIM" and, collectively with Aequitas Management, AH, ACF, and ACM, the "Aequitas companies" or the "entity defendants"), Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis (collectively with



Jesenik and Oliver, the "individual defendants") on March 10, 2016. The SEC alleges the defendants' liability for securities fraud under the Securities Act of 1933 (the "Securities Act"), the Securities Exchange Act of 1934 (the "Exchange Act"), and the Investment Advisers Act of 1940 (the "Advisers Act"). This court has subject-matter jurisdiction over the SEC's action as expressly provided in the Securities Act, the Exchange Act, and the Advisers Act, and pursuant to 28 U.S.C. § 1331.

Judge Hernandez appointed Ronald F. Greenspan to serve without bond as receiver of the Aequitas companies, their subsidiaries and their majority-owned affiliates on an interim basis effective March 16, 2016; by and through that same order, Judge Hernandez stayed litigation of any ancillary proceeding involving the receiverhsip entities or their past or present officers, directors, managers, agents, or partners. On April 14, 2016, I confirmed both Judge Hernandez' interim appointment of Greenspan as receiver of the Aequitas companies and the stay of ancillary litigation on a permanent basis.

On February 22, 2017, specially appearing third party Enviso Capital Group, LLC ("Enviso"), filed a motion for partial lift of the stay of ancillary litigation, in order to permit it to pursue litigation in a California state court against AH, Aequitas Wealth Management, Private Advisory Group ("PAG"), Aspen Grove Equity Solutions, LLC ("Aspen Grove"), and other parties. The receiver opposes Enviso's motion, and plaintiff the SEC joins (#381) in the receiver's opposition.

Now before the court is Enviso's motion (#371) for partial lift of the stay of ancillary litigation. I have considered the motion, oral argument on behalf of Enviso, the receiver, and the SEC, and all of the pleadings and papers on file. For the reasons set forth below, Enviso's

motion (#371) for partial lift of the litigation stay is denied.

ANALYSIS

On March 22, 2016 – after the stay of ancillary litigation was imposed in this action – Enviso filed an action in California state court against AH, Aequitas Wealth Management, PAG, Aspen Grove, and other parties. Enviso's California action arose out of a failed business deal between Enviso and PAG, in connection with which Enviso alleges that PAG breached its contract with Enviso.

Aspen Grove is 60% owned by Aequitas Wealth Management, which in turn is wholly owned by AH. In addition, Aspen Grove is itself a part of the "Receivership Entity" subject to the terms and conditions of Greenspan's receivership. *See* Final Receivership Order (#156) dated April 14, 2016, Exh. A; *see also id.*, § I(1). Moreover, Aspen Grove is the majority owner of PAG, holding a 68.23% ownership interest therein. As an asset majority owned by a receivership entity, PAG is "Receivership Property" as that term is defined in the Final Receivership Order. *See id.*, § III(6). Although Enviso's motion is premised in part on Enviso's theory that neither Aspen Grove nor PAG is Receivership Property or within the direct control of any company within the Receivership Entity, such that Enviso's California action could bear at most only an attenuated relationship to the receivership herein, in fact the assets of both Aspen Grove and PAG are squarely within the receiver's mandate to preserve and protect receivership assets for the benefit of the Aequitas entities' creditors.

The Ninth Circuit has recognized three factors that the courts should consider in deciding whether to lift a receivership stay:

(1) whether refusing to lift the stay genuinely preserves the status quo or whether

the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merit of the moving party's underlying claim.

SEC v. Universal Financial, 760 F.2d 1034, 1037-1038 (9th Cir. 1985). The Ninth Circuit has characterized analysis of these three factors as, in effect, requiring the court "to balance the interests of the Receiver and the moving party." *Id.* at 1038. Applying and analyzing the three factors is committed to the discretion of the district courts. *See id.*

In connection with the first factor – whether the stay genuinely preserves the status quo and/or whether the stay will cause Enviso to suffer substantial injury if not lifted as requested – I find that the stay as it is currently in effect plainly preserves the status quo in a manner beneficial to the receiver and to the receivership, by avoiding the risk of consuming receivership assets in the defense of piecemeal litigation. Moreover, I find that to permit the stay to remain in effect would not cause Enviso any substantial injury, as the effect of the stay is not to extinguish any of Enviso's claims against any entity but rather merely to require Enviso to await consideration of its claims together with all of the other creditors of the companies within the Receivership Entity.

In connection with the second factor – the stage of the receivership – I find that, as detailed in the receiver's report (#444) dated April 30, 2017, this is an early and preliminary stage of this receivership (stabilization and monetization of assets), such that relief from the litigation stage, even if otherwise warranted, would be premature at this time. In connection with the third factor – the merits of Enviso's claims in the California action – I find that the California action has not yet developed to a stage at which its merits can usefully be measured, such that the third factor is effectively neutral.

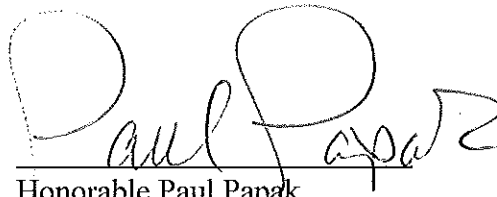
For the foregoing reasons, and also for the reasons set forth in the receiver's report (#444)

dated April 30, 2017, in support of the receiver's conclusion that the stay of Enviso's California action should continue for at least ninety more days from the date the report issued, I find that no good grounds exist for partially lifting the stay of ancillary litigation to permit Enviso's claims in its California action to go forward immediately. In consequence, Enviso's motion (#371) for partial lift of the litigation stay is denied, with leave to refile if warranted at a later stage of these proceedings.

CONCLUSION

For the reasons set forth above, Enviso's motion (#371) for partial lift of the litigation stay is denied as discussed above.

Dated this 30th day of May, 2017.



Honorable Paul Papak
United States Magistrate Judge