

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
PLAINTIFF,)	
)	
v.)	Civil Action No. 3:17-cv-00420-L
)	
PATRICK O. HOWARD; HOWARD)	
CAPITAL HOLDINGS, LLC; AND)	
OPTIMAL ECONOMICS CAPITAL)	
PARTNERS, LLC,)	
)	
DEFENDANTS.)	

**DEFENDANT PATRICK O. HOWARD’S MOTION FOR EXPEDITED DISCOVERY
AND BRIEF IN SUPPORT THEREOF**

TO THE HONORABLE COURT:

COMES NOW, Defendant Patrick O. Howard (“Howard” or “Movant”), and files this Motion for Expedited Discovery and would show this Honorable Court as follows:

BRIEF IN SUPPORT OF MOTION FOR EXPEDITED DISCOVERY

In its Motion to Show Cause [ECF No. 56] (the “Receiver’s Motion”) and Brief in Support thereof [ECF No. 57] (the “Receiver’s Brief”) the Receiver fails to present any facts that establish that Howard violated the Order Appointing Receiver (“Order”). Similarly, the Receiver’s Omnibus Response to Howard’s, Horne’s’ and Scherer’s Responses to Court’s Order to Show Cause Order [ECF No. 81] (the “Receiver’s Omnibus Response”) also fails to present any facts that establish that Howard violated the Order, even though it improperly relies on privileged joint

defense common interest communications between Howard, his counsel and Dovile Soblinskas¹ that Howard has moved to strike. If, however, the Court considers granting the Receiver's request for civil and/or criminal contempt against Howard, Howard respectfully reiterates his request to take expedited discovery.²

In both the Receiver's Brief and Receiver's Omnibus Response, the Receiver includes only irrelevant and in some cases, incomplete exhibits, without context, or particulars. If the Court is willing to consider the Receiver's allegations, then for Howard to sufficiently oppose the serious (but baseless) contempt accusations raised by the Receiver, Howard needs full access to documents and witnesses (particularly documents in the possession of, and testimony from, affiants Dovile Soblinskas and W. Craig Stokley). The Receiver's deficient presentation of facts and impermissible reliance on privileged materials prevents Howard from providing a full and robust response to allegations raised against him. At a minimum, the Receiver's Brief and Omnibus Response fail to present facts that support a vital component of his contempt theory: there is no evidence that the Receiver was harmed, how much time was spent addressing that "harm," nor how the Receiver was prohibited from or interfered with his communications with investors. Absent these seemingly necessary facts to establish contempt, and a fair opportunity for a developed response from Howard, the Receiver and other relevant parties need to be deposed and to respond to requests for discovery.

Specifically, the Movant respectfully requests authority to notice oral depositions duces

¹Howard's Motion to Strike [ECF 85] is supported by an affidavit [ECF 86] that unequivocally shows that as of February 17, 2017, Howard, his counsel, Soblinskas and her then-future counsel were communicating within the scope of a joint defense agreement and that their common interest communications were privileged. At no point did Soblinskas notify Howard that she was withdrawing from the joint defense agreement and at no point did Howard agree to let Soblinskas waive their joint defense common interest privilege.

²See Defendant Howard's Brief in Opposition to Receiver's Motion to Show Cause, Part III.C [ECF 69].

tecum of parties upon **three days' notice** prior to any hearing date for the motion for contempt. The Movant further requests that documents requested as part of any deposition notice duces tecum be produced at least **one day prior** to the commencement of the deposition for purposes of efficiency. Finally, the Movant requests that the Receiver and other parties be ordered to respond in an expedited fashion to Requests for Production, Interrogatories, and Admissions. The Movant believes that evidence discovered at these depositions may precipitate the need to depose other witnesses prior to the hearing or ruling on the Receiver's Motion to Show Cause. The Movant respectfully requests that this Honorable Court allow him to take whatever additional depositions may be necessary upon three (3) days' notice to such proposed deponent.

The Movant respectfully requires expedited depositions, document production, interrogatory answers, and requests for admissions to assess the merit of the alleged wrongful conduct so that evidence at a potential contempt hearing can be presented efficiently and effectively, and so that the relief can be targeted precisely. Unless deposition, interrogatory, document, and other forms of discovery are permitted on an expedited basis, the Movant may be unable to sufficiently respond to the allegations raised by the Receiver.

PRAYER FOR RELIEF

For the foregoing reasons, the Movant respectfully seeks an Order allowing the Movant to conduct oral depositions upon **three days' notice** prior to the appearance date. Further, the Movant respectfully requests that documents requested in Expedited Requests For Production be responded to and produced **within four days** of actual receipt of the Expedited Request for Production, that the Expedited Interrogatories be answered with four days of actual receipt of the Expedited Interrogatories, and that the Expedited Requests for Admissions be answered within four days of actual receipt of the Expedited Requests for Admissions.

Respectfully Submitted,

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**ATTORNEYS FOR DEFENDANT
PATRICK O. HOWARD**

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for the Defendant has left voice messages with opposing counsel and has not heard back from them. Therefore, we assume they are opposed to this Motion.

s/ Barrett Howell

Barrett R. Howell

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2017, a copy of the foregoing has been filed with the United States District Court for the Northern District of Texas, using the electronic case filing system of the Court and served on all counsel of record through the ECF system of the Court.

s/ Barrett Howell

Barrett R. Howell