

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

RALPH S. JANVEY,

Plaintiff,

v.

JAMES R. ALGUIRE, *et al.*,

Defendants.

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Civil Action No. 3:09-CV-724-N

ORDER

This Order addresses the Receiver’s application for temporary restraining order (“TRO”) and preliminary injunction [392]. The Court denies the Receiver’s TRO application and sets a briefing schedule on the preliminary injunction application.

The Receiver seeks an order enjoining former Stanford financial advisers (“Defendants”) from removing funds from certain investment accounts. These accounts are currently frozen by Order of this Court. *See* Order of Apr. 6, 2010 at 2 [379]. That freeze is set to expire on June 1, 2010, “absent an agreement between the parties and/or further Order of this Court.” *Id.* The Receiver now seeks a temporary restraining order and preliminary injunction that would extend the account freeze. In the alternative, he seeks a writ of attachment.

First, the Court denies the Receiver’s TRO application. On application for preliminary injunction, a court may, in limited instances, first issue a temporary restraining

order without notice to the adverse party. *See* FED. R. CIV. P. 65(b)(1)(A).¹ A TRO may issue only if “specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.” *Id.* The Receiver fails to show that “immediate and irreparable injury, loss, or damage will result” before Defendants may be heard. The Court’s prior order freezing Defendants’ accounts expires on June 1, 2010. However, as described below, the Court is ordering expedited briefing on the preliminary injunction. Briefing will conclude no later than May 24, 2010. This allows sufficient time for the Court to rule on the preliminary injunction application before June 1. Thus, there will be no injury to the Receiver if the TRO does not issue.

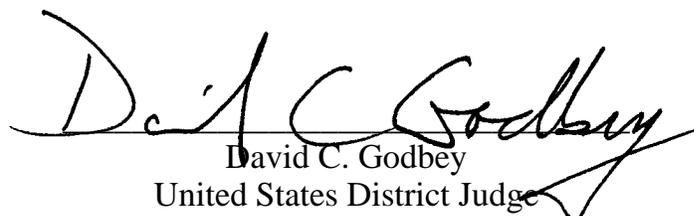
The Court will rule on the Receiver’s preliminary injunction application based on briefing and evidence submitted by the parties. The Court orders that Defendants submit their responses, any supporting affidavits, any deposition cross-examination of the Receiver’s affiants, and any objections to the Receiver’s supporting evidence by May 10, 2010. The Court further orders that the Receiver submit his reply, any rebuttal evidence, and any objections to Defendants’ supporting evidence by May 24, 2010. Finally, the Court orders

¹“Notice,” in the context of Rule 65, implies an opportunity to be heard. *See Granny Goose Foods, Inc. v. Brotherhood of Granny Goose Foods, Inc.*, 415 U.S. 423, 432 n.7 (1974) (“The notice required by Rule 65(a) before a preliminary injunction can issue implies a hearing in which the defendant is given a fair opportunity to oppose the application and to prepare for such opposition.” (citation omitted)); *Harris County v. CarMax Auto Superstores*, 177 F.3d 306, 326 (5th Cir. 1999) (“The Rule’s notice requirement necessarily requires that the party opposing the preliminary injunction has the opportunity to be heard and to present evidence.” (citations omitted)). Thus, Rule 65(b)’s requirements apply to the Receiver’s TRO application because, although Defendants received notice of the application, they have yet to be heard in opposition.

that the parties may depose any affiants on three business days' notice at either their home city or city of their principal place of business for up to three hours, with no more than two depositions per side at a time, absent other agreement of the parties.

The Court will entertain a motion by Defendants to extend these deadlines only if Defendants agree to extend the June 1 expiration of the freeze order.

Signed April 23, 2010.


David C. Godbey
United States District Judge