

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
Civil No. 08-5348 (ADM/JSM)

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY REYNOLDS,

Defendant,

DOUGLAS A. KELLEY,

Receiver.

**MEMORANDUM IN SUPPORT
OF DEFENDANT'S MOTION
TO MODIFY COURT'S ORDER
FROM DECEMBER 16, 2008,
APPROVING PAYMENTS TO
PRESERVE ASSETS AND
PAYMENTS OF
LIVING EXPENSES**

INTRODUCTION

Defendant Larry Reynolds comes before this Court with a Motion to Modify the Court's Order Approving Payments to Preserve Assets and Payments of Living Expenses. This Memorandum is submitted in support of that motion.

ARGUMENT

- I. All approved payments for living expenses and preserving assets should be made retroactive to October 3, 2008, the date of the *ex parte* Temporary Restraining Order.**

On October 3, 2008, this Court issued an *ex parte* Temporary Restraining Order, which effectively froze all of Defendant Larry Reynolds' assets. On October 16, 2008, a Preliminary Injunction and Order Appointing Receiver was issued. It was not until December 16, 2008, two months later, that an Order Approving Payments to Preserve

Assets and Payments of Living Expenses was issued. As a result, from October 3, 2008 to December 16, 2008, with all of his assets frozen, Mr. Reynolds had no ability to pay any of his monthly expenses, including mortgage payments, utilities, telephone, automobile expenses, insurance premiums, and personal living expenses. Consequently, all of Mr. Reynolds' monthly bills are in arrears. Although the Receiver is now paying some of these monthly expenses going forward, most of these accounts remain past due and are incurring late fees. In some instances, a "final notice" has been sent out threatening termination of services if the account is not paid in full. If services are discontinued, reactivation costs would then apply, increasing the cost of these expenses, which the Court and the Receiver have already agreed should be paid.

There can be no logical argument against paying the arrearages on these expenses, given that the Court and the Receiver have already deemed them necessary for the preservation of assets or as ordinary living expenses. If they are legitimate expenses going forward, then they are legitimate expenses for which the arrears must be paid. These accounts should be made current. Therefore, Mr. Reynolds is respectfully requesting that this Court's Order, dated December 16, 2008, be made retroactive to October 3, 2008, when his assets were first frozen; and that the Receiver be ordered to pay all past due bills for the approved expenses as set forth in this Court's Order, dated December 16, 2008.

Mr. Reynolds' request also includes arrearages for his living expenses. To date he has received one check in the amount of \$2,482, which was issued on December 30, 2008, presumably for his monthly living expenses for January. Even if this were actually a sufficient amount to cover his monthly personal living expenses, there would be

nothing left over to pay the arrearages on his personal living expenses, which he incurred from October 3rd to December 30, 2008, when his assets were frozen. Accordingly, Mr. Reynolds is respectfully requesting that this Court order Receiver Kelley to release funds in the amount of \$7,446 to cover his personal expenses for that time period. Again, if Mr. Reynolds' ordinary living expenses were deemed legitimate expenses going forward, then they are legitimate expenses for which the arrears must be paid.

Finally, based on the foregoing argument, this Court should also order the Receiver to pay all arrearages for any additional expenses approved as a result of this motion.

II. Monthly living expenses for certain expenses should be increased.

The Court's Order should be modified by increasing the monthly allowances for groceries, health insurance premiums, toiletries and miscellaneous expenses. In Attachment G of the Receiver's Motion to Approve Payments to Preserve Assets and to Approve Payments of Living Expenses, dated December 9, 2008, the Receiver indicated that the figures used in his recommendation for various living expenses were obtained from "IRS national standards." (See attached Exhibit A). The "IRS national standards" implemented by the Receiver, however, are "IRS Collection Financial Standards" and are "intended for use in calculating repayment of delinquent taxes." (See attached Exhibit B). These national standards are "for the purpose of federal tax administration *only*." (See attached Exhibit B) (emphasis added). They are not intended for determining the ordinary and necessary living expenses of individuals in a receivership situation.

Even if these standards were applicable in this scenario, the allotted amounts require adjustment on two bases. First, the standards used are nearly a year old, which

means the Receiver did not consider a cost of living increase. Second, when these standards are used in a delinquent tax situation, the taxpayer may receive an increased allowance based on a showing of need. In this case, Mr. Reynolds can demonstrate a legitimate need for increasing the monthly allowances.

A. The monthly allowance for groceries should be increased.

The amount of the monthly allowance for groceries should be increased from \$528 to \$1,000. Mr. Reynolds resides with his wife, Antoinette. All meals are eaten in the home. Accordingly, an allowance of \$528 a month for groceries amounts to \$2.93 per meal per household member. It is impossible to purchase groceries that would provide two adults with three well-balanced meals each day.

Mr. and Mrs. Reynolds both have health conditions that require properly balanced diets, including fresh fruits and vegetables, and lean meats. Given their special diets, it is even more difficult to adhere to a budget of \$2.93 per person per meal. Finally, this Court should take into consideration that the Reynolds lives in Los Angeles where the cost of living is higher than the Midwest.

With all of these considerations in mind, the monthly allowance for groceries should be increased to \$1000. This increase equates to each household member spending \$5.56 per meal, which is a far more realistic budget figure.

B. The monthly allowance for health insurance premiums should be increased.

The amount of the monthly allowance for health insurance premiums should be increased from \$570 to \$809.40. There was an error in the initial request for this expense. The monthly premium for Antoinette Reynolds is \$572. (See attached Exhibit C). Mrs. Reynolds has received notice, however, that her monthly premium will increase to \$601 on March 1, 2009. (See attached Exhibit D). The monthly premium for Larry Reynolds is \$143. (See attached Exhibit E). In addition, Mr. Reynolds pays \$65.40 to Anthem Blue Cross for a prescription drug plan, which helps reduce his monthly out-of-pocket expense for prescription medication. (See attached Exhibit F). Therefore, the combined necessary allowance for monthly health insurance premiums is \$809.40.

Due to the closure of the checking account and the recent delinquent payments, Blue Cross is now requiring that both policy premiums are paid two month in advance. Accordingly, it is requested that instead of paying a monthly allowance of \$809.40 for the couples' health insurance premiums and Mr. Reynolds' prescription drug plan, that they receive \$1,618.80 every other month for this expense.

C. The monthly allowance for toiletries should be increased.

The monthly allowance approved for toiletries is \$53. This amount equates to \$26.50 per household member per month. Just as with the grocery allowance, this is inadequate to cover this living expense. Therefore, Mr. Reynolds is requesting that this allowance be increased to \$150.

D. The monthly allowance for miscellaneous expenses should be increased.

The monthly allowance approved for miscellaneous expenses is \$250. This miscellaneous allowance is presumably given to the Reynolds to pay for discretionary expenses that were not otherwise approved by the Receiver and the Court. The problem, however, is that \$250 does not even come close to helping the Reynolds keep their heads above water with regard to their creditors. First, the Receiver denied many of the Reynolds' requested monthly allowances for ordinary and necessary living expenses (e.g. television service, dental, vision, glasses, dry cleaning, out-of-pocket medical expenses, credit card bills, and expenses related to Mr. Reynolds' office such as rent, telephone, and utilities). Second, because the Receiver refuses to pay for any of the arrearages that the Reynolds have incurred since the TRO went into effect on October 3, 2008, the Reynolds are falling further and further into debt. A monthly miscellaneous allowance of \$250 is not sufficient to pay their past due bills let alone current miscellaneous expenses. Accordingly, Mr. Reynolds is requesting that this monthly allowance is increased to \$500.

III. Payment for additional expenses to preserve assets should be approved.

Mr. Reynolds initially requested an allowance of \$170 for Direct TV service at his Las Vegas residence. Receiver Kelley recommended that there be no allowance granted for this expense. This expense has been requested as necessary to preserve the value of the residence, not as a luxury. Further, Mr. Reynolds has reduced the amount of the allowance requested to \$120.

Mr. Reynolds does not reside in the Las Vegas home. In fact, due to the conditions of his release, he is unable to visit the property without approval from pretrial

services. In addition, the property has been placed on the market, and showings have been scheduled. Accordingly, having Direct TV service at this property will not directly benefit Mr. Reynolds.

The reason for requesting the service is for resale purposes. The property is equipped with a home theater and entertainment center worth approximately \$100,000. The realtors have identified this feature as a major selling point of the property. Accordingly, any potential buyer will insist on verifying that the equipment is fully functional. Such verification will be impossible to attain without satellite service. Therefore, approval for this expense should be granted in order to obtain the highest possible purchase price for the property thereby preserving the value of this asset.

IV. Payment for additional business and ordinary personal living expenses should be approved.

Unquestionably, courts have the authority to appoint a receiver and issue restraining orders that freeze personal assets. See S.E.C. v. Dowdell, 175 F. Supp. 2d 850, 854 (W.D.Va. 2001); Federal Rule of Civil Procedure 66. It is reasonable to assert, then, that if the court has the authority to freeze personal assets, it has the “corollary authority to release frozen personal assets, or lower the amount frozen.” S.E.C. v. Duclaud Gonzalez de Castilla, 170 F. Supp. 2d 427, 429 (S.D.N.Y. 2001).

In making a determination about the amount that should be released, the court should weigh “the disadvantages and possible deleterious effect of a freeze . . . against the considerations indicating the need for such relief.” S.E.C. v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1105 (2d Cir. 1972). Consideration should be given to the

defendant's available assets and income. Duclaud Gonzalez de Castilla, 170 F. Supp. 2d 427. In cases where requests for living expenses have been denied, the court found that the requests were not reasonable because there was evidence that the defendant had other sources of income or because the defendant planned to use the funds for luxuries rather than necessities. *E.g. Id.* (finding defendant had voluntarily waived a monthly salary of \$15,000 and was seeking funds for a nanny, housekeeper, handyman, and nurse). By contrast, personal living expenses have been approved when the defendant was able to demonstrate that he had no alternative sources of income and his request to release assets was for the purpose of paying ordinary living expenses, such as utilities, life insurance premiums, medical bills, and business expenses. Dowdell, 175 F. Supp. 2d 854-55.

In this case, Mr. Reynolds does not currently have any alternative stream of income. Mrs. Reynolds does not work. It is further important to note that not all of his assets were derived from the allegedly fraudulent activities. Mr. Reynolds has been involved in legitimate business enterprises that generated income for his household. Therefore, monthly allowances for the following expenses should be granted.

A. A monthly allowance for business expenses should be approved.

Mr. Reynolds has obtained a certain amount of his assets through legitimate business dealings. Mr. Reynolds maintains an office where he conducts his business enterprise, which involves buying and selling closeout and excess goods. He uses his office to meet with clients and negotiate deals. Monthly rent for his office is \$850 and telephone and utilities average \$195 per month. Mr. Reynolds has been notified by his landlord that he must either pay his rent or evacuate the premises.

It is critical that Mr. Reynolds be able to maintain his office space. Due to the terms of his conditions of release in the correlating criminal matter, he is not permitted to travel around the city to conduct his business. The only place that he is permitted to travel is to his office. If Mr. Reynolds loses his office space then he will be confined to his home. Conducting business out of his home is not a viable solution due to its remote location. Potential business partners and clients will not be inclined to work with Mr. Reynolds if it requires additional time-consuming efforts to meet with him.

Further, it is advantageous to all parties involved that Mr. Reynolds be permitted to continue working on his various business endeavors. He currently has several pending deals that are expected to bring in some income. If these dealings are fruitful then it may decrease his need to depend so greatly on Receiver Kelley to pay all of his personal living expenses, as well as to increase the net funds available for restitution purposes. If the need for an allowance for Mr. Reynolds' personal living expenses is reduced, then it will effectively result in a greater preservation of the assets.

B. Monthly allowances for dental care, eye care and glasses, and medical bills not covered by insurance should be approved.

Other than an allowance for health insurance premiums and prescription drugs, Receiver Kelley disapproved of any additional funds for other basic healthcare needs. Mr. Reynolds' requests for monthly eye care and dental care allowances were denied in their entirety. Mr. Reynolds and his wife are both in their sixties. Both have glasses for everyday use as well as reading glasses. Their prescriptions need to be evaluated and updated. New prescriptive lenses are necessary. The same is true with regard to the

couples' dental needs. Mr. Reynolds, in particular, has a broken bridge that requires attention and repair. Neither Larry nor Antoinette Reynolds has dental insurance. A monthly allowance of \$50 for dental care and \$45 for eye care for the couple is a reasonable request for these necessary and ordinary living expenses.

Also denied was Mr. Reynolds' request for a monthly allowance for medical expenses that are not covered by insurance. While the payment of health insurance premiums was approved, the Receiver failed to take into consideration annual insurance deductibles. The amount of the annual deductible must be incurred and paid by the insured individual as an out-of-pocket expense before the insurance carrier will assume responsibility for the insured's medical expenses. In the Reynolds' case, the annual deductible is \$2,500 for Mrs. Reynolds and \$1,500 for Mr. Reynolds. (See attached Exhibits C). Accordingly, Mr. Reynolds is required to pay the first \$1,500 of medical expenses incurred in 2009; and Mrs. Reynolds is required to pay the first \$2,500 of medical expenses incurred in 2009. These deductibles are not spread out evenly over the course of the year. They are typically incurred during the first few months. Accordingly, their monthly out-of-pocket expenses for their deductibles cannot be evenly amortized over twelve months. Therefore, Mr. Reynolds requests that either Receiver Kelley be ordered to pay the Reynolds' monthly medical bills as they are incurred or that Mr. Reynolds be given a lump sum of \$4,000 for the amount of the annual deductible so the Reynolds are able to pay their out-of-pocket medical expenses as they are realized.

C. A monthly allowance for life insurance premiums should be approved.

Larry Reynolds has a term life insurance policy through New York Mutual. He

started the policy approximately three years ago. His wife, Antoinette Reynolds, is the beneficiary. Mrs. Reynolds has commenced marital dissolution proceedings. One of the assets that she is interested in retaining is the life insurance policy on Mr. Reynolds. It is likely that the California district court presiding over the dissolution proceedings will order or has already ordered that Mr. Reynolds maintain his life insurance policy. If this policy is allowed to lapse, it will be more expensive for him to obtain another policy. Life insurance policies are an ordinary and necessary living expense, which the Receiver should be ordered to maintain. Dowdell, 175 F. Supp. 2d 854-55 (finding that utilities, life insurance premiums, medical bills, and business expenses are ordinary living expenses).

D. A monthly allowance for health club dues should be approved.

Although at first blush, a request for a monthly allowance for health club dues may seem to be a luxury item, under the circumstances of this case, it is not. Larry and Antoinette Reynolds both suffer from health conditions that require either routine physical therapy and chiropractic visits or regular exercise involving weight lifting and cardiovascular workouts. (See attached Exhibit G). The Reynolds do not own any of the necessary workout equipment themselves. It has also been determined that a monthly membership to a local health club is more economical than paying for physical therapy and chiropractic care.

E. A monthly allowance for other ordinary living expenses should be approved.

Receiver Kelley also denied funds for dry cleaning and Direct TV at Mr. Reynolds' Los Angeles home. These are not luxuries but rather ordinary living expenses. Again, Mr. Reynolds asks this Court to be mindful that a certain amount of his wealth was obtained through legitimate business dealings. Releasing a miniscule amount of his assets to pay for these everyday living expenses is reasonable. Specifically, Mr. Reynolds is requesting a monthly allowance of \$120 for Direct TV at his home in Los Angeles and \$95 for dry cleaning services.

V. Outstanding bills for professional services rendered should be paid.

Mr. Reynolds has an outstanding bill in the amount of \$465 from his cardiologist, Dr. Hoffman, which has not been paid. Both Larry and Antoinette Reynolds have medical conditions that require Dr. Hoffman's attention. Medical services for the Reynolds' cardiology needs are necessary to their health. Therefore, the Receiver should be ordered to pay both past and future medical bills from Dr. Hoffman.

Mr. Reynolds has two outstanding bills for legal counsel rendered. The first bill, in the amount of \$24,515.71, is for the legal services of Attorney Joe Ryan. (See attached Exhibit H). The second bill, in the amount of \$7,750.00, is for the legal services of Attorney Stephanie Ames. (See attached Exhibit I). These legal expenses were incurred as a result of the criminal charges filed against Mr. Reynolds in federal district court and the accompanying freezing of assets and receivership issues. Although Ms. Ames now represents Antoinette Reynolds, separately, with respect to divorce and estate

preservation matters, both attorneys have worked at the direction and under the supervision of Fred Bruno. Both Ms. Ames and Mr. Ryan have been invaluable to the ongoing legal needs of Mr. Reynolds. In addition, they are serving as local counsel for the Reynolds in California. (See Affidavit of Frederic Bruno). All of these attorneys' fees are ordinary and necessary.

Finally, Mr. Reynolds has an outstanding bill from K.P. Cornwell & Associates relating to the preparation of the Reynolds' 2007 tax returns. (See attached Exhibit J). Like the other professional fees, this is an ordinary and necessary expense, incurred prior to the federal indictment, which should be paid.

CONCLUSION

Based on the foregoing argument of counsel and the accompanying documentation in support thereof, the Defendant, Larry Reynolds respectfully requests that this Court grant his motion.

Respectfully Submitted,

Dated: January 29, 2009

s/Frederic Bruno _____
Frederic Bruno
Attorney License No. 123213
Frederic Bruno & Associates
5500 Wayzata Boulevard, #1450
Minneapolis, MN 55416
Phone: 763-545-7900