

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

v. :

Civil Action No.: 4:17-cv-336-ALM

**THURMAN P. BRYANT, III, and** :  
**BRYANT UNITED CAPITAL FUNDING, INC.** :

Defendants, :

**ARTHUR F. WAMMEL,** :  
**WAMMEL GROUP, LLC,** :  
**THURMAN P. BRYANT, JR.,** :  
**CARLOS GOODSPEED a/k/a SEAN PHILLIPS** :  
**d/b/a TOP AGENT ENTERTAINMENT d/b/a** :  
**MR. TOP AGENT ENTERTAINMENT** :

Relief Defendants. :

**PLAINTIFF’S BRIEF IN OPPOSITION TO RELIEF DEFENDANTS ARTHUR F. WAMMEL AND WAMMEL GROUP LLC’S EMERGENCY MOTION AND BRIEF FOR RECONSIDERATION OF EX PARTE TRO, PRELIMINARY INJUNCTION, ASSET FREEZE, AND RECEIVERSHIP ORDERS**

Plaintiff Securities and Exchange Commission (“Plaintiff” or “Commission”) submits this Brief in Opposition to Relief Defendants Arthur F. Wammel and Wammel Group LLC’s Emergency Motion and Brief for Reconsideration of Ex Parte TRO, Preliminary Injunction, Asset Freeze, and Receivership Orders [Dkt. No. 56] (the “Response”).

**I.**  
**ARGUMENT**

In their Response, Relief Defendants Arthur Wammel and Wammel Group LLC (collectively and singularly “Wammel”) argue that the Court should not have granted the Receiver’s *Ex Parte* Emergency Motion to Expand Receivership and Asset Freeze Against the

Wammel Defendants, for Temporary Restraining Order, and for Preliminary Injunction [Dkt. No. 44 and 45] (the “Motion”). The Commission believes that the Court was justified in granting the Motion and that Wammel’s arguments in opposition are strictly procedural and largely mooted by the preliminary injunction hearing set for Wednesday, August 2, 2017.

Of specific relevance to the Commission is Wammel’s argument that the Receiver’s ability to seek a preliminary injunction, asset freeze, and expansion of the Receivership is somehow affected by a potential settlement between Wammel and the Commission. [Dkt. No. 56 at 3]. It is true that Wammel and the Commission’s staff reached an agreement in principle whereby the staff would recommend that the Commission authorize amending the Complaint to allege that Wammel had violated the anti-fraud provisions of the federal securities laws by running a Ponzi scheme that included, among others, the BUCF investors. As an offer to settle those anticipated charges, Wammel consented that he would, without admitting or denying the allegations in the amended complaint:

- be permanently enjoined from violating the anti-fraud provisions of the securities laws;
- be permanently enjoined from participating, directly or indirectly, including, but not limited to, through any entity owned or controlled by him, in the issuance, purchase, offer, or sale of any unregistered securities, provided however that such injunction shall not prevent him from purchasing or selling securities for his own personal account;
- be ordered to pay disgorgement, prejudgment interest, and penalties in amounts to be set by the Court; and
- be prevented from denying any of the allegations of the complaint in the briefing and hearing, if any, to set the amount of monetary relief.

*See* Response at Exhibits A-4 and A-5 (the “Consents”).

But Wammel's execution of the Consents is of no import to the relief obtained by the Receiver. First, the Consents reflect the terms of a settlement offer made by Wammel as part of a non-binding agreement in principle between the Commission staff and Wammel. As Wammel's counsel is well aware, the undersigned Commission staff do not have authority to bind the Commission, but can only agree to make a recommendation to the Commission for its determination. *See, e.g., Valley Ranch Development Co., Ltd. v. FDIC*, 960 F.2d 550, 554 (5th Cir. 1992)(finding a tentative settlement not binding when it had not approved by the FDIC Board of Governors). Moreover, Wammel has withdrawn the Consents, and there is no longer any contemplated settlement between Wammel and the Commission. And even if the recommendation had been presented to and approved by the Commission, the ultimate decision to enter the relief proposed by the Commission and Wammel rests with this Court, not the parties.

Secondly, the Receiver could in no way be bound by the terms of the Consents. The Receiver's charge and obligations flow from the Court's Order Appointing Receiver—not the Commission, and certainly not from an agreement in principle between Wammel and the Commission staff. [Dkt. Nos. 17, 48]; *see In re Sherman*, 491 F.3d 948, 963-64 (9th Cir. 2007)(noting that the Receiver and the SEC were independent entities, even though the Receiver was appointed pursuant to the SEC's motion, and that the Receiver's powers arose from the order appointing him). To the extent that the Receiver deems certain steps are necessary to fulfill her duties, then the Commission is not in a position to keep her from the execution of her charge. Indeed, the Commission staff recognized that the relief sought in the Motion would likely ruin a potential settlement between the Commission and Wammel. Regardless, the evidence supported the Receiver's Motion, and the Receiver need not compromise the

fulfillment of her obligations because of concerns about how her action's might affect the Commission staff's endeavors.

Lastly, when discussing the Consents, the Commission staff was clear with Wammel's counsel that the Commission staff was sharing information received in the course of its investigation with the Receiver and other interested persons, who are free to make their own determinations of the appropriate use of that information. Wammel cannot now claim that they are somehow prejudiced by the Receiver using this information to satisfy her duties.

## **II. CONCLUSION**

Based on the foregoing, the Commission agrees that the relief granted in response to the Motion was appropriate and should remain undisturbed. The Commission, therefore, respectfully requests that the Court overrule the Wammel Defendants' Response and grant all other relief to which the Commission might show itself justly entitled.

Dated: August 1, 2017

Respectfully submitted,

/s/ Jason P. Reinsch

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**CERTIFICATE OF SERVICE**

I certify that on August 1, 2017, I electronically filed the foregoing ***Plaintiff’s Brief in Opposition to Relief Defendants Arthur F. Wammel and Wammel Group, LLC’s Emergency Motion and Brief For Reconsideration of Ex Parte TRO, Preliminary Injunction, Asset Freeze, and Receivership Orders*** with the Clerk of the Court for the Eastern District of Texas, Sherman Division, using the CM/ECF system. The electronic case filing system will send a “Notice of Electronic Filing” to all counsel of record who has consented in writing to accept service of this document by electronic means.

I further hereby certify that on August 1, 2017, I served a true and correct copy of the foregoing ***Plaintiff’s Brief in Opposition to Relief Defendants Arthur F. Wammel and Wammel Group, LLC’s Emergency Motion and Brief For Reconsideration of Ex Parte TRO, Preliminary Injunction, Asset Freeze, and Receivership Orders*** and the notice of electronic filing by depositing a copy thereof in an authorized United Parcel Service depository at Fort Worth, Texas, with overnight express charges prepaid and addressed to the following parties and persons entitled to notice that are non-CM/ECF participants:

<p>Thurman P. Bryant, III 5343 Buena Vista Dr. Frisco, Texas 75034 <i>Pro Se Defendant</i></p>	<p>Toby Galloway Kelly Hart &amp; Hallman LLP 201 Main St., Suite 2500 Fort Worth, Texas 76102 <a href="mailto:Toby.Galloway@kellyhart.com">Toby.Galloway@kellyhart.com</a></p> <p>Jimmy Ardoin Ardoin Law PLLC 2118 Smith St., Suite 200 Houston, Texas 77002 <a href="mailto:Jimmy@ardoinlawpllc.com">Jimmy@ardoinlawpllc.com</a> <i>Attorneys for Relief Defendants Arthur M. Wammel and Wammel Group LLC</i></p>
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/s/ Jason Reinsch  
Jason P. Reinsch

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**ORDER**

This matter comes before the Court on Relief Defendants Arthur F. Wammel and Wammel Group, LLC’s Emergency Motion and Brief for Reconsideration of *Ex Parte* TRO, Preliminary Injunction, Asset Freeze, and Receivership Orders [Dkt. 56]. After considering the Motion and Plaintiff’s Response, the Court DENIES the Motion. It is hereby:

ORDERED that Defendant’s motion is DENIED in its entirety.