

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
vs.) Case No. 15-CV-00191-S-LDA
)
PATRICK CHURCHVILLE,)
CLEARPATH WEALTH MANAGEMENT, LLC,)
)
Defendants,)
)
and)
)
CLEARPATH MULTI-STRATEGY FUND I, L.P.,)
CLEARPATH MULTI-STRATEGY FUND II, L.P.,)
CLEARPATH MULTI-STRATEGY FUND III, L.P.,)
HCR VALUE FUND, L.P.,)
)
Relief Defendants.)
)

**RECEIVER’S OBJECTION TO DEFENDANT PATRICK CHURCHVILLE’S
MOTION TO MODIFY THE RESTRAINING ORDER TO RELEASE ASSETS FOR
THE DEFENSE OF THE RELATED CRIMINAL CASE**

Now comes Stephen F. Del Sesto, Esq. solely in his capacity as the Court-appointed Receiver for Defendants Patrick Churchville (“Churchville”) and ClearPath Wealth Management, LLC and Relief Defendants ClearPath Multi-Strategy Fund I, L.P., ClearPath Multi-Strategy Fund II, L.P., and ClearPath Multi-Strategy Fund III, L.P. (collectively “Receivership Entities”), (the “Receiver”) and respectfully submits this Objection to Churchville’s Motion to Modify the Restraining Order To Release Assets for the Defense of the Related Criminal Case (the “Motion”). On or about October 3, 2018, Plaintiff, Securities and Exchange Commission (“SEC”), filed an Objection to Churchville’s Motion (the “SEC Objection”). In addition to the within Objection, the Receiver hereby adopts and incorporates herein the arguments in the SEC Objection in its entirety.

In his Motion, Churchville argues that, pursuant to the Fifth and Sixth Amendments of the United States Constitution, Churchville should be able to access “untainted” funds so that he can hire an attorney of his choice to defend him in a related criminal matter. Specifically, Churchville seeks release of the following funds that have been obtained via the Receiver’s efforts:

- (1) NET proceeds from the sale of property located at 6 Whitney Court, Unit 10 in Narragansett, Rhode Island, totaling an alleged \$276,738.10;
- (2) 1.25% of the outstanding partnership interest in Series B of the HCR Value Fund, totaling \$8,999.00; and
- (3) A refund from the Point Judith Country Club, totaling \$6,000.00 (together, the “Tainted Funds”).

In total, Churchville seeks release of \$291,737.10 in Tainted Funds collected and held by the Receiver. Churchville claims that he would use these “untainted” Funds for the following:

- (1) To reimburse his prior attorneys, Attorneys Anthony Traini and Michael Lepizzera, \$100,000.00 on an alleged 2016 loan related to Churchville’s plea negotiation (the “2016 Loan”);
- (2) To remit payment of \$1,570.00 in interest on the 2016 Loan; and
- (3) To retain criminal defense counsel and a forensic auditor.

The Receiver objects to the release of the Tainted Funds for two predominant reasons. First, Churchville has failed to satisfy his burden under the Fifth and Sixth Amendment in proving that the Tainted Funds are untainted. In fact, Churchville would be unable to do so because the Tainted Funds are clearly tainted, as further demonstrated below. Second, Churchville does not need the Tainted Funds for any valid and proper purpose. Churchville willingly and knowingly waived any and all rights to appeal when he accepted his plea agreement. Additionally, to the extent that Churchville took a loan in 2016, it appears that the loan was in direct violation of this Court’s June 2, 2015 Order, [Document No. 13].

I. RELEVANT FACTS & TRAVEL

A. 6 Whitney Court, Unit 10 in Narragansett, Rhode Island (the “Whitney Property”)

Churchville purchased the Whitney Property in September, 2005, for use as a secondary residence for \$470,000.00. Contemporaneous with his purchase of the Whitney Property, Churchville obtained a loan from Wells Fargo Bank, N.A. (later assigned to Bank of America, N.A. in July 2015) in the amount of \$376,000.00. The Loan was secured by a first position mortgage on the Whitney Property. In October, 2005, Churchville obtained a Home Equity Line of Credit Mortgage from Citibank Federal Savings Bank in the amount of \$104,000.00, which was secured by a second position mortgage on the Whitney Property (collectively with the \$376,000.00 loan, the “Loans”). At the time the Receiver came into possession of the Whitney Property, the Loans were still due and outstanding.

After substantial efforts marketing the Whitney Property for sale, the Receiver received an offer in the amount of \$280,000.00 from Shelia Felice (“Buyer”). Ultimately, the Receiver and Buyer agreed to a purchase price of \$295,000.00. The final purchase and sale agreement was executed on March 24, 2016, which allowed for a broker commission equal to 5% of the purchase price. After inspections on the Whitney Property, the Receiver agreed to a closing credit in the amount of \$250.00.

On May 4, 2016, the Receiver petitioned this Court for approval of the sale of the Whitney Property [Document No. 65]. In his petition, the Receiver emphasized, in bold, that “the purchase price identified in the P&S will not fully satisfy the first or second mortgages recorded against the [Whitney] Property. The Receiver has specifically provided notice to both Wells Fargo/BOA and Citibank of this proposed sale and, as of the filing of this Petition, Citibank has not contacted the Receiver.” [Document No. 65.] On May 31, 2016, this Court entered an Order approving the sale

of the Whitney Property pursuant to the terms and conditions of the purchase and sale agreement.
[Document No. 73.]

Although the Receiver stated in his Fourth Interim Fee Application that the sale of the Whitney Property resulted in sale proceeds in the amount of \$276,783.10, the Receiver did not represent that those funds were NET sale proceeds; and, in fact, they were not. [Document No. 119.] As the Receiver had indicated in his Petition to approve the sale, the outstanding Loan obligations on the Whitney Property exceeded the purchase price. After substantial discussions and negotiations with Wells Fargo, the Receiver and Wells Fargo agreed that the Receiver would retain \$23,000.00 from the sale to cover his fees and expenses associated with his maintenance, marketing, and sale of the Whitney Property; the remaining sale proceeds were remitted to Wells Fargo to satisfy and discharge the outstanding Loans. Thus, there are no NET proceeds from the sale of the Whitney Property because the \$23,000.00 retained by the Estate merely covered post-receivership fees, costs and expenses associated with the Whitney Property.

B. Series B HCR Value Fund Partnership Interest

In accordance with this Court's Orders, entered on November 4, 2015, [Document Nos. 40 and 41], \$714,226.09 funds were wired to the Receivership Estate from the HCR Value Fund, LP Amendment and Settlement. Churchville held a 1.25% partnership interest in the HCR Value Fund. His percentage of these settlement proceeds, if not tainted, would be \$8,999.00.

C. Point Judith Country Club Membership

After diligent efforts by the Receiver, the Receiver obtained \$6,000.00 from Point Judith Country Club ("PJCC") as reimbursement for Churchville's country club membership. Although Churchville alleges that this membership fee pre-dated his criminal conduct, the Receiver does not have any evidence supporting when Churchville's PJCC membership was purchased. Further,

Churchville remained a member of PJCC after 2010 and continued to pay \$1,000's in annual dues, annual assessments and other fees associated with membership.

II. STANDARD OF REVIEW

“[A] defendant . . . has a Sixth Amendment right to use her own ‘innocent’ property to pay a reasonable fee for the assistance of counsel.” Luis v. United States, 136 S. Ct. 1083, 1096 (2016). This aspect of a defendant’s Sixth Amendment right is considered “fundamental.” Id. at 1089. However, this right is not unfettered. See United States v. Bokhari, 185 F. Supp. 3d 254, 264 (D. Mass. 2016). The Court in Luis explicitly distinguished between tainted and untainted assets, such as “a robber’s loot, a drug dealer’s cocaine, a burglar’s tools, or other property associated with the planning, implanting, or concealing of a crime.” 136 S. Ct. at 1090. The United States Supreme Court made clear that when the assets are tainted, “the defendant’s ownership interest is imperfect” in that the assets “belong[] to the victim, not the defendant.” Id. Accordingly, although a defendant has a right to untainted, “innocent” funds, a defendant has no right to tainted funds under the Sixth Amendment.

III. ANALYSIS

A. The Tainted Funds Churchville References Are Tainted.

Churchville has no right to the Tainted Funds under the Fifth or Sixth Amendments to the United States Constitution because such Tainted Funds are commingled with and are tainted in and of themselves. First, as stated above, the sale of the Whitney Property did not yield NET equity/sale proceeds, regardless of whether the Whitney Property was tainted. When the Receiver came into possession of the Whitney Property, it was underwater. The Receiver represented to the Court that the purchase price of the Whitney Property would not sufficiently satisfy all outstanding Loans. After substantial efforts by the Receiver, Wells Fargo agreed to accept less than what was

outstanding in full satisfaction of the liabilities on the Whitney Property. By agreement and order of this Court, the Receiver maintained \$23,000.00 to cover his maintenance, marketing, and sale of the Whitney Property. However, even if the Receiver remitted the full \$276,783.10 to Wells Fargo, the mortgage liability on the Whitney Property Loans would have still been not fully satisfied because the mortgage liability exceeded the purchase price. Accordingly, even if the sale proceeds from the Whitney Property were untainted, which they are not, the sale did not result in any NET equity/sale proceeds that would be available to Churchville. Churchville cannot benefit from funds retained from the Whitney Property because such funds were not equity but only resulted from the Receiver's efforts.

Moreover, even if the sale of the Whitney Property did result in NET sale proceeds, those funds would be tainted and, thus, not available to Churchville. Although Churchville purchased the Whitney Property in September, 2005, Churchville routinely made payments on the Whitney Property in accordance with the terms of the Loans. In 2015, during the time of Churchville's fraud, he was still making routine payments. Churchville's income at this time was derived from his fraudulent maintenance of investor accounts, in violation of numerous criminal and civil laws. Because Churchville routinely paid the mortgage on the Whitney Property with tainted funds, any NET sale proceeds (of which there are not any) would likewise be tainted. If there had been any equity in the Whitney Property, it would have resulted primarily by Churchville's principal and interest payments on the mortgage Loans, which were largely from tainted funds. Churchville victimized dozens of individuals and used their tainted funds to maintain his lifestyle; Churchville cannot and should not derive any benefit from these actions.

Second, it is exceedingly clear that Churchville's frauds involved the HCR Value Fund. In the SEC's Amended Complaint, the SEC discusses this involvement. See, e.g., Am. Compl. ¶ 65

(diverting of funds from OPCO investment to HCR Value Fund); ¶ 108, ¶ 114 (fraudulent transfer of \$1.2 million from MSF III to HCR Value Fund); ¶ 116 (“HCR Value Fund received funds derived from Defendants’ fraudulent scheme[.]”). Churchville merely makes the blanket assertion that the Funds from the HCR Value Fund are not tainted. However, he provides no evidence or other forms of support for this assertion. Without any evidence to the contrary, the Funds from the HCR Value Fund are clearly tainted and not available for use by Churchville.

Third, and finally, the reimbursement from PJCC is likewise tainted. The Receiver is unaware of when Churchville first became a member of PJCC. Churchville alleges that it was before his criminal activity; however, he provides no evidence or support for this assertion. Regardless, similar to the mortgage payments, Churchville routinely used tainted funds from his fraudulent schemes to live his extravagant life, including his country club memberships (which were not limited to PJCC). Specifically, it appears that Churchville was still a member of PJCC in 2014/2015. At this point, he was using tainted funds to make expenditures and pay country club dues and fees associated with his membership. Accordingly, the reimbursement of his PJCC membership is likewise tainted.

B. Churchville Has Failed to Assert A Sufficient Need For The Tainted Funds.

Even assuming that the Tainted Funds were not tainted, which they are, Churchville has failed to assert a valid purpose for which he needs the Tainted Funds. Churchville claims that he wishes to repay off principal and interest on a loan that he took in 2016 related to his plea negotiations. However, this Court’s Order, dated June 2, 2015, [Document No. 13] prevented Churchville from taking said 2016 Loan. That Order states in pertinent part:

“. . . the Defendants and . . . each of their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them . . . from taking any action to . . . dissipate, assign, pledge, alienate, encumber, dispose of,

or diminish the value in any way (including, but not limited to, making any charges on any credit card or draws on any other credit arrangement) any funds or other assets of the Defendants or presently held by them, for their direct or indirect benefit, under their direct or indirect control, or over which they exercise actual or apparent investment or other authority . . .”

Churchville should not be permitted to use funds, tainted or not, to help him repay a loan for which he could be held in contempt for taking in the first place.

Churchville also alleges that he wishes to use the Funds to retain counsel in the related criminal matter. However, Churchville has no right to appeal and, thus, no need to hire appellate counsel. By accepting his plea agreement, Churchville waived any and all rights to appeal. Without any need for appellate counsel, Churchville’s arguments under the Fifth and Sixth Amendments must fold. See Coleman v. Thompson, 501 U.S. 722, 752 (1991) (“There is no constitutional right to an attorney in state post-conviction proceedings.”); Brown v. Wall, 2000 WL 34022579, at *1 (D.R.I. Nov. 20, 2000) (“[A] petitioner in federal habeas corpus proceedings has no constitutional right to counsel.”).

Accordingly, Churchville has failed to establish any need for the Tainted Funds even if they were available for his use, which they are not, and, therefore, his Motion should be denied.

IV. CONCLUSION

For the reasons discussed herein, the Receiver respectfully requests that this Honorable Court deny Churchville’s Motion in its entirety. Churchville has failed to establish that the Tainted Funds are not tainted, and he is unable to do so because the Tainted Funds are clearly tainted from

Churchville's numerous fraudulent schemes. Additionally, Churchville has failed to assert a sufficient purpose for which he needs the Tainted Funds even if available.

Respectfully submitted,

*Receiver for Patrick Churchville, ClearPath
Wealth Management, LLC, ClearPath
Multi-Strategy Fund I, L.P., ClearPath
Multi-Strategy Fund II, L.P., and ClearPath Multi-
Strategy Fund III, L.P. and not individually,*

/s/ Stephen F. Del Sesto

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October 3, 2018

CERTIFICATE OF SERVICE

I, Stephen F. Del Sesto, hereby certify that I filed the within document on October 3, 2018, and that notice will be sent electronically to all counsel who are registered participants identified on the Mailing Information for Case No. 15-cv-00191-S-LDA.

/s/ Stephen F. Del Sesto