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JUDGE FIELDS
SUPERIOR COURT

5
6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
7
8 IN AND FOR THE COUNTY OF MARICOPA

9 Arizona Corporation Commission,)
Plaintiff,)
10 v.)
11 One Vision Children's Foundation, Inc.,)
an Arizona non-profit corporation;)
12 Hollister M. Marx, an individual; Wealth)
Management Resources, Inc., an Arizona)
13 corporation; Michael B. and Betty)
A. and Lorrina Diaz, husband and wife,)
14 Defendants.)

Cause No. CV 2002-020878

PETITION NO. 6
PETITION FOR ORDER TO SHOW
CAUSE AND ORDER HOLDING
MICHAEL DIAZ AND MICHAEL
MAKSUDIAN IN CONTEMPT OF
COURT

(Assigned to Judge Kenneth L. Fields)

15
16 Lawrence J. Warfield, as the court appointed Receiver ("Receiver") in the captioned
17 matter, respectfully petitions the Court to enter an order holding Michael Diaz and Michael
18 Maksudian in contempt of court and imposing sanctions for their failure to provide the
19 Receiver with computer passwords for electronic receivership records located on a Wealth
20 Management Resources, Inc. computer seized by the Receiver.

21 . . .

1 I. This Court's Prior Orders

2 1. On October 28, 2002, the State of Arizona and the Corporation Commission
3 filed its Verified Complaint in an action entitled *Arizona Corporation Commission v. One*
4 *Vision Children's Foundation, Inc, et al.* Cause No. CV 2002-020878 ("Complaint"). The
5 Complaint alleged, among other things, that the Defendants violated numerous securities laws
6 of the State of Arizona.

7 2. On October 28, 2002, this Court entered its *Order Appointing Receiver*, which
8 appointed Lawrence J. Warfield as Receiver of all of the assets of One Vision Children's
9 Foundation, Inc. and Wealth Management Resources, Inc. ("Receivership Order"). The
10 Receivership Order, among other things:

11 a. Required the Defendants to promptly turn over to the Receiver all
12 receivership assets and all books and records of any kind pertaining or belonging to One
13 Vision or Wealth Management Resources. (Exhibit 1, page 2, ¶ 3).

14 b. Enjoins the Defendants from doing any act or thing whatsoever to
15 interfere with the Receiver taking custody, control, possession, or management of the assets
16 or documents subject to this receivership (Exhibit 1, pg 5, ¶ 8(d)).

17 c. Required the Receiver to apply to this Court, with notice to the Arizona
18 Corporation Commission and Defendants, for issuance of such other orders as may be
19 necessary and appropriate in order to carry out the mandate of this Court.

20 3. On December 18, 2002, this Court entered its *Order of Preliminary Injunction*
21 which among other things, enjoined the Defendants from concealing any assets, funds, or

1 property controlled by Wealth Management Resources. (Exhibit 2, Order, ¶ 2). A copy of the
2 *Receivership Order* is attached as Exhibit 1 and the Court's *Order of Preliminary Injunction*
3 is attached as Exhibit 2 to this Petition served upon the assigned judge and others, but are not
4 filed with the original in accordance with Rule 5(g)(3), Ariz. R. Civ. P.

5 **II. Wealth Management Laptop Computer**

6 4. Wealth Management Resources, a Defendant in the above-named action,
7 utilized a laptop computer for its business operations.

8 5. On October 29, 2002, the Receiver entered the business office of Wealth
9 Management Resources. During this initial entry, the Receiver discovered a laptop computer
10 on the desk of Wealth Management Resources President, Michael Diaz. The Receiver took
11 possession of this computer.

12 6. While attempting to examine the documents contained on this receivership
13 record, the Receiver discovered that ninety-two (92) documents were password protected.
14 The password protection prevents the Receiver from reviewing these ninety-two (92)
15 documents.

16 7. On February 13, 2003, counsel for the Receiver sent a letter to counsel for
17 Michael Diaz and Michael Maksudian requesting the passwords for the ninety-two (92)
18 documents which were password protected. (Exhibit 3).

19 8. On or about March 1st 2003, counsel for the Receiver contacted Attorney
20 Frances Diaz to attempt to recover the computer passwords for her clients, Michael Diaz and
21 Michael Maksudian. During this telephone conversation, Attorney Diaz informed counsel for

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the Receiver that these ninety-two (92) documents may contain attorney/client privileged materials and that Michael Maksudian and Michael Diaz commonly used numerous passwords to protect documents and it was impossible for Attorney Diaz to respond to the Receiver's request for the WMR passwords without a date and time stamp for each document.

9. On March 6, 2003, counsel for the Receiver delivered a letter to Attorney Diaz specifically identifying the date and time each document was created and requested Attorney Diaz substantiate any claim of attorney/client privilege and identify any attorney who acted as counsel to Wealth Management Resources, Michael Diaz, or Michael Maksudian from January – November, 2001, the relevant dates of the documents which are password protected. (Exhibit 4).

10. On March 26, 2003, counsel for the Receiver sent a third letter to Attorney Diaz recounting the numerous phone messages and requests for the computer passwords which as of March 26, 2003, there had been no response by Attorney Diaz. (Exhibit 5).

III. Violations of this Court's Order by Refusing to Turnover the Computer Passwords.

11. The purposeful delay and failure to comply with the Receiver's request for the passwords for the password protected documents specifically described in Receiver's counsel's March 6, 2003 letter is in conscious disregard for the authority of this Court.

12. The above-reference conduct by Defendants Michael Diaz and Michael Maksudian violate the following Orders of this Court:

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a. The *Order Appointing Receiver* orders the Defendants to turn over all book and records of any kind which pertain or belong to the Receivership Defendants. (Exhibit 1, page 2, ¶ 3).

b. The *Order Appointing Receiver* because the documents are receivership records and the Defendants are enjoined from doing any act or thing whatsoever to interfere with the Receiver taking custody, control, possession, or management of the assets or documents subject to this receivership, or to harass or interfere with the Receiver in any way. (Exhibit 1, page 5, ¶ 8.d.)

c. The *Order of Preliminary Injunction* because the failure to turn over the passwords is an act which “conceals” property of Wealth Management Resources, Inc. (Exhibit 2, pg 2).

WHEREFORE, the Receiver respectfully requests that the Court enter an order:

1. Enter Orders to Show Cause ordering Michael Diaz and Michael Maksudian to appear before this Court at a date and time certain to show cause, if there be any, why the Court should not enter an order holding them in civil contempt of this Court and sanctioning them as appropriate;

2. Following a hearing, enter an Order:

a. Holding Michael Diaz and Michael Maksudian in civil contempt of this Court;

b. Incarcerating Michael Diaz and Michael Maksudian until such time as they comply with this Court’s Orders by turning over the computer passwords;

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c. Assessing a civil penalty, pursuant to A.R.S. § 44-1532, of not more than \$25,000.00 each against Michael Diaz and Michael Maksudian for their violation of the Court Orders; and

d. Additional sanctions as the Court deems appropriate.

Respectfully submitted this 16th day of April, 2003.

GUTTILLA & MURPHY, PC



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