

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
) Case No. 4:12-cv-00080-CEJ
v.)
)
BURTON DOUGLAS MORRISS, et al.,)
)
Defendants)

**REPLY OF IN SUPPORT OF HANY TEYLOUNI'S OBJECTION
TO RECEIVER'S NOTICE OF DETERMINATION**

Claimant Hany Teylouni (Claim No. 20), submits this reply to the Receiver's Response to the Objection of Mr. Teylouni (Doc. No. 344) (the "Receiver's Response"). The Receiver makes primarily three arguments in support of her assertion that the Court should not allow Mr. Teylouni's claim. First, the Receiver contends that in signing an employee change of status form ("COSF"), Mr. Teylouni waived his right to collect all deferred compensation in the future. The documentary evidence submitted by Mr. Teylouni, however, establishes that the COSF was not intended to create such a waiver. Second, the Receiver argues that Mr. Teylouni's right to deferred compensation was conditioned on either additional fundraising for Acartha Group LLC ("Acartha") (or its related entities), or a liquidity event for Acartha's portfolio companies. But Acartha experienced at least one qualifying liquidity event, so the alleged condition precedent to Mr. Teylouni's right to deferred compensation has occurred. Finally, the Receiver argues that, because the Receivership Estate may not have sufficient funds to pay the claims of general creditors, Mr. Teylouni's claim is moot. As explained more fully below, that argument is premature and does not justify denial of Mr. Teylouni's claim.

Mr. Teylouni was a non-executive employee of Acartha Technology Partners, LLC (“ATP”) whose primary roles were to oversee and manage ATP’s internal technology infrastructure (e.g., ensuring that ATP’s telephone and email systems were functioning), and conduct due diligence on the technological aspects of companies in which Acartha Group, LLC (“Acartha”) or one of its subsidiary entities was considering investing. Objection of Hany Teylouni (“Objection”), Ex. D, ¶4. While an employee of ATP, Mr. Teylouni had no knowledge of the fraud alleged in the SEC Complaint against Doug Morriss and had almost no involvement with potential investors. *Id.*, ¶¶7, 13-14, 17. When Mr. Teylouni resigned as an employee of ATP in 2010, he understood that ATP was obligated to pay his deferred salary. *Id.*, ¶10.

A. The Employee Change Of Status Forms Do Not Waive Mr. Teylouni’s Right to Deferred Compensation

The Receiver relies on an employee change of status form, dated June 15, 2008, in support of her argument that Mr. Teylouni waived his right to **all** future deferred compensation. But the documentary evidence before the Court proves the contrary. The COSF states that, by signing the form, Mr. Teylouni acknowledged that his wage reduction was not a deferral, and that he had not been promised that his reduction would be paid at a later date. The COSF does not, however, prohibit the parties from later agreeing to treat Mr. Teylouni’s wage reduction as a deferral and to pay those wages. That is precisely what the parties did here. In support of his claim for deferred compensation Mr. Teylouni relied on, *inter alia*, emails between him and Dixon Brown¹, one of which, sent by Mr. Brown and dated October 23, 2008 – four months after the change of status form relied on by the receiver – states: “This will confirm that your rate of compensation as an employee of Acartha Group is \$300,000 per annum and that, as of October 15, 2008, the amount of [your] salary deferrals is \$18,333.35” Thus, it is clear that despite

¹ A copy of the emails included in Exhibit C to Mr. Teylouni’s Objection.

whatever payroll “form” Mr. Teylouni was asked to sign, such was not intended to act as a waiver against all future compensation claims. And that is certainly the case for the period after October, 2008. Accordingly, the Receiver’s assertion that Mr. Teylouni “waived” his claim for future compensation, or that his salary was fully paid, is unavailing.

B. Any Conditions Precedent to Mr. Teylouni’s Right to Collect Deferred Compensation Have Been Satisfied

The Receiver also asserts that Mr. Teylouni’s right to deferred compensation was conditioned on “a successful portfolio liquidity event” or on the ability of Acartha to raise additional funds. However, as the Receiver acknowledges, a liquidity event occurred when the Receiver sold Pollen shares. That those shares were sold back to Pollen does not preclude the sale from being a liquidity event which triggers Mr. Teylouni’s right to receive his deferred compensation. Additionally, Acartha experienced a liquidity event in August, 2010, when Integrien was sold to VMware, the proceeds of which were in part used to pay deferred salaries of then-current employees. *See* Receiver’s Response, Ex. L at 3. No portion of Mr. Teylouni’s deferred salary, however, was paid following that liquidity event.

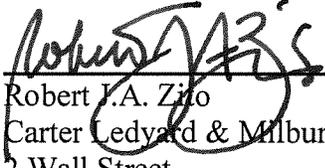
C. That The Receivership Estate May Not Have Funds Sufficient to Pay Mr. Teylouni’s Claim Does Not Justify Denying His Claim At This Time

Finally, the Receiver argues that disallowance of Mr. Teylouni’s claim is appropriate because it is unlikely, according to the Receiver, that under the Receiver’s proposed plan of distribution funds will be available for distribution to non-investor creditors. The Receiver, however, has not yet filed a proposed plan of distribution and still is working to recover funds for distribution, which the Receiver acknowledges. The Receiver’s argument is premature and cannot justify disallowance of Mr. Teylouni’s claim.

The Receiver also argues that Mr. Teylouni's claim should be disallowed *if* he is an insider of the Receivership Entities or *if* his employment perpetuated harm to investors. The Receiver, however, has not alleged that Mr. Teylouni is an insider or that his employment caused harm to investors. In any event, the facts contradict those allegations and the Receiver's bald assertion of Mr. Teylouni's insider status, as well as the insinuation that his employment caused harm to investors, are an insufficient basis on which to disallow his claim.

For the foregoing reasons as well as those set forth in Mr. Teylouni's Objection, Mr. Teylouni respectfully requests that the Court reject the recommendation to disallow his claim, as set forth in the Receiver's Final Notice of Determination, allow Mr. Teylouni's claim, and grant such other and further relief as is just and proper.

Dated: New York, New York
September 5, 2014


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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2014, I electronically filed the Reply of in Support of Hany Teylouni's Objection to Receiver's Notice of Determination with the Clerk of the Court through the Court's CM/ECF system, which will send a notice of electronic filing to all attorneys of record.

/s/ Robert J.A. Zito