

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

CONSUMER FINANCIAL PROTECTION  
BUREAU and THE STATE OF FLORIDA,  
OFFICE OF THE ATTORNEY GENERAL,

Plaintiffs,

vs.

Case no. 14 CV 80931-COHN/SELTZER

MICHAEL HARPER, et al.

Defendants.

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**RECEIVER'S MOTION FOR ORDER DIRECTING  
DEFENDANT HARPER TO TURN OVER FUNDS**

Mark J. Bernet, as receiver for the Defendants The Hoffman Law Group, P.A., f/k/a The Residential Litigation Group, P.A., Nationwide Management Solutions, LLC, Legal Intake Solutions, LLC, File Intake Solutions, LLC, and BM Marketing Group, LLC (the "Receiver"), moves this Court for entry of an order directing the Defendant Michael Harper to utilize \$225,000 cash in his possession to purchase a cashier's check, made payable to the Receiver, and to deliver the check to the Receiver. In support of his motion the Receiver states as follows:

1. In his partially-completed financial disclosure form,<sup>1</sup> Harper has listed as one asset in his possession the sum of \$225,000, cash. This cash originated from the Defendant, The Hoffman Law Group, P.A. ("HLG"), as fees charged to and collected from its clients. HLG, which is owned solely by the Defendant Hoffman,<sup>2</sup> then shared these fees with the Defendants

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<sup>1</sup> In its *Ex Parte Temporary Restraining Order with Asset Freeze, Appointment of Temporary Receiver, and Other Equitable Relief and Order Setting Hearing on Motion for Preliminary Injunction* (the "TRO") entered on July 16, 2014, the Court directed the Defendants to complete financial disclosure forms and to provide copies to the attorneys for the Plaintiffs and to the Receiver.

<sup>2</sup> Of the individual defendants, Hoffman is the only attorney.

Nationwide Management Solutions, LLC, Legal Intake Solutions, LLC, File Intake Solutions, LLC, and BM Marketing Group, LLC, each of which is owned by the Defendants Willcox and Harper. Willcox and Harper then arranged to distribute a portion of the funds to themselves.

2. By letter dated August 15, 2014, the Receiver demanded that Harper utilize the \$225,000 cash to purchase a cashier's check made payable to the Receiver, and then to deliver the check to the Receiver's law firm. A copy of the August 15, 2014 demand letter is attached as Exhibit "A." However, Harper has refused to turn over the funds to the Receiver.

#### MEMORANDUM OF LAW

On July 16, 2014, the Court entered its *Ex Parte Temporary Restraining Order with Asset Freeze, Appointment of Temporary Receiver, and other Equitable Relief and Order Setting Hearing on Motion for Preliminary Injunction* (doc. no. 13) (the "TRO") which, among other things, The TRO, among other things:

- Enjoins the Defendants, in connection with selling, promoting or operating any mortgage assistance relief product or service, from making false representations concerning the results they would obtain for consumers relating to mortgage loan modifications, the degree of success the defendants have with regard to any mortgage assistance relief service, relationships that the Defendants have with any mortgage lender or servicer, or the amount of time it likely would take the defendants to obtain a successful result in connection with a mortgage assistance service;
- Enjoins the Defendants from violating 12 CFR Part 1015, pertaining to prohibited representations relating to a mortgage assistance relief service, and pertaining to required disclosures relating to a mortgage assistance relief service, and pertaining to the prohibition of

the collection of an advance fee from consumers in connection with a mortgage assistance relief service;

- Enjoins the Defendants from asking for or receiving payment from consumers, in connection with mortgage assistance relief services, before consumers have executed a written agreement between the consumer and the mortgage loan servicer modifying the terms of the mortgage loan; and

- Freezes the assets of the Defendants, and enjoins them from transferring, selling, or otherwise disposing of any of their Assets (the term "Assets" is defined broadly on page 4 of the TRO).

In addition, in the TRO this Court appointed the Receiver as the temporary receiver of The Hoffman Law Group, Nationwide Management Solutions, Legal Intake Solutions, File Intake Solutions, and BM Marketing Group (the "Receivership Defendants"), and directed him to take control of the Receivership Defendants and their Assets. On July 16, 2014 the Receiver took possession of the office premises of the Receivership Defendants, including the offices of The Hoffman Law Group. To preserve the documents and other evidence located in the offices, the Receiver disconnected all internet and telephone access to the office, and changed the locks so that he and his staff are the only persons with access to the facility. The Receiver is in the process of interviewing the employees and taking an inventory of the assets and documents located therein. Consistent with the terms of the TRO, the Receiver has barred Mr. Hoffman, and all of The Hoffman Law Group's employees, from the office.

Section VII of the Court's TRO broadly orders the freeze of all assets of the Defendants and all entities affiliated with the Defendants, or agents of the Defendants. Section XIII appoints the Receiver as receiver for the Receivership Defendants, and in Section XIV the Court

authorizes and directs the Receiver to "[t]ake exclusive custody, control and possession of all Assets and Documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated." The term "Assets" is defined in the TRO as "any legal or equitable interest in, right to, or claim to any real, personal, or intellectual property owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by any Defendant, whether in the United States or abroad." "Cash" is specifically identified in the TRO as an example of property that is an "Asset." Thus, there is no credible dispute that the \$225,000 cash in Harper's possession is an "Asset."

Nor is there any dispute that the \$225,000 cash derived from the Receivership Defendants. Harper's tax returns show that over the past several years his personal income derived almost exclusively from the Receivership Defendants. In conversations, Harper has not disputed that the funds derived from the Receivership Defendants, and his refusal to turn over those funds is unjustified.

Turnover orders, such as is contemplated by this motion, are common in cases involving receivership cases. *See, e.g., United States v. Tulane University*, 558 F. 2d 1200, 1200-01 (5<sup>th</sup> Cir. 1977) (rejecting an appeal of an order directing appellant to turn over to the Receiver a local bank account as premature);<sup>3</sup> *FTC v. Overseas Unlimited Agency, Inc.*, 873 F.2d 1233, 1235 (9<sup>th</sup> Cir. 1989) (order directing bank to turn over reserve account is an unappealable interlocutory order and was "a simple turnover order made pursuant to a previously unappealed order appointing a receiver"). Here, Harper is holding \$225,000 cash that is an Asset of the

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<sup>3</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11<sup>th</sup> Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit.

Receivership Defendants, but he has refused to turn over those funds to the Receiver. The Court should direct him to do so.<sup>4</sup>

LOCAL RULE 7.1(a)(3) CERTIFICATION

The Receiver certifies that prior to filing this motion he made a reasonable effort to confer with all parties who may be affected by the relief requested herein. Counsel for the Plaintiffs have indicated, by e-mail, that they do not object to the entry of an order directing Harper to turn over the funds in his possession. Harper has indicated, through counsel who have not appeared in this case, that he may be willing to turn over a portion of the \$225,000, but that he cannot turn over the entire amount, for reasons that he may articulate if he chooses to respond to this motion. Regardless, as of the date of this motion Harper has turned over nothing, and he has made no definitive agreement to do so. Accordingly, the matter could not be resolved.

WHEREFORE, the Receiver requests entry of an order (i) directing the Defendant Harper to purchase a cashier's check from a bank in the amount of \$225,000, made payable to the Receiver, and (ii) directing Harper to deliver that check to the Receiver.

/s/ Mark J. Bernet, Receiver  
Mark J. Bernet, Receiver  
401 E. Jackson Street, Suite 1700  
Tampa, Florida 33602  
Telephone: (813) 223-7333  
Facsimile: (813) 218-5495  
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<sup>4</sup> Arguably, the Receiver could initiate contempt proceedings. At this time, however, the Receiver requests merely a turnover order.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was served by CM/ECF to Melissa Guidorizzi, Esquire, 1700 G Street NW, Washington, DC 20552, e-mail [melissa.guidorizzi@cfpb.gov](mailto:melissa.guidorizzi@cfpb.gov); Zach Mason, Esquire, 1700 G Street NW, Washington, DC 20552, e-mail [zach.mason@cfpb.gov](mailto:zach.mason@cfpb.gov); Amanda Arnold Sansone, 3507 E. Frontage Road, Suite 325, Tampa, Florida 33607, e-mail [amanda.sansone@myfloridalegal.com](mailto:amanda.sansone@myfloridalegal.com); Richard Colin Nathan Schiffer, Esquire, 3507 E. Frontage Road, Suite 325, Tampa, Florida 33607, e-mail [richard.schiffere@myfloridalegal.com](mailto:richard.schiffere@myfloridalegal.com); and Hector E. Lora, Esquire, The Lora Law Firm, LLC, 174 N.E. 106<sup>th</sup> Street, Miami Shores, Florida 33138, e-mail [hectorlora@bellsouth.net](mailto:hectorlora@bellsouth.net); and by mail to Benn Willcox, 15342 83<sup>rd</sup> Way N, Palm Beach Gardens, Florida 33418 (and via e-mail to [bennwillcox@yahoo.com](mailto:bennwillcox@yahoo.com)); and Michael Harper, 1679 Juno Isles Boulevard, North Palm Beach, Florida 33408 (and via e-mail to [michaeljharper80@yahoo.com](mailto:michaeljharper80@yahoo.com)), this 26<sup>th</sup> day of August, 2014.

/s/ Mark J. Bernet, Receiver

cc: Andy Cove, Esquire (via e-mail to [ANC@covelaw.com](mailto:ANC@covelaw.com))  
(*Mr. Cove has not appeared as counsel to any party herein*)



Mark J. Bernet

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August 15, 2014

Mr. Michael Justin Harper  
1679 Juno Isles Boulevard  
North Palm Beach, Florida 33408

**Re: CFPB and FLAG v. Michael Harper, et al.**

Dear Mr. Harper:

I understand that as of the date of this letter you have not engaged an attorney to represent you personally in the pending lawsuit, although I understand that you have had discussions with Mr. Cove and Mr. Hornstine about a possible representation. As a courtesy, I am providing a copy of this letter to them.

I understand that you want to obtain information from the receivership companies' QuickBooks files so that you can complete your financial disclosure form as required under the TRO. In that regard, Mr. Willcox met me at the offices yesterday (August 14, 2014), but was unable to access the QuickBooks files because he did not have the correct password. He was unable to contact Erica McCartney to obtain the password.<sup>1</sup> He accused me of changing the password, and was otherwise unprofessional in his conduct.<sup>2</sup> If you or Mr. Willcox cannot obtain the correct password for the QuickBooks files, we will need to make other arrangements for you to gain access.

In your partially-completed financial disclosures you identify that you are holding cash in the amount of \$225,000. The rest of your financial disclosures reveal that these funds originated from one of the receivership companies. The money, therefore, belongs to the entities in receivership, and should be delivered to me. Accordingly, I demand that you (i) purchase a cashier's check, made payable to "Mark J. Bernet, Receiver," in the amount of \$225,000, and (ii)

<sup>1</sup> I spoke with Ms. McCartney by telephone on July 21, 2014. At the time she told me that she had moved to New York. Mr. Willcox told me yesterday that Ms. McCartney had not told me that she had moved to New York. He also said that, in fact, she has not moved to New York.

<sup>2</sup> Although I am specifically authorized to change the password on any of the Receivership Defendant's files, in fact I did not do so on the QuickBooks files.

akerman.com

Michael Harper  
August 15, 2014  
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deliver it to Guy Quattlebaum in my firm's West Palm Beach office. Please accomplish this by Friday, August 22, 2014.

In the same regard, we have discovered that you own an interest in MCH Titanium Holding, Inc. (this is not disclosed in Item 14 of the disclosures). That company has a significant balance in an account with TD Bank. Is this your company? What is the source of the funds in its accounts? Apart from TD Bank, where else does it maintain accounts? Please provide responses to these questions by August 22, 2014.

I look forward to your cooperation.

Very truly yours,



Mark J. Bernet, Receiver

MJB:tm

cc: Louis Hornstine, Esquire (via facsimile to (609) 964-1849)  
Andrew Cove, Esquire (via facsimile to (954) 921-1621)