

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082- DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION)
)
Plaintiff,)
)
v.)
)
FREDERIC ELM f/k/a FREDERIC ELMALEH,)
ELM TREE INVESTMENT ADVISORS, LLC,)
ELM TREE INVESTMENT FUND LP,)
ELM TREE ‘E’CONOMY FUND LP, and)
ELM TREE MOTION OPPORTUNITY LP,)
)
Defendants,)
and)
)
AMANDA ELM f/k/a AMANDA ELMALEH,)
)
Relief Defendant.)
_____)

**AGREED ORDER OF PRELIMINARY INJUNCTION AND OTHER RELIEF
AGAINST DEFENDANT FREDERIC ELM AND RELIEF DEFENDANT AMANDA ELM**

The Securities and Exchange Commission, having file a Complaint [DE 1], and an Emergency Motion for Temporary Restraining Order and Other Relief [DE 4] seeking, inter alia, the entry of a preliminary injunction and asset freeze against Defendant Frederic Elm f/k/a Frederic Elmaleh (“Elm”) and Relief Defendant Amanda Elm f/k/a Amanda Elmaleh (“Amanda Elm”) (collectively, “Defendants”), and Defendants, by the attached Consent (“Consent”), without admitting or denying the allegations of the Complaint, except as to personal and subject matter jurisdiction, which Defendants admit, having consented to entry of this Agreed Order of Preliminary Injunction and Other Relief, the Court accepts the Consent, and having jurisdiction over Defendants and the subject matter of this action, **HEREBY ORDERS** as follows:

I.

PRELIMINARY INJUNCTION

IT IS ORDERED that, pending resolution of this case on the merits, Elm, and his directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby restrained and enjoined from violating:

A. Section 17(a)(1) of the Securities Act

Section 17(a)(1) of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. § 77q(a)(1), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, to employ any device, scheme, or artifice to defraud, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Elm’s qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

B. Section 17(a)(2) of the Securities Act

Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Elm’s qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

C. Section 17(a)(3) of the Securities Act

Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

D. Section 10(b) and Rule 10b-5(a) of the Exchange Act

Section 10(b) and Rule 10b-5(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a), by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security, to employ any device, scheme, or artifice to defraud, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

E. Section 10(b) and Rule 10b-5(b) of the Exchange Act

Section 10(b) and Rule 10b-5(b) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b), by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, by, directly or indirectly (i) creating a false appearance or

otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

F. Section 10(b) and Rule 10b-5(c) of the Exchange Act

Section 10(b) and Rule 10b-5(c) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(c), by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security, to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

G. Section 206(1) of the Advisers Act

Section 206(1) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. § 80b-6(1), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser, to employ any device, scheme, or artifice to defraud any client or prospective client, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

H. Section 206(2) of the Advisers Act

Section 206(2) of the Advisers Act, 15 U.S.C. § 80b-6(2), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser, to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

I. Section 206(4) and Rule 206(4)-8(a)(1) of the Advisers Act

Section 206(4) and Rule 206(4)-8(a)(1) of the Advisers Act, 15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8(a)(1), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser to a pooled investment vehicle, to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

J. Section 206(4) and Rule 206(4)-8(a)(2) of the Advisers Act

Section 206(4) and Rule 206(4)-8(a)(2) of the Advisers Act, 15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8(a)(2), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser to a pooled investment vehicle, to otherwise engage in any act, practice, or course of business that is fraudulent,

deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Elm's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

II.

ASSET FREEZE

IT IS FURTHER ORDERED that, pending resolution of this case on the merits:

A. Except as provided in paragraph C of this section, Defendants, and their respective directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this order by personal service, mail, email, facsimile transmission or otherwise, be and hereby are, restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property (including, but not limited to, the real property located at 2533 NE 26th Avenue, Fort Lauderdale, FL 33305), and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly, and wherever located:

1. Frederic Elm f/k/a Frederic Elmaleh;
2. Elm Tree Investment Advisors, LLC;
3. Elm Tree Investment Fund LP;
4. Elm Tree 'e'conomy Fund LP;
5. Elm Tree Motion Opportunity LP; and
6. Amanda Elm f/k/a Amanda Elmaleh

B. Except as provided in paragraph C of this section, any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Defendants, directly or indirectly, held jointly or singly, and

wherever located, and which receives actual notice of this order by personal service, mail, email, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets, including, but not limited to, the following presently known bank accounts:

Financial Institution	Name of Account	Account Number
JP Morgan Chase	Elm Tree 'E' Conomy Fund, LP	XXXXXX5527
JP Morgan Chase	Elm Tree Investment Advisors, LLC	XXXXXX0163
JP Morgan Chase	Elm Tree Investment Fund, LP	XXXXXX6580
JP Morgan Chase	Amanda R. Elm, Frederic Elm	XXXXXX4454
JP Morgan Chase	Amanda R. Elm	XXXXXX4447
OptionsXpress/ Charles Schwab	Frederic D. Elm	XXXX-4568
TD Ameritrade	Elm Tree Investment Fund, LP	XXX-XX7284
TD Ameritrade	Frederic Elm	XXX-XX1126
Wells Fargo	Elm Tree Motion Opportunity, LP	XXXXXXX0283
Wells Fargo	Elm Tree Motion Opportunity, LP	XXXXXXX9689
Wells Fargo	Elm Tree Investment Fund, LP	XXXXXXX8075
Wells Fargo	Elm Tree Investment Advisors, LLC	XXXXXXX5784
Wells Fargo	Elm Tree Investment Advisors, LLC	XXXXXXX8067
Wells Fargo	Frederic Elm	XXXXXXX3623
Wells Fargo	Frederic Elm	XXXXXXX3865

C. Notwithstanding the foregoing:

1. Defendants shall be entitled to the release of frozen funds in the total amount of \$8,146.41 for payment of the following expenses:

(a) The monthly mortgage payment to BofI Federal Bank (Account No. XXXX1344) in the amount of \$4,952.08 for February 2015;

(b) The monthly insurance payment to GEICO General Insurance Company (Policy No. XXXX-XX-26-95) in the amount of \$654.04 for February 2015;

(c) The monthly car payment to Wells Fargo Dealer Services (Account No. XXXXXX8374) in the amount of \$796.95 for February 2015;

(d) The monthly car payment to TD Auto Finance (Account No. XXXXXX7267) in the amount of \$918.34 for February 2015;

(e) Any water bills to the City of Fort Lauderdale for the real property located at 2533 NE 26th Avenue, Fort Lauderdale, FL 33305, in the approximate amount of \$150.00 that are currently due or that will come due in February 2015;

(f) Any power bills to Florida Power & Light for the real property located at 2533 NE 26th Avenue, Fort Lauderdale, FL 33305, in the approximate amount of \$450.00 that are currently due or that will come due in February 2015; and

(g) Any lawn and pool care bills for the real property located at 2533 NE 26th Avenue, Fort Lauderdale, FL 33305, in the combined approximate amount of \$225.00 that are currently due or that will come due in February 2015.

2. For payment of the expenses enumerated in the immediately preceding paragraph: (i) Wells Fargo Bank shall release frozen funds from Account No. XXXXXX3865 in the total amount of \$50.02; (ii) Wells Fargo Bank also shall release frozen funds from Account No. XXXXXX3623 in the total amount of \$2,476.83; (iii) OptionsXpress shall release frozen funds from Account No. XXXX-4568 in the total amount of \$4,265.64; (iv) TD Ameritrade shall release frozen funds from Account No. XXX-XX1126 in the total amount of \$544.76; and (v) Defendants shall release frozen funds in the total amount of \$809.16 from the approximate \$4,500.00 in cash on hand they currently possess. These releases shall be made on or before February 1, 2015, to the trust account of counsel for Defendants, David R. Chase, and counsel shall pay the expenses enumerated in the immediately preceding paragraph from his trust account directly to the payees on or before the due dates set forth by the payees for the month of

February 2015. Counsel also shall provide written proof of each payment to the Commission and to Grisel Alonso, Receiver for Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree 'e'conomy Fund LP, and Elm Tree Motion Opportunity LP (the "Receiver"), within two (2) calendar days of making the payment. These funds releases shall not be considered a violation of this Order or the Court's prior Order entered on January 16, 2015 [DE 14]. However, Wells Fargo Bank, OptionsXpress, TD Ameritrade and Defendants shall not release any other funds at any time without prior written order of this Court, except as set forth in the next paragraph below.

3. Defendants also shall be entitled to the release of frozen funds on or after February 1, 2015 in the total amount of \$3,290.00 from the approximate \$4,500.00 in cash on hand they currently possess to pay each of their reasonable and necessary living expenses for the month of February 2015. This funds release shall not be considered a violation of this Order or the Court's prior Order entered on January 16, 2015 [DE 14]. However, Defendants shall not release any other funds at any time without prior written order of this Court.

4. The Commission and Defendants reserve their respective rights to argue for or against any additional or future releases of frozen funds after February 28, 2015.

5. Within three (3) calendar days of the date this Order is entered, Defendants shall surrender possession, custody and control to the Receiver of the following vehicles: (i) 2011 Maserati (VIN No. ZAM45GLA9B0056579); and (ii) 2013 Bentley (VIN No. SCBFU7ZA2DC086213). The Receiver shall provide specific instructions to Defendants for the surrender. The Receiver shall safeguard the subject vehicles and shall not sell or otherwise dispose of them without prior written order of this Court or without prior written consent of Defendants. In addition, unless otherwise ordered by the Court, beginning March 1, 2015, the Receiver shall secure appropriate insurance coverage on the subject vehicles. Notwithstanding the surrender, Defendants retain their right to argue, and may move the Court to determine whether, the subject vehicles, as well as any other assets in Defendants' possession, custody or control, are properly their own personal assets and not assets of the receivership. Similarly, the Commission and the Receiver retain their respective right to argue, and may move the Court to determine whether, the subject vehicles, as well as any other assets in Defendants' possession, custody or control, are assets of the receivership and not properly Defendants' own personal

assets. With respect to the subject vehicles, upon a finding the vehicles are properly Defendants' own personal assets, the Court may order the return of the vehicles to Defendants.

III.

RECORDS PRESERVATION

IT IS FURTHER ORDERED that, pending resolution of this case on the merits, Defendants, and their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, be and they hereby are restrained and enjoined from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible in any manner, any of the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files and other property, wherever located and in whatever form, electronic or otherwise, until further Order of this Court, of or pertaining to:

1. Frederic Elm f/k/a Frederic Elmaleh;
2. Elm Tree Investment Advisors, LLC;
3. Elm Tree Investment Fund LP;
4. Elm Tree 'e'conomy Fund LP;
5. Elm Tree Motion Opportunity LP; and
6. Amanda Elm f/k/a Amanda Elmaleh

IV.

RETENTION OF JURISDICTION

IT IS HEREBY FURTHER ORDERED that this Court shall retain jurisdiction over this matter and Defendants in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

V.

CANCELLATION OF HEARING

In light of the entry of this Order, the Court **HEREBY GRANTS** [DE 22] and **CANCELS** the hearing set for January 29, 2015 at 1:15 p.m. [DE 14].

DONE AND ORDERED in Chambers in Fort Lauderdale, Florida, this 28th day of January, 2015.

A handwritten signature in black ink, reading "William P. Dimitrouleas". The signature is written in a cursive style with a horizontal line drawn through the middle of the text.

WILLIAM P. DIMITROULEAS

United States District Judge

Copies to: Counsel of Record