

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.)
_____)

RECEIVERSHIP ORDER

WHEREAS Plaintiff Securities and Exchange Commission has filed an emergency motion for the appointment of a Receiver for Defendants Elm Tree Investment Advisors, LLC ("ETIA"), Elm Tree Investment Fund LP ("ETI Fund"), Elm Tree 'e'Conomy Fund LP ("e'Conomy Fund"), and Elm Tree Motion Opportunity LP ("Motion Opportunity Fund") (the ETI Fund, 'e'Conomy Fund and Motion Opportunity Fund are collectively referred to as the "Elm Tree Funds"), with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of ETIA and the Elm Tree Funds; marshal and safeguard all of the assets of ETIA and the Elm Tree Funds; and take whatever actions are necessary for the protection of the investors;

WHEREAS, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a *prima facie* case of violations of the federal securities laws by ETIA, the Elm Tree Funds, and Defendant Frederic Elm f/k/a Frederic Elmaleh;

WHEREAS, the Commission has submitted the credentials of a candidate to be appointed as Receiver of all of the assets, properties, books and records, and other items of ETIA and the Elm Tree Funds, including properties, assets and other items in their names or their principals' names, and the Commission has advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court;

IT IS THEREFORE ORDERED that Grisel Alonso, Esq. is hereby appointed the Receiver for ETIA and the Elm Tree Funds, their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of ETIA and the Elm Tree Funds, whatsoever and wherever located belonging to or in the possession of ETIA and the Elm Tree Funds, including but not limited to all offices maintained by ETIA and the Elm Tree Funds, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of ETIA and the Elm Tree Funds, wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;
2. Investigate the manner in which the affairs of ETIA and the Elm Tree Funds were conducted and institute such actions and legal proceedings, for the benefit and on behalf of ETIA and the Elm Tree Funds, and their investors and other creditors, as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in ETIA and the Elm Tree Funds, including against ETIA and the Elm Tree Funds, their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in ETIA and the Elm Tree Funds; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, *et. seq.* or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

3. Present to this Court a report reflecting the existence and value of the assets of ETIA and the Elm Tree Funds and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of ETIA and the Elm Tree Funds;

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of ETIA and the Elm Tree Funds, and exercising the power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;

6. Defend, compromise or settle legal actions, including the instant proceeding, in which ETIA and the Elm Tree Funds or the Receiver are a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where ETIA and the Elm Tree Funds are nominal parties, as in certain foreclosure actions where the action does not effect a claim against or adversely affect the assets of ETIA and the Elm Tree Funds, the Receiver may file appropriate pleadings at the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by ETIA and the Elm Tree Funds;

7. Assume control of, and be named as authorized signatory of, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of ETIA and the Elm Tree Funds and, upon, order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

9. Have access to and review all mail of ETIA and the Elm Tree Funds and the mail of Defendant Elm and Relief Defendant Amanda Elm (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of ETIA and the Elm Tree Funds. All mail addressed to Elm or Amanda Elm that is opened by the Receiver

and, upon inspection, is determined by the Receiver to be personal or attorney-client privileged, shall be promptly delivered to the addressee and the Receiver shall not retain any copy.

IT IS FURTHER ORDERED that, in connection with the appointment of the Receiver provided for above:

10. ETIA and the Elm Tree Funds and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of ETIA and the Elm Tree Funds shall deliver forthwith upon demand such property, monies, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of ETIA and the Elm Tree Funds;

11. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, ETIA and the Elm Tree Funds shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

12. Unless expressly authorized in writing by the Receiver in advance, ETIA and the Elm Tree Funds and their principals shall take no action, nor purport to take any action, in the name of or on behalf of ETIA and the Elm Tree Funds;

13. ETIA and the Elm Tree Funds and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver, including, if deemed necessary by the Receiver, appearing for deposition testimony upon two (2) business days' notice (by email or facsimile), and producing documents upon two (2) business days' notice, while the Commission's request for a Preliminary Injunction is pending. ETIA and the Elm Tree Funds and their principals, and respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by ETIA and the Elm Tree Funds; said amount or amounts of compensation

shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court;

15. During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code without prior permission from this Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of ETIA and the Elm Tree Funds;

16. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to ETIA and the Elm Tree Funds;

17. Title to all property, real or personal, all contracts, rights of action, and all books and records of ETIA and the Elm Tree Funds and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

18. Upon request by the Receiver, any company providing telephone services to ETIA and the Elm Tree Funds shall provide a reference of calls from any number presently assigned to ETIA and the Elm Tree Funds to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

19. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to ETIA and the Elm Tree Funds shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

20. The United States Postal Service is directed to provide any information requested by the Receiver regarding ETIA and the Elm Tree Funds, and to handle future deliveries of the mail of ETIA and the Elm Tree Funds as directed by the Receiver;

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

22. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by ETIA and the Elm Tree Funds or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by

the Receiver in connection with the discharge of the Receiver's duties and responsibilities;


23. Service of this Order shall be sufficient if made upon ETIA and the Elm Tree Funds, and their principals, or their counsel, by email, facsimile or overnight courier;

24. In the event the Receiver discovers that funds of persons who have invested in the Elm Tree Funds have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds;

25. Immediately upon entry of this Order, the Receiver may take depositions upon oral examination of parties and non-parties subject to two (2) business days' notice. In addition, the Receiver may issue subpoenas for documents, things and electronically stored information to non-parties calling for production within one week of service. The Receiver also shall be entitled to serve interrogatories, requests for the production of documents and electronically stored information, and requests for admissions. The parties shall respond to such discovery requests within two (2) business days of service. Service of discovery requests shall be sufficient if made upon the parties by email, facsimile or overnight courier. Depositions may be taken by telephone or other remote electronic means; and

26. This Court shall retain jurisdiction of this matter for all purposes.

DONE AND ORDERED in Chambers in Fort Lauderdale, Florida, this 16 day of January, 2015.


WILLIAM P. DIMITROULEAS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record