

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,)
et al.,)
)
Defendants,)
and)
)
AMANDA ELM f/k/a AMANDA ELMALEH,)
)
Relief Defendant.)
_____)

PLAINTIFF’S RESPONSE TO COURT’S ORDER TO SHOW CAUSE

Plaintiff Securities and Exchange Commission responds to the Court’s Order to Show Cause for Lack of Prosecution as to Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree ‘e’Conomy Fund LP, and Elm Tree Motion Opportunity LP entered on December 21, 2015 [DE 133], and shows the Court as follows:

1. The Commission filed its Complaint in this action on January 15, 2015 [DE 1].
2. On January 16, 2015, the Court appointed Grisel Alonso, Esq. as 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 “Corporate Defendants”) [DE 13]. Among other things, the receivership order authorizes the receiver to act in her official capacity on behalf of the Corporate Defendants in connection with the instant proceeding.
3. On January 28, 2015, the receiver entered into a consent in her official capacity on behalf of the Corporate Defendants [DE 21-1]. As part of the consent, the Corporate Defendants acknowledged having been served with the summonses and Complaint, entered a general appearance, admitted the Court’s jurisdiction over them and the subject matter of this action, and agreed to the entry of a preliminary injunction and asset freeze.

4. By Agreed Order entered by the Court on January 28, 2015 [DE 24], the Court accepted the consent and entered a preliminary injunction, asset freeze and records preservation mandate against the Corporate Defendants.

5. As of the date of this response, the receivership over the Corporate Defendants remains pending.

6. In light of the filing of the consent and the Court's subsequent entry of the Agreed Order of Preliminary Injunction and Other Relief [DE 24], the Commission submits the Corporate Defendants, acting through the receiver in her official capacity, have responded to the Complaint and their interests in this litigation are being preserved. In addition, the Commission submits that because the receivership over the Corporate Defendants remains pending, the Commission has not failed to prosecute its case against them.

7. Notwithstanding these developments, the Commission and the receiver have agreed the Corporate Defendants will enter into a further consent which includes, among other provisions, a judgment of permanent injunction. The parties expect to file the necessary paperwork and proposed order for the Court's review shortly after the new year. To the extent any additional matters remain unresolved at the conclusion of the receivership, the Commission will address those with the Court and request appropriate relief.

Dated: December 28, 2015

Respectfully submitted,

By: /s/ Patrick R. Costello
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Florida Bar No. 75034

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on December 28, 2015, the foregoing document was filed electronically with the Clerk of Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record identified on the Service List below via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Patrick R. Costello

Patrick R. Costello

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