

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE : CIVIL ACTION  
COMMISSION :  
 :  
v. :  
 :  
 :  
ROBERT L. BENTLEY, :  
BENTLEY FINANCIAL SERVICES, :  
INC., and ENTRUST GROUP : NO. 01-5366

MEMORANDUM ORDER

This is an SEC civil enforcement action. The Commission charged that defendants Robert Bentley, Bentley Financial Services and Entrust made false material statements and otherwise engaged in fraud in connection with the offer to sell and sale of securities, specifically certain privately issued notes. These defendants stipulated to the entry of a consent decree by which, inter alia, their assets were frozen and a receiver was appointed with authority to allocate available funds from such unlawful activity to the investors.

The receiver has presented a proposal to establish procedures, including notice and a deadline, for the filing of claims. The court would ordinarily wish to proceed with dispatch. The situation, however, has been complicated by the filing of an amended complaint in which the SEC has named as a "relief defendant" Lynn Bentley, Robert Bentley's spouse. The SEC alleges that Mrs. Bentley "received, directly and indirectly, proceeds of the fraudulent conduct" and seeks to compel her to

disgorge all such proceeds "which she holds or has an interest in."

The response of the SEC to the court's subsequent inquiry regarding the basis for the joinder of a "relief" defendant is not altogether satisfying. The SEC acknowledges that there is no mention of "relief defendants" in the Federal Rules of Civil Procedure and cites to a few cases in which the term was used interchangeably with "nominal defendants," who are referenced in the Federal Rules.

There is no question that someone who is truly a nominal defendant may be so designated and joined as such to facilitate the recovery of property to which others are entitled, including the fruits of securities fraud. A nominal defendant, however, is typically a custodian, depository, trustee or similar agent who "has no legitimate claim to the disputed property" and "is not a real party in interest." SEC v. Colello, 139 F.3d 674, 676 (9th Cir. 1998). See also SEC v. Cavanaugh, 155 F.3d 129, 137 (2d Cir. 1998) (defendant's wife who did not know that culpable spouse had deposited proceeds of fraud into her account properly treated as nominal defendant); SEC v. Cheriff, 933 F.2d 403, 414 n.13 (9th Cir. 1991) (a "nominal defendant" is one who "has no interest in the property that is the subject of the litigation"); SEC v. Antar, 831 F. Supp. 380, 401-02 (D.N.J. 1993) (wife and children of culpable defendant who maintained

"absolute control" of trust accounts in their names containing funds "directly traceable to" securities fraud properly characterized as nominal defendants).

The burden is on the SEC to show that a nominal defendant has no legitimate claim to the funds in question. See Colello, 139 F.3d at 677 & n.3. The SEC has not made such an allegation here and indeed seeks to recover, inter alia, proceeds Mrs. Bentley "has an interest in."

There has been no indication that the SEC and Mrs. Bentley are pursuing a consensual resolution of the type reached with the other defendants. Mrs. Bentley has engaged counsel who has entered an appearance and requested an extension to April 12, 2002 to answer the amended complaint to which the SEC has consented. It thus appears that full scale litigation, including discovery and trial proceedings, may be required to determine the amount of Mrs. Bentley's assets which may be available for distribution and in which the fundamental underlying basis of liability could be litigated. All of this would logically be resolved before the allocation of funds and before investors must decide whether to file a claim with the receiver and forego prosecution of their own claims or whether to assign a claim and, if so, for what percentage.

On the other hand, there are numerous investors with potential claims totaling many millions of dollars. Some of them

are entities which depended on the integrity of their investments to fund programs and meet payrolls. The receiver is collecting assets sufficient to make at least a substantial initial distribution. The process proposed by the receiver appears to offer the best opportunity for investors efficiently and promptly to obtain a maximum recovery of their funds. Although ordinarily it would be preferable to await the determination of all unresolved issues in pending litigation, the court has concluded that in the circumstances presented the claims process should proceed. The receiver is currently working on the final phase of the necessary procedures which is the development of a mechanism for resolution of any disputed claims. When this is completed the court will enter an order establishing formal procedures for the presentation of claims.

**ACCORDINGLY**, this                      day of April, 2002, **IT IS**  
**HEREBY ORDERED** that the receiver's Motion for an Order Establishing Procedures and Deadline for Filing Claims (Doc. #38) is **GRANTED** and an appropriate order establishing claim procedures, deadlines and notice requirements will be entered following the submission of the receiver's proposed mechanism for resolution of any disputed claims.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**