

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

JOHN HAYMOND : CIVIL ACTION
HAYMOND NAPOLI DIAMOND, P.C. :
 :
v. :
 :
MARVIN LUNDY :
 :
v. :
 :
JOHN HAYMOND, :
ROBERT HOCHBERG, :
HAYMOND NAPOLI DIAMOND, P.C. : No. 99-5048

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

August 23, 2002

Pending is Marvin Lundy's ("Lundy") Motion for Order to Effectuate the Jurisdiction of the Court. The issue raised by Lundy is whether a separate law firm, related to Haymond & Lundy, LLP ("H&L"), and receiving fees governed by the H&L partnership agreement, should be joined as a party.

That law firm, Haymond Napoli and Diamond, P.C., PA ("HND-PA") is not a stranger to this action's docket; it has been heard in multiple proceedings before the court, and it currently controls assets subject to this action. An evidentiary hearing was held, and the court now makes the following findings of fact and conclusions of law.

I. **Findings of Fact**¹

1. H&L was dissolved on October 8, 1999.

2. On November 10, 1999, the court appointed Martin Heller, Esq. ("Receiver" or "Heller") as H&L's "Neutral Court Representative with the powers and duties of a master under Fed. R. Civ. P. 53." Order, Nov. 10, 1999 (#18). In relevant part, Heller was empowered to:

A. "Meet with the parties to implement an orderly and equitable division of the cases of the Former Clients between the parties and their respective law firms, subject to the Former Clients' written instructions and approval of the court." Id. at ¶1(B).

B. "To use bank accounts in his representative capacity to hold sums in escrow for payment of bills and eventual distribution of profits, if any, to the parties." Id. at ¶6.

3. All of Heller's activities were subject to review and

¹The court incorporates and adopts, as they apply to Robert Hochberg, John Haymond and Marvin Lundy, the factual findings made in Haymond v. Lundy, 174 F. Supp. 2d 269 (E.D. Pa. 2001) (following bench trial, entering judgment for Lundy against Robert Hochberg on the former's claim that Hochberg engaged in the unauthorized practice of law). It also adopts the factual background section of Haymond v. Lundy, 177 F. Supp. 2d 371 (E.D. Pa. 2001). Finally, any facts found in the discussion section are incorporated herein by reference.

supervision by the court. Id. at ¶7. Every attorney formerly employed by H&L received notice of this appointment. Id. at ¶10.

4. On December 10, 1999, Alan Epstein, Esq. counsel to Lundy, wrote to Larry Spector, Esq., counsel to John Haymond ("Haymond") to memorialize the parties' agreement escrowing attorney's fees collected by the former partners:

A. Fees from cases opened after the inception of H&L (October 1997) and before its dissolution would be held in escrow in the "Haymond and Lundy operating account" after certain distributions were made. See Lundy Ex. 1, 2(f).

B. Fees from cases opened by Lundy (the "Lundy" or "ML&L" cases) would be held in escrow by Lundy and deposited in an account at Prudential Securities. Id. at 3(f).

5. Heller, writing on the text of this letter on December 12, 1999, and attaching a new signature page, wrote:

A. The Lundy cases "shall be held by Mr. Lundy in that account pending agreement or a court order as to the disbursement of those funds."

B. "From Martin Heller to all attorneys + non-attorneys of the Law Office of Marvin Lundy and Haymond, Napoli and Diamond. This letter should

be considered as if it were an Order of the Court. Any deviation from this Order will be reported to the Court and appropriate sanction will be recommended." Id. at 4.

6. The court was notified of this Order and approved of it, but the Order was not entered on the docket; no one subject to the Order objected to it.

7. The Law Office of Marvin Lundy ("LOML"), referred to in Heller's Order, is the law firm formed by Lundy after the dissolution of H&L.

8. Haymond, Napoli and Diamond ("HND"), referred to in Heller's Order, was the Connecticut law firm formed by Haymond after the dissolution of H&L.

9. The manager of HND on December 12, 1999, was Robert Hochberg ("Hochberg"). Tr. Feb. 21, 2002, at 10.

10. The only shareholder of HND on December 12, 1999, was Haymond. Id. at 12.

11. From December, 1999, through June, 2000, HND escrowed attorney's fees it received as ordered by Heller. Tr. Feb. 21, 2002, at 13-14 (Hochberg testimony); Id. at 160-61 (testimony of Scott Diamond ("Diamond")); Id. at 182-83 (testimony of Jack Bernstein ("Bernstein")).

12. On June 29, 2000, Haymond, Andrew Napoli ("Napoli"),

and Diamond entered into an agreement. See Lundy Ex. 2 (incorporating an "Agreement").

13. The Agreement created a separate law firm, HND-PA, for the Pennsylvania operations of HND, referred to in the Agreement as "HND-CT." Id. The Agreement divested Haymond of daily responsibility for managing the Pennsylvania practice. Tr. Feb. 21, 2002, at 119. Both HND-PA and HND-CT currently exist. Tr. Feb. 21, 2002, at 132.

14. The Agreement provided, in relevant part:

- A. HND-PA would issue 1,000 shares of common stock: 700 shares to Haymond, 150 shares to Napoli, and 150 shares to Diamond. Agreement, ¶ 7.
- B. "[HND-PA] shall assume all obligations and liabilities of [HND-CT] in connection with the maintenance and operation of the law firm on [sic] Pennsylvania and New Jersey including but not limited to lease obligations, yellow page advertising[,] equipment and service contracts, payroll and any and all other existing and future obligations." Id. at ¶ 6.
- C. Haymond, before agreeing to settle this action, would obtain the approval of at least three of the

following individuals: Diamond, Napoli, Bernstein, David Berman, or Hochberg. Id. at ¶ 9.

D. All parties to the agreement would agree on "strategy regarding" this action before implementing it. Id.

E. Hochberg would manage HND-PA, id. at ¶ 11, and obtain 201 shares from Haymond when reinstated to the Connecticut Bar. Id. at ¶ 12.

F. Hochberg, Haymond, Napoli and Diamond all signed the Agreement. Id.

15. On June 30, 2000, Haymond moved to distribute the escrowed fees, which, he argued, created an "severe financial burden" on him. Emergency Mot. for Dist. of Fees. (filed June 30, 2000) (#67). The Court denied this Motion by Order on October 25, 2000 (#134).

16. Sometime soon after June, 2000, HND-PA knowingly ceased escrowing funds from H&L cases. Tr. Feb. 21, 2002, at 18, 47.

17. There were discussions among Bernstein, Napoli, Diamond, Berman and Hochberg about this decision. Tr. Feb. 21, 2002, at 24, 27-28.

18. The partners of HND-PA have given differing accounts of the decision to cease escrowing attorney's fees they received:

- A. Hochberg: Upon advice of counsel, he "felt that it was not necessary" because HND-PA was a separate corporate entity from HND-Ct, and not bound by any court order. Tr. Feb. 21, 2002, at 16. The partners of HND-PA had concluded that the right of clients of personal injury law firms to change lawyers implied the right of the lawyers to receive fees from the settlement of those client's cases. Id. at 28. Additionally, when it became clear that the "finances of HND-PA ... were not sufficient ... to keep the firm open," "people said ... we are not required to escrow any fees and we need them in order to support ourselves" Id. at 48.
- B. Diamond: HND-PA was "continuous picked on in the litigation, but yet we were never allowed to voice our objections to anything ... We were cut out of the loop totally." Id. at 161. Since HND-PA was "not being copied [on court correspondence] ... [and if] we had no standing, then we decided that we've earned these fees, why shouldn't we be allowed to

take the money that we've earned. We're not part of [Heller's Order]." Id. at 168.

D. Bernstein: "[I]f you're not a party to an action, you're not usually bound by anything that occurs in that action" Id. at 182.

19. HND-PA stopped escrowing funds of H&L because the partners decided they required the funds to maintain their new law firm. This need was pressing for HND-CT before the decision to create HND-PA was made; HND-PA was incorporated to give legal "cover" for failure to comply with the Receiver's Order, so that HND-PA could use the escrowed funds to pay current operating expenses.

20. Neither the Court nor the Receiver was informed of HND-PA's decision to cease escrowing funds. Id. at 21.

21. The money HND had escrowed between December, 1999, and June, 2000, was used to pay the operating expenses of HND-PA. Id. at 93.

22. Haymond and his partners at HND-PA are now adversaries. Id. at 79-80. Haymond terminated Hochberg's employment at HND-CT in February, 2001. Id. at 121.

23. Haymond's ownership share of HND-PA was reduced to 49 percent when Hochberg was readmitted to the Connecticut bar. Id. at 62-64. Before February 6, 2001, Hochberg voted with Haymond

on all matters concerning HND-PA's management; together the two controlled the operation of HND-PA. Id. at 85-90. On February 6, 2001, HND-PA allegedly held its "annual meeting" pursuant to "notice duly given." At this meeting, all of the shareholders except Haymond voted to give each of them an equal vote in firm management, rather than control proportional to ownership. Lundy Ex. 2. Haymond no longer controls the day to day operations of HND-PA. Id. at 119.

24. Hochberg admits that HND-PA's meetings were held without formalities; the partners would "go into each other's offices" and reach consensus without a formal vote. Haymond did not participate in these informal meetings because he was not present at the Philadelphia office of HND-PA. Id. at 60-62.

25. Haymond denies knowing of HND-PA's plan to cease escrowing funds. Id. at 106-07. He claims he was unaware of HND-PA's actions until November, 2001. Id. at 108.

26. John Dean, Esq., Haymond's Connecticut counsel, testified he received assurances from attorneys at HND-PA that they were escrowing H&L funds after July, 2000. Id. at 141. Hochberg assured him the fees were escrowed. Id. at 142. Dean received faxes from attorneys at HND-PA documenting that funds were escrowed. Id. at 144; see also Haymond Ex. 1-4.

27. The other partners of HND-PA claim Haymond was

aware of the decision not to escrow funds at the time it was made.

- A. Hochberg: "I know that he was aware of it" Id. at 48. "I honestly do not recall any discussion [with Dean about escrowing funds]." Id. at 65.
- B. Diamond: At the time of HND-PA's formation, and in reference to the escrowed funds, Haymond said "You do what you have to do to keep the place going, and I don't care what . . . what that means" Id. at 166.
- C. Bernstein: His conversations with Dean related only to escrows of unrelated funds. Id. at 180.

28. Haymond's testimony that he did not know of HND-PA's decision in June, 2000, is not credible. It was contradicted by the testimony of Hochberg and Diamond. It does not comport with how Haymond himself described the operation of the law firm before his relationship with Hochberg became adversarial. Tr. Feb. 21, 2002, at 119. Haymond needed funds in June, 2000, and needed to be free from the daily expenses of the Pennsylvania practice. Although Haymond may not have explicitly authorized ending the escrow, the most credible account was Diamonds': "You

do what you have to do to keep the place going, and I don't care what ... what that means" Dean's testimony is not totally inconsistent, as Haymond directed him to inquire about the status of non-existent money.

29. On August 31, 2001, the Court, issuing a judgment in this action, appointed Special Master Heller as a Receiver of the partnership, and ordered an accounting and distribution of the partnership's assets.

30. The Receiver found that from December, 1999, until January, 2002, HND-PA collected \$1,532,948 in attorney's fees on cases of Lundy, or H&L, prior to the firm's dissolution. HND-PA has not remitted these funds to the partnership. See Final Judgment.

II. Discussion

Lundy's "Motion for Order to Effectuate the Jurisdiction of the Court" seeks declaratory, monetary, and injunctive relief:

1. A declaration that HND-PA is bound by the Orders of the Receiver and the court;
 2. An Order that HND-PA pay \$1.1 million to H&L;
 3. An Order requiring HND-PA to produce records sufficient to identify each of its pending cases;
- and

4. An Order requiring HND-PA to send a letter to the "potential payor of monies" in any open case that all attorney's fees are to be paid to the Receiver and not HND-PA.

Haymond joins in this Motion. HND-PA,² denies that the court can grant Lundy the relief he seeks. It argues: (1) Heller's Order has no effect because it was not entered on the docket; (2) even if it were, the court's Orders do not bind HND-PA, a non-party; and (3) HND-PA can not now be joined as a party.

Lundy's Motion does not seek to hold HND-PA in contempt, but to declare that HND-PA converted H&L money and to force it to return the money it owes. The propriety of such an injunction turns, at least in part, on whether HND-PA is a party to this action, because injunctive relief against non-parties is generally disfavored. Detroit Edison Co. v. NLRB, 440 U.S. 301, 315 (1979) (substantial doubt that a non-party, not subject to the court's jurisdiction, can be properly enjoined). Similarly, the award of damages against a non-party to an action is generally impermissible, though res judicata might apply. See

²The response of HND was submitted by Hochberg, a party to this action on Lundy's counterclaim, now on appeal. But although the brief states that Hochberg "submits this response on his behalf only and not on behalf of HND-PA," it admits that "the excessive scope and breath of the relief requested in Mr. Lundy's Motion compels Mr. Hochberg to discuss HND-PA's non-party status as it further demonstrates why Mr. Lundy's Motion to 'effectuate jurisdiction' must fail." Resp. to Lundy's Motion for Order to Effectuate at 2-3. For the purposes of clarity, and to reflect the interests involved, this Opinion refers to the respondent to Lundy's Motion as HND-PA.

CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, 18A FEDERAL PRACTICE & PROCEDURE 2d § 4451 (2002) (hereinafter "WRIGHT AND MILLER, FEDERAL PRACTICE") (non-party with sufficient interest and control in earlier adjudication bound by it).

HND-PA's status in this action has been the subject of dispute. HND-PA's attempt to join the action was opposed by both parties.³ HND-PA has not been served with a complaint nor required to answer a claim that it wrongfully withheld attorney's fees it was required to escrow for distribution as former H&L partnership funds. The court earlier stated that HND-PA was not a party when it attempted to assert a right to court ordered relief.⁴ Lundy disagrees.⁵

HND-PA is not a "party" to this action as that term is usually understood: "a person by or against whom a legal suit is

³On September 7, 2001, HND-PA moved to intervene (#303). Haymond and Lundy both objected. On October 25, 2001, HND-PA withdrew its motion to intervene (#324).

⁴See, e.g., Haymond v. Lundy, 177 F. Supp. 2d at 382; Tr. Nov. 16, 2001, at 131.

⁵At argument on February 21, 2002, Lundy suggested that the appearances of John Haymond in September, 2000, for Haymond Napoli and Diamond effectively intervened HND-PA as a party. Then on February 22, 2002, the Court issued a Rule to Show Cause. (#397) Hochberg and Lundy responded. (#399, #403, #407) On consideration of the Rule to Show Cause why Judah Labovitz's appearance in August and September, 2000, did not constructively intervene HND-PA, the Rule to Show Cause will be discharged. Labovitz's client in September, 2000, was not clearly HND-PA; even if it were, his appearance on its behalf on a Motion for Contempt would not intervene HND-PA as a party for all purposes. Rather, it would have been a limited intervention, like an intervention for jurisdictional purposes, and could not waive HND-PA's ability to disclaim its status as a party.

brought."⁶ But neither is it an entity simply interested in the outcome; it falls somewhere between these two formal definitions.

Lundy argues that the Receiver must possess all potential assets of the partnership before a distribution can occur, even those assets held by "non-parties." Contending that either the court has exercised in rem jurisdiction over the assets held by HND-PA or that HND-PA and Haymond are in privity, Lundy seeks to force HND-PA to disgorge those assets without additional hearings. Alternatively, Lundy asserts that even if the court does not order HND-PA to return money as a non-party, it should join the law firm as a party, and then adjudicate the law firm's right to keep the partnership's assets.

The issues raised by Lundy's Motion are: (1) can HND-PA be bound, as a non-party, by the Receiver's Orders or the court's judgment and be forced to contribute to H&L; or (2) should the court now join HND-PA as a party and adjudicate its liability to H&L.

A. Binding HND-PA, a Non-Party, by the Court's Judgment

The Receiver reports, and the court accepts as a fact, that from December, 1999, through January, 2002, HND-PA withheld

⁶ A "'party' is a technical word having a precise meaning in legal parlance; it refers to those by or against whom a legal suit is brought ... all others who may be affected by the suit, indirectly or consequently, are persons interested but not parties." BLACK'S LAW DICTIONARY 1122 (6th ed. 1990). Although HND-PA was given many opportunities to participate in proceedings, it was not required to do so. One can not be a voluntary party: to be a party is to be compelled to participate in the adjudicative process.

\$1,532,948 in attorney's fees it received from clients on cases originally handled by H&L or ML&L.

On August 31, 2001, the court, appointing Heller as H&L's Receiver, directed him to gather the assets of the partnership, and recommend their distribution to the former partners under their partnership agreement. HND-PA takes the position that as a non-party to the action it can not be bound by the court's adjudication that attorney's fees originating from Lundy or the former partnership are partnership assets, to be collected by the Receiver and distributed to the former partners. Lundy contends that it is appropriate to bind HND-PA because: (1) it would be a proper exercise of the Court's in rem jurisdiction; and (2) Haymond and HND-PA are in privity.

1. In Rem Jurisdiction

Lundy, citing United States v. Dean Rubber Mfg. Co., 71 F. Supp. 96 (D. Mo. 1946), claims that once a court has acted on a piece of property, successive owners of the property are bound by the court's earlier judgment. He argues that the court has acted on a piece of property, Haymond and Lundy's respective entitlement to attorney's fees from cases settling or litigated to verdict after dissolution of H&L, so that successive owners of this property (e.g., HND-PA) are bound by the court's allocation and should be forced to return the fees they have received.

A court exercising in rem jurisdiction determines the ownership of property even against claims of non-parties to the original judgment. See ROBERT C. CASAD, JURISDICTION IN CIVIL ACTIONS § 1.01(3) (2d ed. 1991) (in rem jurisdiction binds the "whole world"). Examples of such actions are land title registration, admiralty, and forfeitures. See WRIGHT AND MILLER, FEDERAL PRACTICE § 3631 (Fed. R. Civ. Pro. 4(n) provides for initiation of an action in rem); id. at § 4431. But a necessary condition to in rem jurisdiction is a res - a defined piece of property.

In Dean Rubber, the United States sought to enforce, against non-parties to an original action, an injunction against the distribution of defective prophylactics a corporation had in stock or might subsequently acquire. The court held that part of the complaint, that against the existing stock of prophylactics, was based on in rem jurisdiction: "bind[ing] successive owner[s] of the [res]." Dean Rubber, 71 F. Supp. at 98. But the court declined to find that it had in rem jurisdiction over the property not acquired at the time of the original injunction (the "might subsequently acquire" stock of prophylactics). Because its jurisdiction over an individual's actions concerning contingent assets was in personam, the court struck the complaint because it did not allege the non-party had conspired with the party bound by the injunction. Such an allegation of conspiracy

was necessary to finding that the court had in personam injunctive jurisdiction over a non-party. See Dean Rubber, 71 F. Supp. at 98. Dean Rubber provides a helpful analogy to this action.

The appointment of a Receiver to collect the partnership's assets created in rem jurisdiction over some classes of attorney's fees now held by HND-PA. See 1 R. CLARK, TREATISE ON THE LAW & PRACTICE OF RECEIVERS § 285 (1969 supp.) (the appointment of a receiver acts on the property by enjoining others from interference with the receiver's possession; it is "in the nature of a proceeding in rem"). Paragraph 3(D), 3(E) and 3(F) of the court's Order of August 31, 2001, adjudicates the parties' entitlement to attorney's fees received from the initiation of this action, October 12, 1999, until August 31, 2001:

- D. Net fees received from any H&L case open at the time of dissolution shall be divided between the parties as follows: Lundy shall receive 60% of the net fees and Haymond shall receive 40%. Judgment, ¶3(D).
 - (ii) Net fees accumulated during the pendency of this action and held in escrow by the parties in accordance with this court's orders may be distributed as soon as the amounts held in escrow are verified correct by the Receiver.
 - (iii) Additional net fees received from H&L cases by the parties shall be placed in escrow pending an approval of the amount and distribution by the Receiver.
- E. Net fees received by Lundy, or his new firm, from ML&L cases settled or litigated to verdict shall remain the property of Lundy or his new firm.

- F. Net fees received by Haymond, or his new firm, from ML&L cases settled or litigated to verdict shall be placed in escrow. These fees shall be distributed 80% to Haymond, or his new law firm, and 20% to Lundy, or his new law firm, with one exception

This judgment established that H&L owned, against the claims of "the whole world," the following classes of property: (1) attorney's fees received by the parties from H&L cases between October 12, 1999, until August 31, 2001; and (2) attorney's fees received by "Haymond, or his new law firm," from ML&L cases, in the same time period. The court's in rem jurisdiction extends to those fees. To the extent that HND-PA holds money arising from these two categories of cases, it would not violate the general rule against binding non-parties to force it to return the fees owed to the partnership.

With respect to any other fee, the judgment might be res judicata as to the entitlement of each party to money if it is collected, but the judgment does not seize any particular res. In rem jurisdiction can not exist over future contingent assets, e.g., those collected after the judgment. Dean Rubber, 71 F. Supp. at 98 (injunctions prohibiting distribution of assets acquired in the future created only in personam jurisdiction). When those fees were collected by the partners, the Receiver was entitled to them by virtue of the Court's in personam

jurisdiction because the court exercises direct control over the parties and can force them to disgorge assets to the Receiver. See CLARK ON RECEIVERS § 911(a) (receiver may, under orders of the court, take possession of all firm assets). But if those fees are collected by non-parties, a separate action (by the Receiver or by the parties) would be necessary to establish jurisdiction and title. See id. (court can authorize receiver to bring suit if the action could have been maintained by the firm).

Lundy's argument that the court has in rem jurisdiction does not account for the different classes of fees held by HND-PA. Some of the fees are partnership property, and no relitigation would be necessary. Some, ML&L fees collected after August 31, 2001, are H&L property under the judgment, but HND-PA should have due process, requiring notice and the opportunity to object to their collection in a forum where the firm's participation is mandatory. Some, H&L fees collected by HND-PA at any time, are H&L property only if HND-PA is functionally equivalent to Haymond, or Lundy, for the purposes of the judgment. The court's exercise of jurisdiction over HND-PA would then be in personam. This depends on whether HND-PA and Haymond were or are in privity.

2. Privity

The requirement of privity effectuates due process; an entity can not be bound by a judgment unless it can be fairly said to have had its day in court. In executing the judgment, whether HND-PA is in privity with Haymond is a factual inquiry. See WRIGHT AND MILLER, FEDERAL PRACTICE § 2956. Haymond and HND-PA are in privity if one of the following disjunctive factors are present: (1) HND-PA had control over the litigation;⁷ (2) its interests were adequately represented by a named party;⁸ or (3) it was an aider and abettor of Haymond in an attempt to remove his assets from the Receiver's reach.⁹ Richards v. Jefferson County, 517 U.S. 793 (1996) (a non-party with the "same interests" as a named party can be bound) Regal Knitwear Co. v. NLRB, 324 U.S. 9, 14 (1945) (defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors); G. & C. Merriam Co. v. Webster Dictionary Co., 639 F.2d 29, 37 (1st Cir. 1980) (same).

Haymond and HND-PA were in privity until February 6, 2001. Until that time, Haymond and Hochberg, who together controlled HND-PA both as a matter of law and in fact, were so closely tied

⁷See supra, Finding of Fact 14(D) (all parties would agree on strategy); but see supra Findings of Fact 22, 23 (detailing how relationship between Haymond and HND-PA became adversarial).

⁸See supra, Finding of Fact 13, 23.

⁹See supra, Findings of Fact 25-28 (discussing Haymond's knowledge of HND-PA's actions).

together that Hochberg "would have voted any way [Haymond] wanted ... for most of the time." Tr. Feb. 21, 2002, at 85. HND-PA explicitly assumed " all obligations and liabilities ... including ... any and all other existing and future obligations" of HND-CT. HND-PA incurred this obligation as a part of an Agreement with specific provisions about the parties' joint interests in this action, and their decision jointly to control its progress.

Haymond's tacit approval of HND-PA's decision not to escrow the funds allowed him to avoid the consequences of the Receiver's Order.¹⁰ HND-PA, by admission of its partners, helped Haymond avoid the effect of the Receiver's Order. HND's partners claim that as representatives of a separate entity, they are not bound by its terms. But this is correct only if Haymond did not create HND-PA (and retain a majority share) with knowledge that the Receiver's Order would be ignored. HND-PA aided and abetted Haymond's noncompliance with the Receiver's Order; it was in privity with Haymond. See Regal Knitwear, 324 U.S. at 14.

¹⁰The court does not find that Haymond's actions placed him in contempt. To establish contempt, the petitioner must prove: "1) that a valid order of the court existed; 2) that the defendants had knowledge of the order; and 3) that the defendants disobeyed the order." Roe v. Operation Rescue, 54 F.3d 133, 137 (3d Cir. 1995). Here it is unclear that a valid court order existed requiring the parties to escrow funds because: (1) the Receiver's Order was subject to court approval which was not given in writing; (2) the Receiver's Order was not entered on the docket; and (3) the Receiver's Order, if it were to have injunctive effect, would require a different procedure under Fed. R. Civ. Pro. 65. United States v. Schiavo, 504 F.2d 1, 8 n. 17 (3d Cir. 1974) (en banc) (formalities of placing judgments on the docket must be strictly construed).

After February 6, 2001, when the parties became adversarial, this close relationship was severed. Haymond and the other partners of HND-PA are now adversaries in litigation; HND-PA has sued for breach of Haymond's promise to obtain its consent before engaging in settlement discussions in this action; Haymond does not have the ability to control HND-PA's actions. Privity between Haymond and HND-PA has been destroyed.

The court has in rem jurisdiction over fees collected by HND-PA from ML&L cases before August 31, 2001, and therefore has the power to force HND-PA to return some of the \$1.5 million dollars it has withheld from H&L. But it is unclear that a non-party only partially in privity with a party can be bound to the judgment, through the court's in personam jurisdiction over the named party. Forcing HND-PA to return money to H&L would implicate additional constitutional concerns, especially if that decision was viewed as a prejudgment attachment. These issues are so complex, and the basis for the court's jurisdiction so attenuated, that it is inadvisable to seize HND-PA's assets.

B. Joinder of HND-PA

The court could direct the Receiver to bring a separate suit against HND-PA to collect some fees it has withheld. This would have advantages; the court could resolve the pending disputes between the parties and distribute all of the assets of the

partnership before discharging the Receiver. Unfortunately, the uniquely "bellicose" nature of this litigation would make adjudication of the issues raised of indeterminable length. See Haymond v. Lundy, 177 F. Supp. 2d at 387.¹¹ It is also unclear if the court could issue a final judgment, as it has this day, allowing the parties to appeal, while still retaining jurisdiction to order the Receiver to file an action against a non-party to collect more funds potentially subject to the court's adjudication.

There is a better solution to the problems posed: Haymond, whose tacit approval of HND-PA's decision not to escrow the attorney's fees allowed that firm to withhold \$1.5 million from H&L, will be charged with the consequences of his actions. But for Haymond's collusion with HND-PA, H&L would have collected all the fees in question. It is unfair to Lundy to await a further adjudication of the fees HND-PA may retain by virtue of Haymond's willingness to let HND-PA evade the court's jurisdiction. Under the broad, inherently equitable, nature of its powers over a firm in receivership, the court will fashion a remedy that effects

¹¹This belief finds support in the progress of this litigation since the Court's judgment on August 31, 2001. Where most actions are terminated at judgment, the docket here grown by 125 entries, to 428, in the last twelve months.

substantial justice to all concerned. The parties have had notice and opportunity to object to this remedy.¹²

The \$1,532,948 collected but not remitted by HND-PA before January, 2002, will be treated as if it had been collected by Haymond. Haymond will be charged \$1,532,948 in accounts received from the amount otherwise due him. His recovery against HND-PA is a separate matter from the amount due Lundy from the assets of the partnership, and should not delay distribution. The legal consequences of the changing nature of the parties' relationship to each other, the interaction between those relationships and

¹²The court, referring to the Receiver's supplemental report on the assets of liabilities of H&L, stated:

This report is written imposing on John Haymond the liability of HND, Connecticut and HND, Pennsylvania. In other words, they are treated as one. So that, the reason that certain things are deduced from what he gets is because HND, Pennsylvania didn't turn the assets into the Court ... They ... are having a fight with [Haymond] about who is entitled to [the fees]. It's not my responsibility to resolve that fight, I don't think ... John Haymond was the subject of a suit, he was before this Court and ... he went out and transferred all the fees ... he should have known that it was a problem for him ... Well, it's all right with the Court, but then he takes the responsibility.

Kampf (for Haymond): You're saying that HND-PA and HND-CT shouldn't be differentiated in the report."

Court: For the purposes of distribution of assets in this case.

Kampf: Okay. And we do object to that.

Tr. Feb. 22, 2002, at 42-43.

the court's Orders, and the consequences of future collections by HND-PA, may be addressed elsewhere.¹³

The final judgment, issued today, effectuates this decision.

III. Conclusions of Law

1. Appointment of a Receiver establishes in rem jurisdiction over those property assets that are fixed at the time of the appointment. Here, the Receiver's appointment on August 31, 2001, established in rem jurisdiction over: (1) attorney's fees received by the parties from H&L cases between October 12, 1999, until August 31, 2001; and (2) attorney's fees received by "Haymond, or his new law firm," from ML&L cases, in the same time period.

2. HND-PA was in privity with Haymond from June, 2000, until January 6, 2001.

3. The court declines to order HND-PA to return assets to H&L.

4. The court has the power to authorize the Receiver to collect assets from HND-PA. The court declines to authorize the Receiver to file such an action, or to join HND-PA as a party in this action. To do so would indefinitely prolong this action's

¹³Two actions currently pending before this Court, HND-PA et al. v. HND-Ct et al., 2002-cv-721 and Andrew Napoli et al. v. John Haymond, 2001-cv-5188, may afford Haymond the opportunity to address these issues. However, in HND-PA, 02-721, a Motion for Remand is pending, and this is not the place to determine if either of these actions will be adjudicated in the United States District Court for the Eastern District of Pennsylvania.

resolution, to the detriment of Lundy. It would also prejudice the timely administration of justice, and consume judicial resources better allocated elsewhere.

5. The \$1,532,948 collected but not remitted by HND-PA will be treated as if it had been collected by Haymond. Haymond will be credited with \$1,532,948 in accounts received, thereby subtracting from the amount otherwise due him. This result holds Haymond accountable for his tacit authorization of HND-PA's actions.

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

JOHN HAYMOND : CIVIL ACTION
HAYMOND NAPOLI DIAMOND, P.C. :
 :
v. :
 :
MARVIN LUNDY :
 :
v. :
 :
JOHN HAYMOND, :
ROBERT HOCHBERG, :
HAYMOND NAPOLI DIAMOND, P.C. : No. 99-5048

ORDER

AND NOW, this 23rd day of August, 2002, for the reasons given in the foregoing memorandum, it is **ORDERED** that:

1. Lundy's Motion for Order to Effectuate Jurisdiction (#364) is **DENIED**.

2. The Rule to Show Cause "Why Judah Labovitz's appearances for Haymond Napoli and Diamond in August and September, 2000, did not intervene Haymond Napoli and Diamond, P.C., PA," as a party in this action (#397) is **DISCHARGED**.

Norma L. Shapiro, S.J.