

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

---

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

**Plaintiff,**

v.

INTERNATIONAL FIDUCIARY CORP., S.A.,  
DANIEL ERIC BYER,  
MALCOLM CAMERON BOYD STEVENSON,  
and PRESTON DAVID PINKETT II

**Defendants.**

TERRY MARTIN, CD2E, INC., WINCHELL  
CORPORATION, M&M TECHNOLOGIES  
ROBERT LOWREY, SZE COAST  
OPERATING CORP. and

**Relief Defendants.**

---

CIVIL ACTION:  
1:06 -CV-1354  
GBL/TRJ

**DEFENDANT PRESTON DAVID PINKETT II'S OPPOSITION TO  
RECEIVER'S MOTION FOR SHOW CAUSE ORDER**

Defendant **PRESTON DAVID PINKETT II** ("Pinkett"), through the undersigned counsel, files his Opposition to Receiver Roy M. Terry's ("Receiver") Motion for Show Cause Order ("Motion"), and in support thereof, respectfully requests the Court to consider the following:

The Motion of the Receiver should be denied because: 1) the Receiver stands in the shoes of Defendant International Fiduciary Corporation ("IFC") and has no standing to enforce an order obtained for the benefit of the Plaintiff Securities and Exchange Commission ("SEC"), which has not moved for such relief; and 2) Pinkett furnished a copy of the requested accounting

) in February 2007, which the Receiver and the SEC received from Pinkett's then counsel and the SEC has relied upon in filing its amended complaint.

1. **The Receiver, as representative of Defendant IFC, has no standing to raise this issue.**

) The SEC sought and obtained the order requiring an accounting from all Defendants in order to determine the financial scope of the transactions complained of and the status of assets which were contributed by the members. The Receiver is not a party to this proceeding and as a non-party he has no standing under 18 U.S.C. § 401 or otherwise to file a motion to show cause. Arguably, the Receiver stands in the shoes of the IFC and can participate to the same extent as IFC. More importantly, the order to file an accounting runs against both Pinkett and IFC. The Receiver is under a duty to file the same accounting as Pinkett and he has the records and money to put it together. He cannot avoid IFC's obligation, knowing that Pinkett has no money since his assets are frozen, by demanding that Pinkett do the Receiver's job of reviewing the records the Receiver already has to account for where the funds went.

2. **The Receiver and the SEC already have the accounting.**

In February 2007, an accounting was prepared on behalf of Pinkett which, while not sworn, informally provides the essential information set forth in the Court's Order to the extent of Pinkett's knowledge at the time. This accounting was prepared under the direction of Pinkett's then counsel before the Receiver took possession of all the IFC records, then consisting of approximately 10 boxes.

) The accounting showed that about \$42 million dollars was collected from members and held in bank accounts over which Pinkett had signature authority. Of this amount, approximately \$20 million was returned to members pursuant to their requests. Another \$15 million was

) transferred to their representatives in the transaction and \$5 million was transferred to Pinkett. Over \$2 million remained in the bank accounts over which Pinkett had signature authority and was frozen pursuant to this Court's Order. The accounting reflects this information in detail and was derived primarily from two of the 10 boxes containing bank records of deposits, transfers and withdrawals to evidence these transactions. Pinkett does not know what any of the recipients of these funds did with the moneys they received after distribution.

Since this accounting was provided to the Receiver and the SEC, they have both had long and continuing access to the 10 boxes of IFC records, additional records obtained from the office of IFC, computer-generated IFC records, and records obtained from IFC's accounting, all of which reflect the information designated in the Court's Order. In fact, the SEC has relied on the Pinkett accounting and the additional records it has received as the basis for its amended complaint.

) In short, the Receiver's request for an additional accounting was moot before it was filed. The Receiver has had access to all information available to Pinkett including his personal bank records, from which to pursue his duties to locate, conserve and administer the Receivership estate, and Pinkett is unable to add anything further to that effort.

As to the Receiver's comment regarding the filing of another document by Pinkett, he confuses the requirement to prepare an accounting with the possible voluntary submission of a personal financial statement as part of ongoing settlement negotiations with the SEC.

Finally, the concern expressed by the Receiver that Pinkett "might continue to exert control" over IFC assets is mere supposition and has no basis in fact.

) WHEREFORE, Defendant Preston David Pinkett II respectfully prays that upon review and consideration of the above, the Court deny the Receiver's Motion in its entirety, grant Defendant all costs of court incurred herein, and award Defendant all other and further relief to which he may be entitled.

Dated: May 7, 2007

Respectfully submitted,



Daniel R. Kirshbaum (*pro hac vice*)  
**AXELROD, SMITH & KIRSHBAUM**  
5300 Memorial, Suite 700  
Houston, Texas 77007  
Phone: (713) 861-1996  
Fax: (713) 861-2622

---

Amy L. Tenney (VA Bar #45924)  
Larry P. Ellsworth (*pro hac vice*)  
**JENNER & BLOCK LLP**  
601 Thirteenth Street, NW.  
Suite 1200 South  
Washington, D.C. 20005  
Phone: (202) 639-6000  
Fax: (202) 661-4961  
Email: [atenney@jenner.com](mailto:atenney@jenner.com)

) *Attorneys for Defendant Preston David Pinkett, II*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 7, 2007, I served the following parties and/or their counsel of record a copy of the foregoing, by the means noted below:

(by e-mail and U.S. mail)

Alvin David (Dave) Williams, Esq.

Carl Tibbetts, Esq.

U.S. Securities Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549-4010

(email) williamsdav~sec.gov

(by U.S. mail)

Daniel Eric Byer

3 .34250 Hazelwood Avenue

Abbotsford, BC V2S 7L4

CANADA

(by U.S. mail)

Malcolm C. Stevenson

#346, 9 .32442 Dahlstrom Avenue

Abbotsford, BC V2S 6111 CANADA

(by email)

Roy M. Terry, Jr.

Durette Bradshaw PLC

Main Street Centre

600 East Main Street

Richmond, Virginia 23219

  
\_\_\_\_\_  
Amy L. Tenney