

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY
AS RECEIVER FOR ARTHUR LAMAR
ADAMS AND MADISON TIMBER
PROPERTIES, LLC,

Plaintiff,

v.

MICHAEL D. BILLINGS and
MDB GROUP, LLC;
TERRY WAYNE KELLY, JR. and
KELLY MANAGEMENT, LLC;
and WILLIAM B. MCHENRY, JR. and
FIRST SOUTH INVESTMENTS, LLC,

Defendants.

Case No. 3:18-cv-679

Arising out of Case No. 3:18-cv-252,
Securities and Exchange Commission v.
Arthur Lamar Adams and Madison
Timber Properties, LLC

Hon. Carlton W. Reeves, District Judge
Hon. F. Keith Ball, Magistrate Judge

RESPONSE TO MCHENRY’S MOTION FOR ACCESS

Alysson Mills, in her capacity as the court-appointed receiver (the “Receiver”) for Arthur Lamar Adams (“Adams”) and Madison Timber Properties, LLC (“Madison Timber”), through undersigned counsel, respectfully responds to the “Motion of William B. McHenry, Jr. and First South Investment, LLC [“McHenry”] for Access to Exhibits introduced at Arthur Lamar Adams’ Sentencing Hearing” as follows:

1.

McHenry requests access to the following exhibits admitted at the sentencing of Lamar Adams: Government Exhibit G-1, Defendant Exhibit D-1, and “the other Government exhibits for which there is no objection.”

2.

Of the exhibits admitted at the sentencing of Lamar Adams, the Receiver herself has a copy of only one: Government Exhibit G-1, the transcript of Adams's FBI interview on April 19, 2018. The Receiver received the transcript from the Government, and a protective order prevents the Receiver from disclosing it to any party without the Government's and this Court's permission.

3.

The Receiver takes no position on whether the Government or this Court should grant McHenry's counsel access to Government Exhibit G-1, the transcript of Adams's FBI interview on April 19, 2018. The Receiver notes, however:

- a. The transcript contains sensitive information that should be protected so long as criminal investigations could be ongoing. The Receiver submits that if the Court grants McHenry's counsel access to the transcript, it would be prudent to restrict its disclosure to counsel only, and subject to a protective order that prevents its further disclosure.
- b. McHenry has not established that the transcript is relevant to any issue currently before the Court. The only question presented by the Receiver's motion for summary judgment is whether Madison Timber was a Ponzi scheme, such that McHenry's commissions must be returned. *Whether McHenry knew that Madison Timber was a Ponzi scheme is irrelevant for now.* McHenry points out that the Receiver seeks the return of commissions paid to him between 2010 and 2018, but that Madison Timber *Properties* was not formed until August 2012. But that fact does not disprove that Madison Timber was a Ponzi scheme in 2010, when it operated as Madison Timber *Company*. At all times Madison Timber was controlled by Adams, and Adams testified at his sentencing that Madison Timber's income came solely from defrauded investors.¹ The Court

¹ While Adams may have had a few "legitimate land and timber deals" that he did for himself or his friends, what flowed through Madison Timber was *other* people's money. "Not a single asset was brought into this scheme." *See* transcript of sentencing hearing proceedings on October 30, 2018, at page 273-274 ("[MR. FULCHER] And in this case, we have a pure Ponzi scheme. You heard me say it yesterday, not a single asset was brought into this scheme. ..."); at page 285-286 ("[MR. FULCHER] [I]t was a house of cards all along ... -- you know, we could have been in here years before."); at page 308 ("[THE COURT] According to his statement, he had been running the scheme since approximately 2007. That's almost 11 years ..."); at page 312 ("[THE COURT] But the fact of the matter is that this scheme went on for more than ten years ..."); at page 337 ("[THE COURT] After 11 years of success of running the program, now he decides that he's had enough. Didn't have enough in 2008, 2009 ..."). *See also* transcript of sentencing hearing proceedings on October 29, 2018, at page 91 ("BY MR. COLLETTE: ... Q: [L]ike the judge said, but certainly had anybody just recorded the deed or gone to a courthouse ..., we wouldn't be sitting here today? A. Correct. Q. We may have been sitting here eight or nine years ago. A. Right."); at page 92-93 ("BY MR. FULCHER: ... Q: [A]ll of the money received back by people who invested with you was money that came from other people

may choose to review the transcript for relevancy *in camera* before it decides whether to grant McHenry's counsel access to it.

- c. Regarding the only question presented by the Receiver's motion—whether Madison Timber was a Ponzi scheme—the Receiver is working with McHenry's counsel to produce to him underlying accounting records of Madison Timber for the years in question.

4.

The Receiver takes no position on whether the Government or this Court should grant McHenry's counsel access to Defendant Exhibit D-1, which is Adams's own "summary of every investment and every payment."

5.

The Receiver requests, however, that any sensitive information, including but not limited to names of investors, be redacted from any exhibit made available to McHenry's counsel. The Receiver volunteers to assist with any redactions.

who entrusted you with their money. Right? A. Uh-huh. Q. So there's no such thing as profit when it comes to Madison Timber, is there? A. I don't know what you mean by profit. Q. Madison Timber didn't make money on any kind of product or any kind of sales of timber, did it? A. No, Madison Timber did not. Q. So all the money that these investors received was money that came from other investors? A. Right."); at page 94 ("Q. ... So we can agree that the people didn't receive any profits of Madison Timber's – Madison Timber. They only received other investors' money? A. Yeah, it flowed through Madison Timber. Q. And what flowed through Madison Timber, not to belabor the point, but what flowed through Madison Timber was other people's money? A. Correct."); at page 135 ("THE COURT: ... [I]n 2009, were you engaged in what you – what you've pled guilty to here today? THE DEFENDANT: Yes, sir.").

December 17, 2018

Respectfully submitted,

/s/ Lilli Evans Bass

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: December 17, 2018

/s/ Rebekka C. Veith
Admitted pro hac vice