

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.09-23507-CIV-GOLD/MCALILEY

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

KIRKLAND YOUNG, LLC, A LIMITED
LIABILITY COMPANY, ATTORNEY AID,
LLC, A LIMITED LIABILITY
COMPANY, DAVID BOTTON, APRIL
BOTTON KRAWIECKI, AND SAMY
BOTTON,

Defendants.

**ORDER CONCERNING MOTION HEARING ON
DECEMBER 17, 2009, AND CLARIFICATION OF THE
TEMPORARY RESTRAINING ORDER DATED NOVEMBER 19, 2009**

THIS CAUSE came before the Court for hearing on December 17, 2009 upon the following motions:

- A. Motion [DE 32] of the Temporary Receiver, Mark Raymond, Esquire, to Employ Legal Counsel;
- B. Motion [DE 34] of the Temporary Receiver, Mark Raymond, Esquire, to Employ Accounting Firm;
- C. Defendant, David Botton's Omnibus Motion [DE 58] Regarding (1) Appointment of Counsel for Receivership Defendant Kirkland Young, LLC; (2) to Prohibit Waiver of Privilege by Receiver; (3) Allowance of Unrestricted Access to Witnesses and Documents; and (4) Allowance of Immediate and Expedited Discovery;
- D. Defendant David Botton's Motion [DE 60] to Amend and Modify the TRO; and

- E. Motion [DE 63] of the Temporary Receiver, Mark Raymond, Esquire, to Extend Receivership to Include ABK Consultants, Inc., and Request for Expedited Ruling.

For reasons stated of record, the following is hereby

ORDERED:

1. Further hearing on the order to show cause [DE 19] why a preliminary injunction should not be entered against Defendant Kirkland Young, LLC (“Defendant Kirkland”) and David Botton is hereby rescheduled to Monday, January 11, 2010, at 9:00 a.m.

2. Pursuant to Fed. R. Civ. P. 65(b)(2), I find good cause to extend the expiration date for the TRO [DE 19]. The Defendants have requested and have agreed, pursuant to Fed. R. Civ. P. 65(b)(2), to extend the expiration date of the TRO until the completion of the Preliminary Injunction hearing so that they may have further opportunity to present their case.

3. Plaintiff Federal Trade Commission’s Motion for Order to Show Cause [DE 56] shall also be rescheduled to be heard on January 11, 2010.

4. The Temporary Receiver’s motions [DE 32 & 34] to retain legal counsel and an accounting firm are granted. The Temporary Receiver shall submit a budget of anticipated expenses for the Temporary Receivership to the Court and the parties.

5. Defendant’s Omnibus Motion [DE 58] is granted in part as follows:

A. The Temporary Receiver shall promptly provide Defendant David Botton with a list of names, addresses, email addresses and telephone numbers to the extent known of persons on the payroll of Defendant Kirkland as of November 19, 2009. Except with respect to the dissemination of the Temporary Restraining Order to persons who may not yet have received it, contact by Defendant David Botton and his representatives with such persons shall be limited to noticed depositions. The parties may participate in such depositions by telephone.

B. The Temporary Receiver shall provide oral updates regarding the operation of Defendant Kirkland through the receivership at the request of Defendant David Botton. These updates are intended to address major issues and not routine matters.

C. The Temporary Receiver holds and controls the evidentiary privileges of Defendant Kirkland, which is subject to the receivership. The Temporary Receiver shall not waive such privileges without seeking leave of Court to do so and providing Defendants' counsel with an opportunity to be heard. To seek leave, the Temporary Receiver shall apply to the Honorable Chris M. McAliley, United States Magistrate Judge, for leave to waive the privilege. If the Temporary Receiver applies for leave to waive privilege as to documents, the Temporary Receiver shall submit the documents to the Magistrate McAliley for *in camera* review. After such review, the Court will order further procedures to determine the merits of the Temporary Receiver's application, including an opportunity to be heard by the Defendants' counsel in opposition.

D. Consistent with the purposes of TRO [DE 19], the Temporary Receiver may conduct discovery of former counsel of Defendant Kirkland, Conrad and Scherer, LLP, and Reed Smith, LLP. The Temporary Receiver is permitted to conduct depositions of these law firms and may also subpoena information from their files that is directly and inextricably involved with transactions of Defendant Kirkland. If the Temporary Receiver believes that he is entitled to information that is withheld by one of these law firms, he may file a motion to contempt.

E. Defendant David Botton may notice the Temporary Receiver for a deposition to be taken on January 7, 2010.


F. To prepare for the Preliminary Injunction hearing on January 11, 2010, Defendant Botton may obtain documentary evidence (not work product or privileged material) from Plaintiff by written request with the limitation that such evidence is specifically identified and not broad sweeping.

G. The remainder of Defendant's Omnibus Motion [DE 58] is denied without prejudice to Defendant Botton's ability to raise arguments as to the scope of any preliminary injunction the Court may impose after completion of the preliminary injunction hearing.

6. Notwithstanding the asset freeze provision (Section V) of the TRO [DE 19], Defendant David Botton may obtain loans not to exceed \$1000 per week for living expenses pending further order of this Court. Such loans shall not directly or indirectly encumber any assets owned by Defendant David Botton or held for his benefit. The remainder of Defendant's Motion [DE 60] to Modify and Amend the TRO is denied.

7. The Temporary Receiver's motion [DE 63] to extend the receivership to include ABK Consultants, Inc., is granted.

IT IS SO ORDERED, this 29 day of December, 2009.


HONORABLE ALAN GOLD
UNITED STATES DISTRICT JUDGE