
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; and
NELDON JOHNSON,

Defendants.

**ORDER RE: CIVIL CONTEMPT OF
PACIFIC STOCK TRANSFER CO.**

Case No. 2:15-cv-00828-DN

District Judge David Nuffer

Court-appointed receiver R. Wayne Klein (“Receiver”) filed a Motion for Order to Show Cause Why Pacific Stock Transfer Company (“PSTC”) Should Not Be Held in Civil Contempt of Court for Violating the Corrected Receivership Order (“Motion”).¹ Based on the Motion and a hearing on the Motion on April 26, 2019, the following findings are entered.

1. On October 31, 2018, the Receivership Order (“Order”) was entered appointing the Receiver over RaPower-3 LLC (“RaPower”), International Automated Systems Inc. (“IAS”), and LTB1 LLC (“LTB1”), and the assets of Neldon Johnson and R. Gregory Shepard.²

2. Among other things, the Order provides:

a. “The directors, officers, managers, employees, trustees, investment advisors, accountants, attorneys, and other agents of RaPower-3, IAS, and LTB1

(collectively, the ‘Entity Receivership Defendants’) are hereby dismissed, and the powers

¹ [Docket no. 576](#), filed February 19, 2019.

² [Docket no. 490](#). The next day the court issued the Corrected Receivership Order, [docket no. 491](#), filed November 1, 2019, to correct the formatting of the October 31, 2019 Receivership Order. Other than the formatting, both orders are substantially the same.

of any general partners, directors, or managers are hereby suspended. Such persons shall have no authority with respect to the Entity Receivership Defendants' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver."³

b. "The Receiver shall have all powers, authorities, rights, and privileges heretofore possessed by the owners, members, shareholders, officers, directors, managers, and general and limited partners of the Entity Receivership Defendants under applicable state and federal law, by the governing charters, bylaws, articles, or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959, 1692, and Fed. R. Civ. P. 66, and this Court."⁴

c. "The Receivership Defendants . . . , transfer agents . . . of the Entity Receivership Defendants, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, or relating to, the Receivership Defendants or Receivership Property; such information shall include, but is not limited to: books, records, documents, accounts, stock certificates, intellectual property records, evidence of intellectual property rights, computer and electronic records, and all other instruments and papers. If these documents and records are no longer within their control, they must provide information to the Receiver identifying the records, the persons in control of the records, and efforts undertaken to recover the records."⁵

³ Corrected Receivership Order ¶ 9, [docket no. 491](#), filed November 1, 2018.

⁴ *Id.* ¶ 11.

⁵ *Id.* ¶ 24.

d. “Johnson and Shepard, as well as . . . agents . . . of the Entity Receivership Defendants, and other appropriate persons or entities, including the family members of Johnson and Shepard, shall promptly answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Defendants or any other matter relevant to the operation or administration of the receivership or collection of funds due to the Receivership Defendants.”⁶

3. On November 12, 2018, the Receiver sent a letter to PSTC seeking various documents, records, and information related to PSTC’s role as transfer agent to IAS.⁷ A copy of the Order was enclosed with the letter.⁸

4. PSTC did not respond to the November 12, 2018 letter.⁹

5. On December 14, 2018, the Receiver issued a subpoena to PSTC commanding the production of documents that he previously requested in the November 12, 2018 letter.¹⁰

6. PSTC was personally served with the subpoena on December 14, 2018.¹¹

7. On January 15, 2019, PSTC partially responded to the subpoena while at the same time refusing to produce certain records unless “authorized by the shareholder or compelled by a court of competent jurisdiction.”¹²

⁶ *Id.* ¶ 28.

⁷ [Docket no. 576-1](#), filed February 19, 2019.

⁸ *Id.*

⁹ [Docket no. 576](#).

¹⁰ [Docket no. 576-2](#).

¹¹ *Id.*

¹² [Docket No. 576-3](#). Although the letter is dated January 2, 2019, the Receiver did not receive PSTC’s partial response until January 15, 2019. *See* [Docket no. 576](#), at 7.

8. In the partial response, PSTC stated it was in receipt of the Order.¹³

9. On January 18, 2019, the Receiver sent a letter regarding PSTC's partial response explaining that he is the only person authorized to act for IAS and that the Order requires PSTC to produce the documents requested in the November 12, 2018 letter and subpoena.¹⁴

10. PSTC did not respond to the Receiver's January 18, 2019 letter.¹⁵

11. The Receiver filed the Motion on February 19, 2019.¹⁶

12. The court took the Motion under advisement and ordered that PSTC be served a copy of the Motion by no later than Friday, March 15, 2019, and that any response to the Motion be filed no later than March 29, 2019.¹⁷

13. PSTC was served a copy of the Motion and the order taking the Motion under advisement on March 8, 2019.¹⁸

14. PSTC did not file a response to the Motion or attend the April 26, 2019 hearing on the Motion.

¹³ Docket no. 576-3.

¹⁴ Docket no. 576-5.

¹⁵ Docket no. 576 at 7.

¹⁶ *Id.*

¹⁷ Docket no. 588, filed March 5, 2019.

¹⁸ Docket no. 595-1, filed on March 13, 2019.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Motion¹⁹ is GRANTED.

IT IS FURTHER HEREBY ORDERED as follows:

1. PSTC shall provide the information requested by the Receiver including: (1) all documents requested in Exhibit A to the Subpoena to Pacific Stock Transfer Company,²⁰ a copy of which is also attached as Exhibit A to this order; and (2) all stock ownership and sales by:

- a. Glenda Johnson;
- b. LaGrand Johnson;
- c. Randale Johnson;
- d. Justin Horton;
- e. Diane Shepard;
- f. Matthew Shepard;
- g. Mark Shepard;
- h. Roger Hamblin;
- i. Black Night Enterprises;
- j. Starlight Holding; and
- k. N.P. Johnson Family Limited Partnership.

2. As required under Paragraph 24 of the Order, PSTC shall turn over to the Receiver all paper and electronic information of, or relating to, IAS, RaPower, LTB1, Johnson, or Shepard. Such information shall include, but is not limited to, books, records, documents,

¹⁹ Docket no. 576, filed February 19, 2019.

²⁰ Docket no. 576-2, filed February 19, 2019.

accounts, stock certificates, intellectual property records, evidence of intellectual property rights, computer and electronic records, and all other instruments and papers.²¹

3. PSTC shall produce the above records and information to the Receiver no later than Monday, June 10, 2019.

4. If PSTC does not produce the above information to the Receiver by June 10, 2019, a coercive fine of \$2,000.00 per day shall be imposed upon PSTC until PSTC is in full compliance with this court's orders.²²

5. As required under the Order, PSTC shall also promptly answer under oath all questions that the Receiver may put to it and produce all documents, as required by the Receiver, regarding the business of IAS, RaPower, LTB1, Johnson, or Shepard, or any other matter relevant to the operation or administration of the receivership.²³

6. The Receiver is entitled to reasonable attorneys' fees and costs, and reasonable receiver's fees expended in relation to the Motion, which include reasonable attorneys' fees expended drafting the Motion, drafting the January 18, 2019 letter, a portion of the time spent participating in the show cause hearing on April 26, 2019, and fees from drafting the form of this order and the attorneys' fee motion.²⁴

²¹ Docket no. 491 ¶ 24.

²² *Law v. Nat'l Collegiate Athletic Ass'n*, 134 F.3d 1438, 1443 (10th Cir. 1998) ("Courts have upheld as civil fines intended to coerce, as long as the offending party can avoid them by complying with the court's order." (citations omitted)).

²³ Docket no. 491 ¶ 28.

²⁴ *In re Skinner*, 90 B.R. 470, 479 (D. Utah 1988) ("sanctions for a civil contempt may include attorney's fees and costs"); see *Hutto v. Finney*, 437 U.S. 678 n.14 (1978) ("Of course, fees can also be awarded as part of a civil contempt penalty.").

7. PSTC's response to the Receiver's motion for attorneys' fees is due no later than fourteen days after the entry of this order or the date the Receiver serves PSTC with a copy of his motion for attorneys' fees and costs, whichever is later.

8. PSTC may purge its contempt by complying with this order. If PSTC fails to comply with this order, additional remedies may be imposed.

Signed May 24, 2019.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written above a horizontal line.

David Nuffer
United States District Judge

EXHIBIT A

Definitions

As used below, the following terms have these definitions:

A. The term “YOU,” “YOUR,” “YOURS” shall mean and refer to Pacific Stock Transfer Company including without limitation its agents, employees, consultants, officers, managers, and attorneys, and any other person, entity, or representative acting for or on its behalf.

B. The term “IAUS” shall mean and refer to Receivership Defendant International Automated System, Inc., in the above-captioned lawsuit, including without limitation any person or entity acting as its agent or representative.

C. The terms “DOCUMENT” and “DOCUMENTS” shall mean and refer to anything that may be considered a document or tangible thing within the meaning of Rule 34 of the *Federal Rules of Civil Procedure*. This definition includes, but is not limited to, any and all writings, recordings, photographs, and other records, including originals and duplicates. To illustrate, “documents” include, but are not limited to, memoranda, communications, letters, written materials, reports, records, personal calendars and diaries, minutes, contracts, memoranda or electronic recordings of telephonic or personal communications, tape recordings, films, prints, negatives, stenographic notes, maps, drawings, plans, schematics, blueprints, sketches, email communications, documents evidencing payment, intraoffice and interoffice memoranda, memoranda for file, computer-stored data, and computer printouts.

The terms “DOCUMENT” and “DOCUMENTS” shall also include all non-identical copies (whether different from the originals because of any alterations, notes, comments, or other material contained therein or attached thereto or otherwise) and drafts of all written, printed, recorded, or graphic matter of every kind and description, together with any attachment thereto or enclosure therewith.

D. The term “COMMUNICATIONS” shall mean any oral or written, formal or informal, at any time or place and under any circumstances whatsoever, by which information of any nature was transmitted or transferred, including, without limitation, the giving or exchanging of information by speech, gestures, documents, or any other means, or any request for information by any such means.

E. “AND” and “OR” shall have both conjunctive and disjunctive meanings.

F. “RELATE” and “RELATED” shall mean—in whole or in part—constituting, containing, discussing, describing, analyzing, identifying, evidence, referring to, or stating.

Documents Requested

1. Any and all agreements between you and IAUS, including but not limited to, any Transfer Agency Agreement.
2. All documents and communications between you and IAUS related to any Transfer Agency Agreement or trading.
3. Any and all documents identifying or otherwise indicating other entities that have served as transfer agents for IAUS, including but not limited to, any documents containing the dates that each transfer agent provided services to IAUS and contact information for the transfer agents.
4. Any and all documents identifying current market makers for IAUS stock, including but not limited to, any documents containing contact information for the market makers.
5. Any and all documents identifying any broker-dealers who have served as market makers for IAUS since November 1, 2015, including but not limited to, any documents containing contact information for the broker-dealers.
6. Any and all documents that refer or relate to the number of current shareholders of IAUS and the number of shares outstanding as of October 31, 2018.
7. Any and all documents that refer or relate to the IAUS stock ownership of Receivership Defendants and family members of Receivership Defendants (hereafter "Persons")
The Persons covered by this request are:
 - a. Neldon P. Johnson
 - b. Glenda Johnson
 - c. LaGrand Johnson
 - d. Randale Johnson
 - e. Justin Horton
 - f. Gregory Shepard
 - g. Diane Shepard
 - h. Matthew Shepard
 - i. Mark Shepard

Including, but not limited to, documents with information regarding:

- i. The number of shares (common and preferred), warrants, options, or other securities (“Securities”) of IAUS held by each Person on November 1, 2015;
- ii. The number and type of Securities transferred to each Person after November 1, 2015, including:
 - a. The date of the transfer,
 - b. The identity of the transferor,
 - c. How the transfer was accomplished (eg., private transfer of which the transfer agent was informed, open market purchase through a broker-dealer, issuance of new shares, etc.),
 - d. The price of the Securities or total amount of each transfer, and
 - e. How payment was made by the Person to the transferor.
- iii. The number of Securities sold or transferred by each Person after November 1, 2015, including:
 - a. The date of the transfer,
 - b. The identity of the transferee,
 - c. How the transfer was accomplished,
 - d. The price of the Securities or total amount of each transfer, and
 - e. How payment was made from the transferee to the Person.

8. Any and all documents related to monthly trading volume of IAUS for the period since November 1, 2015, including but not limited to, documents indicating the trading volume reflected by transactions involving Persons (i.e., the Johnson family).

9. Any and all documents related to Rule 144 sales by Persons, including but not limited to, legal opinions regarding the sales.