IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09CV0988-F
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

REPLY TO SHERMAN'S RESPONSE [DOC 1041] TO MOTION FOR LEAVE TO RECONSIDER STAY

TO THE HONORABLE ROYAL FURGESON, SENIOR U.S. DISTRICT JUDGE:

Defendant Jeff Baron briefs the following six reply issues in challenge to Sherman's representations in his response.

1. Sherman's Disgusting, Deceitful Assault on Mr. Kline's Spotless Reputation.

Sherman's response deceitfully accuses Mr. Kline of being prohibited from practicing law and being so grossly unethical that "The Court may safely disregard anything Mr. Kline has to say." Sherman deceitfully attempts to make it appear that Kline committed some ethical violation. Kline has not. Instead, Mr. Kine has a spotless reputation that he has earned in over two decades of dedicated service.

Sherman's **disgusting** libel of Mr. Kline and attempt to tarnish Mr. Kline's good name is completely groundless and untrue. Contrary to

Sherman's deceitful argument, Mr. Kline has **a perfect and unblemished disciplinary record.** Mr. Kline is fully licensed, and fully permitted to practice in federal court. As a technical matter Mr. Kline is flagged by the state bar for 'administrative suspension' for failure to certify MCLE or the like. However, that has nothing to do with ethics. The local rule of the Northern District makes clear that 'administrative suspension' is not an 'ethics' issue and that counsel may fully continue to practice before this court regardless of the so called 'administrative suspension'.

Sherman's assault on Mr. Kline is particularly disgusting because it is a libel broadcast to tens of attorneys on the mailing list for this case, and made in a context where Mr. Kline has no means to respond to the deceitful implication Sherman makes. Contrary to Sherman's suggestion, Mr. Kline has **never** been found to have committed any ethical violation of any type.

Why would Sherman make such a deceitful accusation ? Sherman has been caught. Attorneys have come forward and disclosed that instead of —as Sherman had negotiated, and was under a legal duty to do— immediately closing the bankruptcy and paying all the creditors with the money Baron funded into Ondova, **SHERMAN WENT TO WORK AGAINST CLOSING THE BANKRUPTCY AND AGGRESSIVELY**

TRIED TO GENERATE CLAIMS. MOREOVER, SHERMAN AGGRESSIVELY SOUGHT TO GENERATE CLAIMS WHERE NO CLAIMS EXISTED. Sherman's duty was to immediate pay all the Ondova creditors and close the bankruptcy as negotiated in the global settlement. Instead, Sherman attempted to sink the estate by generating claims that would not have been made without his vigorous efforts to create them. Notably, despite his efforts Sherman succeeded in generating only two claims. Sherman then lied to this Court and represented that there were "nineteen" claims, when he succeeded in generating only **two**.

2. Sherman is Still Deceitfully Pretending that a Flood of Lawyers Made Substantial Contribution Claims in the Ondova Bankruptcy.

Sherman's claims have been shown to be a sham. Sherman's claims are false, and clearly established as false by the hard record in black and white. Contrary to Sherman's deceitful claim in his Response that "several" lawyers filed substantial contribution claims in the Ondova bankruptcy, the record shows that **there were only two substantial contribution claims made**. Notably, the very definition of "several" means more than two.[1] Sherman is simply not honest.

[1] See http://dictionary.reference.com/browse/several .

Sherman was not willing to take the risk of perjury to controvert the evidence against him. By contrast, Mr. Beckham placed himself at risk and swore under penalty of perjury that Sherman's counsel did solicit him. Notably absent is Sherman's counsel putting himself under penalty of perjury saying that he did not.

Mr. Kline, with a spotless ethics reputation spanning over two decades of practice, corroborated that in September 2010 Beckham told him Sherman's counsel had solicited the claims. It is simply not credible that in September of 2010, Mr. Beckham would have made something like that up and told it to Mr. Kline. Mr. Beckham's account of Sherman's actions in September 2010 has been independently corroborated by Mr. Kline.

3. Sanction for Mr. Sherman's Actions.

The question is whether this Court sanctions Sherman's actions (1) in the sense of supports and approves them, or (2) in the sense of disapproves them and will take firm and affirmative action against Sherman and his counsel. There is no other way to characterize Sherman's attack on Mr. Kline other than as despicable and deceitful.

Notably, Sherman does not deny the allegations against him under oath. Sherman does not deny contacting Beckham, or multiple other

lawyers. Sherman does not deny soliciting claims even when told that no fees were due. Instead, Sherman feels license to deceitfully taint the reputation of the counsel who have come forward with testimony exposing what Sherman has been doing.

It is the worst sort of vexatious, ugly conduct for a lawyer to wrongfully, and groundlessly disparage the good reputation of another in order to hide his own misconduct. Sherman, moreover knows that Kline has an exemplary disciplinary record spanning more than two decades. Sherman's deceitful attack on Mr. Kline is a smokescreen to deflect from the stark reality—the sworn, collaborated testimony that Sherman, through his counsel, solicited attorneys to generate claims— and did so even when told that no money was due.

The new testimony offered in Baron's motion graphically explains the "claims" that have been presented before this court. Not a single 'claimant' has presented an executed contract and shown how Mr. Baron violated any provision or owed one cent under the agreements. Notably absent with the "claims" were invoices that had been sent but Jeff Baron refused to pay. When examined one by one they are all the same. Take for example Mr. Broome. Unlike some of the 'claimants' Mr. Broome did not claim his

contract was in the file cabinet and would be produced 'later' – and then never produced (as is the case with many of the "claimants"). Mr. Broome eventually produced his contract with Jeff Baron. The contract is written. It contains a provision that Broome's fees are capped at $10,000.00 per month, and require written authorization to exceed that cap. Broome does not claim Baron authorized the cap exceeded, and Broome has not presented any evidence of such authorization. Broome also admits that he was paid at the $10,000.00 cap rate. Yet, Broome submits a "claim" for tens of thousands of dollars. On what basis ? Broome argues that his contract does not contain any provision capping his fee at $10,000.00 per month. But we have the contract, in writing, from Broome. We can read the provision in black and white. There clearly is an express $10,000.00 monthly cap on fees incurred. Baron paid Broome that amount monthly. **No money was due from Baron.** Yet, as the testimony states Sherman solicited attorneys to do, Broome presented a claim for fees, even though **no money was due**.

Meanwhile Baron has been deprived of his property, and his most basic human rights—including the right to engage in business transactions, to acquire income, to be represented by the paid legal counsel of his choice, to have a jury hear and decide the claims against him, etc.

There is now sworn testimony that in a Ponzi like scheme, Sherman sought attorneys that he solicited to make claims provide the names of other attorneys that Sherman might also solicit to make claims against Baron and seek more names of other attorneys to solicit for claims. Sherman has offered no sworn denial. In fact, Sherman does not offer any denial of the facts themselves– and offers only deceitful attacks as to the character of the witnesses against him, and the claim that the conversation in September with Mr. Beckham was not individually logged by Sherman's counsel.

4. <u>Sherman's Smokescreen.</u>

Sherman uses allegations against Baron as a smokescreen. For example, Sherman argues that Baron 'obstructed' proceedings by objecting to variances between the negotiated agreement of the parties and the wording in the global settlement draft. Sherman then concedes that "at a hearing on the Motion to Approve, the Bankruptcy Court discovered that there were in fact numerous issues". In other words, Baron's objections were not groundless and were not frivolous. The objections were accurate and found to be well taken by the court. Yet, Sherman creates a smoke screen, by deceitfully suggesting that Baron's objections were obstructionist and groundless.

Similarly, Sherman generates smoke in alleging that Baron made an effort to "scuttle the settlement agreement by filing an objection to a motion by the Trustee to resolve a technical issue". If a hearing were held on the issue, this Court would find that it was Sherman working to drag out finalization by creating needless fights over the pricing of fees charged by Ondova to Quantec LLC. Baron had funded Ondova with around $2 Million in cash. Sherman could, and should have paid all the creditors and ended the bankruptcy. Instead Sherman tried every possible tactic to delay closing the bankruptcy. Here is a perfect example-- creating a fight with Quantec over pricing.

There was only a certain cash flow and Sherman knew that by insisting on a large profit for Ondova, that Quantec would not be able to pay the registration fees. It was a **completely sham controversy manufactured by Sherman.** Since Sherman had negotiated to immediately pay off all the creditors and end the bankruptcy, there was no legitimate reason for Sherman to be suddenly concerned with the new pricing for the future renew fees charged to Ondova. Sherman could have charged cost, or cost plus one cent. It did not matter, so long as the price was low enough that Quantec could pay the fees based on its existing revenue. Knowing that, Sherman

demanded a price he knew Quantec could not pay. Why would Sherman do that ? He knew it would generate an objection and more billing. **MORE BILLING.** Sherman has billed in fees, every cent that Baron placed into the Ondova estate to pay the creditors. Notably, there was more than a million dollar surplus over the amount needed to pay the creditors. Sherman has billed and taken those funds as well.

5. Sherman Plays Both Sides against the Middle.

Sherman argues in his response that the bankruptcy court learned Baron failed to meet one of the deadlines in the settlement agreement.[2] The deadline that wasn't met, however, was for finding a new trustee for Village trust. Sherman thus plays both sides of the same issue: Sherman claims Baron's failure by September 15, 2010 to secure a replacement trustee for the village trust was "obstruction". Yet, previously, Sherman argued that Baron's intent (on September 15 2010) to find a replacement trustee was a bad faith attempt to transfer assets offshore– by replacing one Cook Islands trustee with another (as had been ordered by the Bankruptcy Court).

In other words, Sherman uses Baron's difficulty in securing a new trustee by September 15, 2010 to argue Baron's "obstruction", and at the

[2] Sherman attempts to link that with the groundless allegation Baron hired four new attorneys and didn't pay one of them.

same time has used Baron's (court ordered) efforts to secure a new trustee as "obstruction" by 'transferring assets off-shore'. It is all garbage, and hopefully, should appear that way to the Court. If it doesn't, Baron should be allowed to hire a trial lawyer (that he has been denied to this point), and the Court should hold a hearing where Baron (and the Court) have the benefit of paid trial counsel presenting these facts on Baron's behalf, and enable the Court get a firm handle on Sherman's actions and claims.

6. The Instant Motion, like Jeff Baron's Original Motion, is for Relief Pursuant to Fed.R.App.P. 8(a), not Fed.R.Civ.P. 60.

Sherman erroneously argues that Rule 60 bars the requested relief. However, Fed.R.Civ.P. 60 relates to relief from "Final Judgment", not to relief from interlocutory orders. Fed.R.Civ.P. 60(b). In any case, the instant motion is made pursuant to Fed.R.App.P. 8(a), not Fed.R.Civ.P. 60, and there is no 'one year statute of limitations'. Further, Rule 60 places no time restriction to set aside a judgment for fraud on the Court.

Sherman fraudulently represented to this Court that "nineteen" lawyers came to the bankruptcy court with substantial contribution claims. The truth was that only two lawyers came to the bankruptcy court with substantial contribution claims– and they came only after Sherman aggressively solicited them to come.

Contrary to Sherman's false representations, there were not "several" substantial contribution claims made. Instead, there were two, and only two. Moreover, there was a sufficient **cash escrow** put up in the Bankruptcy Court to cover those two claims, if they are found to be valid and Jeff Baron then found somehow to be responsible to the Ondova estate to pay the claims. Notably, in Pronske's amended substantial contribution claim in the bankruptcy court, he does not claim that Jeff Baron breached any agreement with him, nor owes him any money. Significantly, there is no claim in the bankruptcy court against Baron for indemnity as to any substantial contribution claims. The law does not allow for any such claim to be filed against Baron, and Sherman has carefully avoided filing such a claim in the bankruptcy court.

7. Conclusion.

This case clearly got off track. The receivership is off track. A large part of the responsibility for that rests with Sherman. From day one, Sherman's representations were not honest with the Court. Sherman came to this Court and sold an untrue story—that Baron owed money and "nineteen" lawyers suddenly showed up with substantial contribution claims

in the Bankruptcy court, 'threatening' the Ondova estate and the settlement agreement.

Attorneys have recently come forward and provided testimony that instead of paying the creditors and terminating the bankruptcy as negotiated in the global settlement, Sherman, through his counsel, fought to keep the bankruptcy open at all costs by aggressively soliciting attorneys to make claims against Baron– even when told that no fees were due.

Faced with the sworn testimony clearly depicting what happened, Sherman has attempted to discredit the attorneys' sworn testimony. However, since Sherman is not willing to risk criminal liability for perjury, he cannot offer controverting testimony. Instead, to obstruct this Court from granting a stay of the receivership pending appeal, Sherman despicably turns to a deceitful assault on Mr. Kline's spotless reputation.

The receivership can, and should by stayed. If desired by the Court, the Court can require that the LLCs allow the Court a 'lien' in the domain names, and require Court approval for any transfers of the names.

Baron should be allowed all the rights of a free citizen. Those rights include, for example, the right to work, engage freely in business transactions, to acquire income, to own and possess property, to hire paid

counsel, and to the protections of the U.S. Constitution such as the right to trial by jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that this document was served this day on all parties who receive notification through the Court's electronic filing system.

CERTIFIED BY: /s/ Gary N. Schepps
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