

BACKENROTH, FRANKEL & KRINSKY, LLP
800 Third Avenue, 11th Floor
New York, New York 10022
(212) 593-1100

Abraham J. Backenroth
Mark A. Frankel
Scott A. Krinsky

Telecopier No.
(212) 644-0544

June 23, 2021

VIA ECF

The Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Securities and Exchange Commission v. Platinum Management (NY) LLC, et al,
Civil Case No. 1:16-cv-06848-BMC

Dear Judge Cogan:

We are counsel to Mark A. Nordlicht in his Chapter 7 Bankruptcy which he filed on June 29, 2020 and which is pending in the United States Bankruptcy Court for the Southern District of New York under Case No. 20-22782-RDD. On December 7, 2020, the Receiver in this action commenced, in Bankruptcy Court, an Adversary Proceeding captioned *Cyganowski v. Nordlicht* under Adv. Pro. No. 20-07025-RDD (the “Adversary Proceeding”), which contained one count and objected to Mr. Nordlicht’s discharge under 11 U.S.C. § 727(a)(4)(A). Revealingly, neither the Chapter 7 Trustee nor any of Mr. Nordlicht’s many other and substantial creditors have objected to his discharge, and their time to do so has expired.

We moved to dismiss the Receiver’s Complaint which motion was heard by Bankruptcy Judge Robert D. Drain on June 14, 2021. Although Judge Drain, in a Bench Ruling, partially granted Mr. Nordlicht’s motion to dismiss in the event that the Receiver had authority to commence the Adversary Proceeding, he noted that the Receiver’s powers, including her authority to file, commence and pursue the Adversary Proceeding were constrained by the terms of this Court’s Second Amended Order Appointing Receiver dated October 16, 2017, including the leave requirements in paragraphs 24, 26 and 34 therein (the “Receivership Order”)(Dkt No. 276). Thus, Judge Drain held that the Receiver must first obtain the permission and approval of this Court for the filing, commencement and continued pursuit of the Adversary Proceeding, as per the terms of the Receivership Order. Judge Drain also stayed the Adversary Proceeding pending the Receiver’s application to this Court for such an Order.

Yesterday, June 22, 2021, the Receiver, through counsel, filed a letter with this Court (Dkt No. 569) seeking “clarification” of the Receivership Order.¹ Specifically, the Receiver requested that this Court either determine that the Receivership Order’s injunction and leave provisions are inapplicable to the Adversary Proceeding, or grant the Receiver authorization to pursue the Adversary Proceeding.

Although the Receiver’s letter requests relief from this Court, it does not state that it is a request for a mandatory pre-motion conference which is required by Your Honor’s Individual Practices (See, Rule II(B) & Rule III(A)(2)). Should the Court not treat the Receiver’s letter-motion as a request for a pre-motion conference, then we respectfully request that the Court enter a scheduling order setting forth a reasonable briefing schedule for the parties (and any other potential objectors), since we intend to object to the Receiver’s letter-motion on numerous grounds. If the Court does treat the Receiver’s letter-motion as a request for a mandatory pre-motion conference (we do not oppose a conference), then we respectfully request out of excess caution and seek to confirm that our time to respond to the Receiver’s letter-motion run five days from yesterday, or by Monday, June 28, 2021, as per Rule III(A)(2) of Your Honor’s Individual Practices.

Respectfully Submitted,

/s/ Scott Krinsky

Scott Krinsky

cc: Erik B. Weinick, Esq. (Via ECF)

¹ Contrary to the Receiver’s assertion in her letter, Judge Drain did not direct the Receiver to “seek clarification” of the Receivership Order. Rather, he directed that the Receiver move for (or otherwise obtain) this Court’s permission and approval to prosecute the Adversary Proceeding, or obtain a ruling from this Court that the stay contained in the Receivership Order is either not applicable or lifted.