

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
HONORABLE JAMES V. SELNA, JUDGE PRESIDING

CERTIFIED TRANSCRIPT

SECURITIES and EXCHANGE)	
COMMISSION,)	
)	
PLAINTIFF,)	
)	
vs.)	SACV NO. 20-02398-JVS
)	
JUSTIN ROBERT KING, et al.,)	
)	
DEFENDANTS.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

via ZOOM

SANTA ANA, CALIFORNIA

MONDAY, MARCH 15, 2021

1:27 P.M.

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1 **SANTA ANA, CALIFORNIA; MONDAY, MARCH 15, 2021; 1:27 P.M.**

2 THE COURT: Calling Calendar Item No. 1,
3 SACV 20-2398-JVS, Securities and Exchange Commission versus
4 Justin Robert King, et al.

5 Appearances on behalf of the plaintiffs, please.

6 MS. DEAN: Lynn Dean, for the Securities and
7 Exchange Commission.

8 THE COURT: Good afternoon.

9 MS. DEAN: Good afternoon, Your Honor.

01:27:59 10 MS. WANNER: Good afternoon, Your Honor.

11 You also have Kathryn Wanner, Securities and
12 Exchange Commission.

13 THE COURT: Good afternoon.

14 THE CLERK: And for the Receiver?

01:28:06 15 MS. ANDRASSY: Good afternoon, Your Honor.

16 Kyra Andrassy of Smiley Wang-Ekvall, appearing for
17 Jeff Brandlin, the Receiver, who couldn't be here today,
18 because he's testifying at an arbitration trial.

19 THE COURT: Good afternoon.

01:28:17 20 THE CLERK: And representing herself.

21 Ms. King, would you like to make an appearance?

22 MS. KING: Yes, I'm here.

23 THE CLERK: And you are Shannon King, correct?

24 MS. KING: Yes, I am.

01:28:29 25 THE CLERK: And we also have Mr. Justin King

01:28:33 1 representing himself.

2 (Court Reporter requests clarification for the
3 record.)

4 THE COURT: He's on mute, himself.

01:28:46 5 MR. KING: Sorry about that.

6 Good afternoon. I'm here, Your Honor.

7 THE COURT: Okay. We're here this afternoon on
8 the application of the Securities and Exchange Commission
9 for an order of contempt.

01:28:59 10 Let me share my thoughts with you and then I'd be
11 happy to hear you on the individual points.

12 Number 1, the standard on an application for
13 contempt is found in the Ninth Circuit case *In re: Dual Deck*
14 *Cassette Recorder Antitrust Litigation*, 10 F.3d 693, 695,
01:29:19 15 Ninth Circuit (1993).

16 In order to find contempt -- civil contempt, I
17 would have to find by clear and convincing evidence that the
18 alleged contemnors are in fact in contempt.

19 As I understand the application, there are three
01:29:36 20 principal allegations:

21 Number 1, there's the contention that Mr. King
22 made misrepresentations that, nominally at least, would
23 violate paragraphs 3(b) and 4(a) of the preliminary
24 injunction. The first of those were -- conversation with
01:30:00 25 Ms. Hazen in which he represented to her that the funds were

01:30:05 1 there to pay back all the investments.

2 The second representation is that -- it's unclear
3 exactly what it was, but the second representation is that
4 two accounts were not disclosed to the Receiver or that two
01:30:28 5 accounts were not picked up by the Receiver in his initial
6 report.

7 With regard to the second contention, I don't find
8 that there's clear and convincing evidence that Mr. King
9 made that representation and he denies making that specific
01:30:50 10 representation at Document 49, paragraph 20 of his
11 declaration.

12 With regard to the first representation, I have
13 before me the declaration of Naomi Hazen, at Docket 40-1.
14 Her declaration in Paragraph 8 states, in part:

01:31:13 15 "I asked him" -- referring to
16 Mr. King -- "about the Receiver's
17 statement in his e-mail that there was
18 only" 1.75 [sic] "million in Elevate's
19 account and asked him whether there was
01:31:26 20 enough money to pay everyone back.

21 Mr. King responded that the lawsuit was
22 a misunderstanding. He told me that he
23 had moved some money out of the Elevate
24 account into his personal account in
01:31:37 25 order to pay some investors because the

01:31:41 1 brokerage would not allow him to pay
2 investors from the Elevate account. He
3 said that he had caused the brokerage
4 firm to -- "said that had caused the
01:31:49 5 brokerage firm to alert the SEC. He
6 acknowledged that this was not
7 professional, but the investments were
8 generating returns and that there was
9 enough money to pay all of the
01:32:03 10 investors. He said the money was 'all
11 there.'"

12 I find by clear and convincing evidence that that
13 representation was made. I don't find the Harmon
14 declaration to be in material conflict with that statement.

01:32:19 15 And I would find Mr. King in violation of
16 paragraphs 2(b), 3(b) and 4(a) of the preliminary injunction
17 on that basis.

18 The second set of allegations relate to the
19 accounting that was required of each defendant. First of
01:32:39 20 all, I would note by way of backdrop that the defendants
21 were required to make that accounting within five days.
22 Given the complexity of this business and the finances of
23 the defendants, I find that that's a factor that the Court
24 needs to consider in determining whether there was in fact a
01:33:01 25 contempt here.

01:33:02 1 There are two accounts that were not disclosed:
2 Mr. King's Fidelity account which at the time had \$2,372.
3 Mr. King asserts that this was below the \$5,000 reporting
4 level in Paragraph 7 of the preliminary injunction. He is
01:33:22 5 accurate, but that does not immunize him from other
6 disclosure obligations. I would not find a contempt based
7 on the failure to disclose that account.

8 Second is, Ms. King's Schwab account which,
9 apparently, was not disclosed. I find that to be the fact
01:33:43 10 of the case, but I don't find that either nondisclosure is
11 material. Number one, both accounts were frozen as part of
12 the initial preliminary injunction. The SEC was not harmed
13 in any way by a failure to make a further specific
14 disclosure. So I would not find a contempt based on the
01:34:11 15 failure to disclose those accounts. Basically, they were
16 *de facto* disclosed through the effect of the preliminary
17 injunction which froze those accounts and then brought them
18 to the SEC attention -- attention. I find no harm resulted
19 from the delay in making a full disclosure of those
01:34:30 20 accounts.

21 The final allegation relates to Elevate's answer
22 filed in this proceeding by Elevate's counsel. Section 14
23 of the -- I think it's 14 -- of the preliminary injunction
24 barred any party from interfering with the work of the
01:34:54 25 Receiver.

01:34:56 1 Facially, at least, filing an answer on behalf of
2 Elevate interfered with the Receiver's ability to control
3 that account.

4 In the opposition, most recently filed at
01:35:13 5 Docket No. 2 [sic], the assertion is made that Mr. King did
6 not tell the Jacko law firm -- J-A-C-K-O -- to file an
7 answer.

8 The memorandum states at page 6: Justin King did
9 not instruct or otherwise ask the Jacko law firm to prepare
01:35:39 10 or file an answer on behalf of Elevate. The Jacko Law Group
11 has represented Elevate which was sued by the SEC, since
12 October 2020, so it prepared and filed an answer when due is
13 a matter of course.

14 There -- it continues: The Jacko-- the Jacko firm
01:35:59 15 did not do so at the instruction of -- Justin's instruction,
16 citing Paragraph 4 of the Trowbridge declaration.

17 The Trowbridge declaration does not directly
18 support that statement. All the Trowbridge declaration
19 says, at Paragraph 4, page 6, is that they filed that answer
01:36:20 20 in the normal course.

21 The denial by Mr. King is not supported. It's not
22 corroborated by the Trowbridge declaration. Nevertheless, I
23 don't find any evidence in the record that he caused an
24 answer to be filed on Elevate. I would not find contempt on
01:36:41 25 the basis of the fact that the Jacko firm filed an answer.

01:36:45 1 Now, it's not before me today; but clearly if the
2 Jacko law firm had notice of the preliminary injunction --
3 and presumably it would have or should have as counsel for
4 Elevate -- it may well be the case that Jacko Law Firm and
01:37:01 5 its counsel are in contempt, but that's not before the Court
6 today.

7 One way to remedy this is to cause that firm to
8 withdraw its answer and to permit the Receiver to take over
9 Elevate's position. I'll come back to that at the end of
01:37:19 10 the day in terms of the relief that should be granted.

11 Finally, one additional point: Mr. King seems to
12 be signing all these pleadings on behalf of himself and
13 Miss King. Going forward, if Miss King is going to join in
14 a pleading, she needs to sign it, too. As a non-admitted
01:37:38 15 member of the Bar, he cannot represent her.

16 So with those thoughts in mind, I'd be happy to
17 hear you, and I would like to begin with the issue of the
18 representations.

19 Miss Dean, would you like to be heard?

01:37:52 20 MS. DEAN: Yes, Your Honor.

21 With respect to the representations, obviously, we
22 accept your finding that the misrepresentations to Ms. Hazen
23 regarding the amount of money available to repay investors
24 was actually made, and we do think that that is an incident
01:38:12 25 of contempt.

01:38:14 1 On the misrepresentation with respect to the fact
2 that there were two more accounts available, I understand
3 Your Honor's position that you -- as I understand
4 Your Honor's position, you find that there is not clear and
01:38:29 5 convincing evidence of that representation, and --

6 THE COURT: No, it's a little bit more precise
7 than that.

8 MS. DEAN: Okay.

9 THE COURT: I believe some representation was
01:38:39 10 made, like was the representation that those two accounts
11 weren't in the Receiver's initial report or that the
12 representation of the Receiver had failed to pick them up
13 and that they'd somehow been concealed from the Receiver. I
14 find sufficient conflict there that there's no clear and
01:38:58 15 convincing evidence that an actionable statement that would
16 justify contempt was made.

17 MS. DEAN: Well, our position there is that if you
18 look at the Harmon declaration, there were at least two
19 investors who were convinced that there were additional
01:39:16 20 accounts the Receiver wasn't aware of, including an investor
21 who was so convinced that he was going to ask Mr. King to
22 set up a phone call with the Receiver to tell him where this
23 money was.

24 So our position is that there is evidence that
01:39:31 25 that representation was made and that the representation

01:39:33 1 that was made was that the Receiver did not know of accounts
2 that had funds that would have been available to make
3 payments to investors. So -- I mean, I think the evidence
4 is in the statements in the Harmon declaration. And I'm
01:39:50 5 looking at the Harmon declaration, specifically Paragraph 11
6 of Docket No. 37-2, Mr. Brian Bowen who said that he wanted
7 Mr. King to tell the Receiver where these other funds are so
8 that investors can be paid back and that he was going to
9 arrange -- ask Mr. King to arrange a call to do so.

01:40:19 10 THE COURT: That's interesting. But, one, in
11 terms of any knowledge or statement of behalf of Mr. King,
12 clearly, hearsay. And number two, even if taken at
13 face value, it's the investor's belief. It's not anything
14 on the part of Mr. King, so I'm simply not going to find
01:40:38 15 that statement actionable.

16 MS. DEAN: Okay. Well, I don't believe there's
17 any reason to continue flagging it, since we do agree with
18 you that the statement made to Miss Hazen was itself an
19 incident of contempt.

01:40:48 20 THE COURT: Mr. King, would you like to be heard
21 on this issue?

22 MR. KING: Hi, good morning, or -- afternoon,
23 Your Honor.

24 I just told Miss Hazen that I would do everything
01:41:01 25 I could to pay her back. And she had asked if there was

01:41:04 1 other accounts or if I had money. And I said that there was
2 two other accounts that they didn't put in the notes. It
3 was my understanding that the total in assets was a lot more
4 than what was reported, but I don't know -- I told her I
01:41:15 5 didn't know, because I don't have access to those accounts.

6 Go ahead.

7 THE COURT: Ms. King, would you like to say
8 anything on this issue?

9 MS. KING: I have nothing to say, Your Honor,
01:41:29 10 about this. I don't -- I'm not -- I didn't know this.

11 THE COURT: Okay. I'll maintain my original
12 filing -- findings.

13 Let's go to the issue of account disclosures.

14 Miss Dean.

01:41:42 15 MS. DEAN: Yes. With the account disclosures, I
16 will say that it is our position that it's more than just
17 the two accounts that Your Honor noted, which are the
18 Schwab-King accounts. And part of the reason for that is
19 the Kings filed their accounting, which is Docket No. 48,
01:42:02 20 belatedly. And in that accounting, they actually list
21 additional accounts, including a Wells Fargo account and
22 what looked like some additional credit card accounts that
23 we were unaware of, up until the point that they filed
24 Docket No. 48.

01:42:23 25 So, you know, with that clarification, we're

01:42:25 1 prepared to accept Your Honor's ruling on that. But just so
2 the record is clear, there are more than just the two Schwab
3 accounts, and we only became aware of them when they filed
4 Docket No. 48.

01:42:38 5 THE COURT: But the SEC was not harmed or
6 privileged with respect to Fidelity and Ms. King's Schwab
7 account, because they had already been frozen, correct?

8 MS. DEAN: The Fidelity account and the Schwab
9 account were frozen. I am not certain that the Wells Fargo
01:42:53 10 account was frozen. I need to follow up with the paralegal
11 on that one. We did not --

12 *(Court Reporter requests clarification for the*
13 *record.)*

14 MS. DEAN: Sure. We did not -- we did not
01:43:23 15 initially serve Wells Fargo with the copy of the asset
16 freeze order. I know that as we have gone through bank
17 records that we have obtained and have learned about
18 additional accounts. We have sent out some additional asset
19 freeze notifications, and I believe the Receiver has as
01:43:40 20 well. But whether that particular Wells Fargo investment
21 account was frozen, I need to follow up. It's a de minimis
22 amount of money, Your Honor. I will acknowledge that. And
23 on that basis, I'm not -- I'm not really arguing with your
24 finding here. I just wanted to point out that there are
01:44:00 25 some accounts that we only became aware of after they filed

01:44:05 1 their belated accounting.

2 THE COURT: Wells Fargo is not one of the accounts
3 listed in the preliminary injunction.

4 MS. DEAN: It is not.

01:44:12 5 THE COURT: Right. Correct. That's what I'm
6 saying.

7 Okay. Mr. King, would you like to be heard on
8 this issue?

9 MR. KING: Yes, Your Honor.

01:44:18 10 The Wells Fargo account was opened in 2019, and it
11 was only opened for one month. It's been closed for well
12 over a year and never contained any assets at all in it. I
13 only disclosed it to show my full cooperation that it was an
14 account in the name of Elevate for about a month. I wanted
01:44:35 15 to disclose that as well as the credit cards. I mean, it's
16 my understanding, Your Honor, that the credit card accounts
17 are not assets, but I decided to include them in all of
18 this, just to show my full cooperation with the Court.

19 THE COURT: Ms. King, would you like to be heard
01:44:51 20 on this issue?

21 MS. KING: Yeah, Your Honor.

22 So the day that this happened, we all started
23 getting COVID symptoms. And then five days later, my mom
24 ended up in the ICU and six days later she passed away. So
01:45:07 25 it wasn't that we were deliberately trying to be, you know,

01:45:12 1 difficult through this, but it was a very difficult time
2 that we were going through, too. So --

3 THE COURT: I hold to my additional -- earlier
4 finding that there is no basis for contempt with respect to
01:45:28 5 these allegations.

6 Let's move on to the answer on behalf of Elevate.

7 Miss Dean.

8 MS. DEAN: Well, I understand Your Honor's
9 position that, you know, it may be that the law firm itself
01:45:44 10 is the party that's in contempt here. But we would simply
11 argue that the law firm is under the control of its client.
12 And although Mr. King says he did not instruct them to file
13 the answer, the evidence is that once the answer was filed,
14 the Receiver's counsel requested that Mr. Trowbridge
01:46:07 15 withdraw the answer, because she did not have the capacity
16 to make it. There is no evidence. There's no declaration.
17 There's nothing from Mr. King saying, *Once I realized there*
18 *was a mistake here, I instructed my lawyer to withdraw this*
19 *answer.* He just makes the argument that somehow the
01:46:24 20 Receiver should somehow be able to withdraw it.

21 As Your Honor knows, one law firm cannot, you
22 know, withdraw filings that are made by ECF by another firm.
23 The simplest thing to do here would be to have Mr. King
24 simply instruct his attorney to withdraw the filing. He's
01:46:44 25 never put in any declaration saying that he's done so, even

01:46:47 1 though he's been on notice since the day we filed the OSC re
2 Contempt, that this was an issue. He just keeps insisting,
3 Well, it's not my fault which is, by the way, his argument
4 for a lot of things.

01:46:57 5 So our position is, he has control over this law
6 firm. He was the one paying them. I mean, they didn't
7 do -- they didn't file this answer out of the goodness of
8 their heart. And he is the person who's in a position to
9 cure the problem.

01:47:12 10 THE COURT: Okay. Mr. King.

11 MR. KING: Yes, Your Honor.

12 I never instructed the Jacko law firm to file it.
13 I don't know that I have the ability to withdraw it. My
14 attorney asked the Jacko law firm to withdraw the answer,
01:47:28 15 and they said they couldn't because, I think, the Receiver
16 is over Elevate now. So they weren't -- they didn't have
17 the ability, as far as I know, to withdraw.

18 THE COURT: But the Receiver is not counsel of
19 record for Elevate. True? It's the Jacko law firm.

01:47:45 20 That's your attorney, correct?

21 MR. KING: Yeah, that was my attorney. Up until
22 the TRO, as far as I know.

23 THE COURT: Well, they're still your attorneys, as
24 far as I can see. Your failure to instruct them to withdraw
01:47:59 25 the answer would constitute interference with the Receiver.

01:48:06 1 MR. KING: It was my understanding that the
2 Receiver insisted that they withdraw from representation,
3 and so they could no longer act on my behalf --

4 THE COURT: Sir --

01:48:14 5 MR. KING: -- but I'm happy to --

6 THE COURT: Sir, they haven't withdrawn from
7 representation.

8 Let me hear from Miss King, first.

9 Miss King, would you like to say anything on this
01:48:22 10 issue?

11 MS. KING: I don't have anything to say,
12 Your Honor. I don't -- we don't know what we're doing.
13 Clearly, we're pro se, because we have no funds. So how
14 would we know to tell Jacko to file an answer on something
01:48:32 15 we have no business being in? I don't know.

16 THE COURT: They're still your lawyers.
17 Presumably, you'd have control over your lawyers as to what
18 to do and not do on your behalf.

19 I direct within five days you cause the Jacko law
01:48:44 20 firm to withdraw its answer. That's the relief I'm granting
21 on this issue.

22 MR. KING: Okay. Thank you.

23 THE COURT: Okay. I want us to circle back to
24 what other relief I thought to grant.

01:49:00 25 I have found one -- found Mr. King to be in

01:49:03 1 contempt with respect to one item.

2 Let's discuss relief, Miss Dean.

3 MS. DEAN: Yes, Your Honor.

4 I've actually noodled around with this quite a
01:49:16 5 bit. I mean, one possible remedy would be a clarifying
6 disclosure.

7 Now, the filings in response to this motion are in
8 some way clarifying, because Mr. King has filed declarations
9 in which he says he now acknowledges that there were losses
01:49:34 10 in the accounts and he acknowledges that -- you know, he
11 claims not to have made the statements; but at the same time
12 he says, I had no way of knowing and I was telling investors
13 I'm sorry they lost money, which is at least a tacit
14 acknowledgement, but there's not enough money in the
01:49:51 15 accounts.

16 So, you know, we would -- our obvious preference
17 would be to have Mr. King file some sort of a declaration in
18 which he -- without -- I mean, obviously, there's a number
19 of issues here. I'm not asking him to, you know -- and
01:50:06 20 liability issues in this civil case as well. I'm not asking
21 him to acknowledge wrongdoing, but if there could be some
22 clarification where he says, *Look, there isn't in fact*
23 *enough money in these accounts to make people whole*, without
24 getting into the why that might be.

01:50:23 25 THE COURT: I would have severe concerns about his

01:50:25 1 Fifth Amendment liability for making that statement. I'm
2 not going to order that.

3 MS. DEAN: The other possibility that I considered
4 is just having the Receiver post the declaration he has
01:50:38 5 already filed or all of the moving papers with respect to
6 this OSC on the Receiver's website with an e-mail
7 notification to investors that, *Hey, you know, these are the*
8 *filings that were made in connection with this motion and*
9 *here are Mr. King's declarations* without any substantive
01:50:56 10 commentary, but just directing investors to those
11 declarations.

12 THE COURT: Okay. Mr. King.

13 MR. KING: Yes, Your Honor.

14 I mean, on the advice of counsel since all this
01:51:09 15 started, I have not had any conversations with any
16 investors, whatsoever.

17 I'm happy to do whatever the Court wishes.

18 THE COURT: Well, I think the SEC and the Receiver
19 have within their own capability the ability to post all
01:51:27 20 those pleadings on the Receiver's website.

21 So I'm going to order that that be done within
22 10 days. Also, should be posted is the transcript of this
23 hearing and the minute order of this hearing.

24 MS. DEAN: That is acceptable to us, as long as
01:51:51 25 your reporter thinks that they can turn the transcript

01:51:53 1 within 10 days.

2 THE COURT: Ms. Parker?

3 THE COURT REPORTER: Yes.

4 MS. DEAN: Okay. We'll go ahead and put in an

01:52:07 5 order for it this afternoon then. And as soon as we get it,
6 we'll let the Receiver have it.

7 THE COURT: Okay. I further order that you file
8 these documents as available and not wait for all of them
9 before you make -- you and the Receiver make the first
01:52:22 10 posting.

11 MS. ANDRASSY: I can have all the pleadings that
12 were filed posted this afternoon.

13 THE COURT: Okay. Is there anything else that we
14 should take up this afternoon?

01:52:36 15 MS. DEAN: I do not believe so, Your Honor.

16 THE COURT: Mr. King?

17 MR. KING: I don't have anything else, Your Honor.
18 I'm just -- I know -- with respect to the Receiver and the
19 website, I know that they had sent that e-mail out to my
01:52:53 20 entire contact list, not just the investors. I don't know
21 who has access to the website. But, you know, some of the
22 things I don't want to go to 150 different people that have
23 nothing to do with this, but --

24 THE COURT: Well, I'm going to let the Receiver
01:53:11 25 use his discretion as to how he discloses that. You know,

01:53:15 1 as a practical matter, all those pleadings are in the
2 docket. All you have to do is get on ECF, and you can look
3 at everything we've discussed.

01:53:26 4 MR. KING: Okay. Thank you, Your Honor. I have
5 nothing further.

6 THE COURT: Okay. Ms. King.

7 MS. KING: Your Honor, I just would like to
8 address, perhaps, my Schwab account or access to funds to
9 provide for my children.

01:53:40 10 THE COURT: You need to make a separate
11 application. That really isn't before me. So I invite you,
12 if you want to have some change in the status of the Schwab
13 account, make an application to the Court.

14 MS. KING: Okay. Thank you.

01:53:53 15 THE COURT: This is complicated territory, and I
16 think you would both be well served by being represented by
17 counsel.

18 MS. DEAN: Well, they have counsel who's present
19 on the call, Your Honor.

01:54:08 20 THE COURT: Well, he's not counsel of record. And
21 whether he's advising informally or not is not a concern of
22 mine. But I would strongly suggest that it would be helpful
23 to you to have counsel in one form or another.

24 MS. KING: It's difficult to have access to
01:54:25 25 counsel with no funds, but I appreciate that.

01:54:28 1 THE COURT: Okay. Well, thank you very much,
2 everyone.

3 I think that concludes this hearing.

4 MS. DEAN: Thank you very much, Your Honor.

01:54:38 5 THE COURT: Bye-bye.

6 MR. KING: Thank you, Your Honor.

7 *(At 1:54 p.m., proceedings were adjourned.)*

8
9 -oOo-

01:54:39 10
11 CERTIFICATE

12 I hereby certify that pursuant to Section 753,
13 Title 28, United States Code, the foregoing is a true and
14 correct transcript of the stenographically reported
01:54:39 15 proceedings held in the above-entitled matter and that the
16 transcript page format is in conformance with the
17 regulations of the Judicial Conference of the United States.

18
19 Date: March 16, 2021

01:54:39 20
21
22 /s/DEBORAH D. PARKER
23 DEBORAH D. PARKER, OFFICIAL REPORTER
24
25