

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

-----X

THE PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF THE STATE
OF NEW YORK,

Plaintiff,

INDEX NO. 452378/2019

MOTION DATE 12/05/2019

MOTION SEQ. NO. 001

- v -

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC,
NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC AND
ACP X, LP,

Defendants,

**DECISION + ORDER ON
MOTION**

-and-

NYPPEX, LLC, LGA CONSULTANTS, LLC,
INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY
OPPORTUNITY PARTNERS, LP, and INSTITUTIONAL
TECHNOLOGY VENTURES, LLC.

Relief Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 43, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 82, 83, 84, 85, 86, 87, 88

were read on this motion to/for

PRELIMINARY INJUNCTION/TEMPORARY
RESTRAINING ORDER

HON. BARRY R. OSTRAGER

By Order to Show Cause entered December 9, 2019, filed contemporaneously with the Complaint in this action, the Office of the Attorney General requested, among other things, a preliminary injunction enjoining Laurence G. Allen and the various entities he controls from accessing the remaining assets of ACP Partners X, LLC (“ACP”), a limited partnership Mr. Allen created in 2004 and of which he is the General Partner. The Complaint, alleging violations of the Martin Act (General Business Law § 352) and Executive Law § 63(12), was filed after a

multi-year investigation by the Office of the Attorney General (Index No. 452346/18) during which time temporary restraints were in place pursuant to General Business Law § 354. The Office of the Attorney General has also requested in this motion the appointment of a temporary receiver to distribute the remaining assets of the limited partnership.

The Court held hearings on January 27, 29, 30, 31, and February 3 at which Mr. Allen was extensively examined and cross-examined. Another 10 witnesses testified, including six limited partners of ACP, each of whom testified that they were deceived and/or defrauded by Mr. Allen. For the reasons which follow, the Court finds that the Office of the Attorney General has established a likelihood of success on the claims asserted in the Complaint, and that the balance of the equities tips decidedly in favor of the Office of the Attorney General. Specifically, the Court finds that if the requested injunction is not ordered, Mr. Allen will remain in control of the assets of ACP, and the wind-down of the fund will likely proceed in a manner that furthers Allen's self-interest to the detriment of the Limited Partners. Since the Court finds there is a likelihood that the Office of the Attorney General will establish its entitlement to the relief it seeks, including money damages, the Court declines to appoint a receiver at this time. The Court has scheduled a plenary trial on the merits for June 2, 2020.

The evidence adduced at the preliminary injunction hearing revealed a shocking level of self-dealing, breaches of fiduciary duty, misappropriation of enormous sums of ACP capital, and outright fraud. ACP was established in 2004 pursuant to a Private Placement Memorandum ("PPM"), a Limited Partnership Agreement, and a Subscription Agreement. The ACP Partners limited partnership was capitalized with approximately \$17 million and was established for the purpose of acquiring a diversified portfolio of distressed private equity limited partnership interests.

The Limited Partnership Agreement contains a relatively standard distribution waterfall that provides that the General Partner, while vested with substantial investment discretion, cannot receive any “carried interest” payments until the limited partners have received the return of their entire capital plus an 8% annual preferred interest return. The Limited Partnership Agreement expands the discretion of the General Partner from the description in the PPM but retains significant restrictions on the General Partner’s ability to earn carried interest. It is undisputed that to the extent the PPM conflicts with the Limited Partnership Agreement, the terms of the Limited Partnership Agreement controls.

Among the most significant features of both the PPM and the Limited Partnership Agreement was the disclosure that NYPPEX, LLC (“NYPPEX”), a broker dealer controlled by Allen that specializes in matching buyers and sellers of private equity interests in the secondary market, would be paid for broker dealer services it provided for the ACP partners. Other than such payments, ACP had no obligation to pay any administrative or overhead expenses. NYPPEX was, in turn, owned by NYPPEX Holdings, LLC (“NYPPEX Holdings”), another entity controlled by Mr. Allen.

NYPPEX and NYPPEX Holdings have common officers and employees and they have generally had approximately 15 employees. One of those employees, Robert Zimmer, the Treasurer from 2012 to 2017, testified that every certification that he and Mr. Allen signed from 2013 until 2017, including certifications relating to the value of NYPPEX, was “a lie”. Mr. Zimmer also identified emails from auditors and attorneys challenging the manner in which Mr. Allen was proposing to manage ACP and NYPPEX. It was clear from Mr. Zimmer’s testimony, which the Court credits, that every decision affecting ACP and NYPPEX was done at the express

direction of Mr. Allen, including the decision by Mr. Allen to add ACP to ACP Investment Group and merge ACP Investment Group with NYPPEX.

ACP never returned the entirety of the original investments of any of the 75 limited partners of ACP. And the evidence established that neither NYPPEX nor NYPPEX Holdings ever earned a profit except, perhaps, during one year when these entities generated a marginal profit. During the period between the fourth quarter of 2008 and the fourth quarter of 2016, Mr. Allen invested \$5 million of ACP cash in NYPPEX Holdings. Subsequent to 2016, Mr. Allen caused ACP to provide NYPPEX Holdings with an additional \$1 million credit line, all of which was drawn down before an Ex Parte Order preserving the status quo was signed by Justice Lori S. Sattler on December 20, 2018 (Index No. 452346/18, NYSCEF Doc. No. 18). During the period 2008 to 2018 Mr. Allen's total compensation from NYPPEX Holdings exceeded \$6 million.

Mr. Allen has offered the fanciful explanation of the suspicious circumstances described in the preceding paragraphs by testifying that ACP's investment in NYPPEX Holdings will produce windfall profits for the ACP limited partners because the value of NYPPEX Holdings exceeds \$100 million. The Court does not credit any of this testimony and finds that ACP was essentially utilized as a piggy bank to fund a failing broker-dealer, its failing parent, and Mr. Allen. Mr. Zimmer apparently made "whistleblower" complaints about the administration of ACP and NYPPEX to the Securities and Exchange Commission and FINRA, but no action was taken with respect to these complaints.

But, there is more. In 2013, 2014, and 2015, with ACP limited partners wondering where their return on investment was, Mr. Allen secured passage of Amendments 3, 4, and 5 to the Limited Partnership Agreement. The solicitations for amendments 3, 4 and 5 included a

provision falsely stating that the General Partner was entitled to 100% of his carried interest and further offering those voting in favor of the amendments immediate payment of a portion of their investments at a discounted rate, while reaffirming the General Partner's right to claim carried interest. These amendments were approved. Subsequent amendments to the Limited Partnership Agreement purported to have ACP indemnify Mr. Allen and limit legal action by the limited partners against Mr. Allen. There was no basis for the assertion that the General Partner was entitled to receive carried interest without amendments 3, 4 and 5, and after these amendments passed Mr. Allen distributed to himself (and, perhaps, others) a total of \$3,404,466.87 in carried interest.

In addition, another entity controlled by Mr. Allen, LGA Consultants, LLC, received substantial investment advisory fees from ACP. And, for reasons that cannot be explained, ACP also paid investment and advisory fees. The evidence adduced at the hearing also established that shares of public companies owned by ACP were liquidated prior to the existing injunction in this case and at least a portion of the proceeds were diverted to entities controlled by Mr. Allen.

In short, the Court cannot allow Mr. Allen or any of the companies he controls to make any decisions with respect to the remaining and very modest assets of ACP.

Accordingly, Plaintiff is granted a preliminary injunction pursuant to CPLR §§ 6301, 6311-6312 enjoining Defendants and Relief Defendants, together with their employees, representatives, agents and all others acting under their direction or authority, from directly or indirectly:

1. Taking any action pursuant to the Seventh Amendment to the Amended and Restated Agreement of the Limited Partnership Agreement of ACP X, LP;
2. Making distributions from ACP X, LP, except to limited partners of ACP X, LP on a pro-rata basis to their limited partnership interest in ACP X, LP, which distributions must first be approved by the Court;

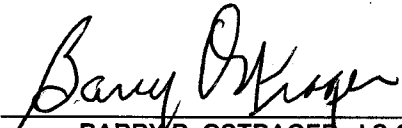
- 3. Making any investments, extending any loans or lines of credit or entering into any agreements on behalf of ACP X, LP to or with Laurence G. Allen, NYPPEX Holdings, LLC, ACP Partners X, LLC, or any other entity in which Allen directly or indirectly exercises control or has an ownership interest;
- 4. Facilitating, allowing or participating in the purchase, sale or transfer of any limited partnership interest in ACP X, LP;
- 5. Making any payments or distributions from ACP X, LP, ACP Investment Group, LLC or ACP Partners X, LLC, to Defendants, Relief Defendants, Tyler Allen, Michelle Allen, and/or LGA Investments Family Limited Partnership;
- 6. Withdrawing, converting, transferring, selling or otherwise disposing of funds and assets held by ACP Investment Group, LLC, ACP X, LP, and ACP Partners X, LLC, wherever they may be situated, for purposes other than that provided for in Paragraph 2, *supra*;
- 7. Violating Article 23-A of the GBL, and from engaging in fraudulent, deceptive and illegal acts, and further employing any device, scheme or artifice to defraud or to obtain money or property by means of false pretense, representation or promise.

The application to appoint a receiver pursuant to General Business Law § 353-a is denied without prejudice to renewal at the trial.

Pursuant to the parties' stipulation (NYSCEF Doc. No. 40), defendants will answer within 30 days from the issuance of this decision. The parties shall appear for a Preliminary Conference on March 31, 2020 at 10:00 a.m.

The Court will provide a copy of this opinion to appropriate enforcement agencies.

2/4/2020
DATE


BARRY R. OSTRAGER, J.S.C.
BARRY R. OSTRAGER
JSC

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE