UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. SEYED TAHER KAMELI, CHICAGOLAND FOREIGN INVESTMENT GROUP, LLC, and AMERICAN ENTERPRISE PIONEERS, INC., Defendants, and AURORA MEMORY CARE, LLC, et al., Relief Defendants.	Case No.: 1:17-cv-4686 Judge Joan Gottschall

MEMORANDUM IN SUPPORT OF DEFENDANT'S PROPOSED ORDER TO PRESERVE THE STATUS QUO

Introduction

The purpose of a temporary restraining order is to preserve the status quo. The order proposed by the Securities and Exchange Commission ("SEC" or "Commission") neglects this purpose and instead penalizes the Defendants through its sweeping breadth and rampant vagueness. An order restricting conduct must be specific and should be reasonably tailored to avoid a particular consequence. Lack of specificity invites uncertainty both in compliance and enforcement. Accordingly, both the United States Supreme Court and the Seventh Circuit Court of Appeals have continually held that injunctions directing a party to "obey the law" are unenforceable. Flying in the face of this general rule, the SEC

has continually requested that the Defendants be restrained from violating sections of the Securities Exchange Act. This Court should not honor that request.

However, not only are such provisions unenforceable, but, given the unique circumstances of this case, they are also unnecessary. The SEC has been investigating the Defendants for approximately three years, and, in that time, the Defendants have cooperated with the agency's inquiries by turning over documents and other requested information. Furthermore, the Defendants have shown their ability to self-regulate by agreeing to the entry of an order, for which they believe the SEC has not satisfied its burden, freezing investor assets and preserving relevant documents. In fact, the Defendants are already complying with such provisions, refraining from moving the assets at issue and providing the SEC with evidence thereof on a regular basis. Accordingly, the Defendants have continually demonstrated that the likelihood of them committing future violations of the Securities Exchange Act is nil and that a temporary restraining order is unwarranted.

For these reasons, which are further explained below, the Defendants believe that this Court should deny the SEC's request and instead enter their proposed order.

Procedural History

SEC served a subpoena to Defendants over 30 months ago. Defendants cooperated with SEC by providing over one million pages of documents. On June 22, 2017, the Securities Exchange Commission ("SEC" or "Commission") filed a complaint against Seyed Taher Kameli ("Kameli"), Chicagoland Foreign Investment Group, LLC ("CFIG"), and American Enterprise Pioneers, INC. ("AEP"), alleging that Mr. Kameli violated provisions of the Securities Exchange Act of 1934 in connection with the EB-5 Immigrant Investment Program. (Doc. No. 1.) Simultaneously, the SEC also filed an ex parte motion for a

temporary restraining order requesting that Defendants be enjoined, "to prevent dissipation of investor assets…" (Pl.'s Mot. for TRO, Doc. No. 6.) On June 28, 2017, after hearing oral arguments, this Court directed the parties to submit an agreed order by July 5, 2017 to preserve the status quo until the preliminary injunction hearing scheduled for August 1, 2017. (Minute Entry, Doc. No. 24.) On July 5, 2017, the SEC filed a motion for extension of time to file a proposed order, (Pl.'s Mot. for Extension, Doc. No. 25,) which the Court granted, (Minute Entry, Doc. No. 27.)

On July 12, 2017, a scheduling conflict with the Court caused the hearing to be stricken and set for July 14, 2017, (Minute Entry, Doc. Nos. 28, 29,) which was subsequently reset for July 20, 2017 at the request of the parties. (*See* Minute Entry, Doc. No. 30.) At that time, the Court again directed the parties to submit a proposed agreed order by July 18, 2017 to preserve the status quo.

As of July 18, 2017, despite mutual concessions, the parties have failed to produce an agreed proposed order.

Arguments

Rule 65(b) of the Federal Rules of Civil Procedure grants this Court the power to issue temporary restraining orders ("TRO"). Fed. R. Civ. Pro. R. 65(b). A TRO is an extraordinary legal remedy that should be restricted to serving its underlying purpose of "preserving the status quo and preventing irreparable harm just as long as is necessary to hold a hearing, and no longer." *E.g. Granny Goose Foods v. Bd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974). To serve this purpose, a TRO must provide the following: (1) the reasons why it was issued; (2) the terms; and (3) a detailed description of the acts being restrained. *See* Fed. R. Civ. Pro. R. 65(d).

The specificity requirement of Rule 65(d) is more than a mere technical requirement; indeed, the "command of specificity is a reflection of the seriousness of the consequences which may flow from a violation of an injunctive order." *Payne v. Travenol Labs., Inc.*, 565 F.2d 895, 897-98 (5th Cir. 1978) (citing *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424, 438-39 (1976)). Accordingly, injunctions instructing a party to "obey the law" are unenforceable. *NLRB v. Express Publ'g Co.*, 312 U.S. 426, 432-40 (1941); *Swift & Co. v. United States*, 196 U.S. 375, 396 (1905); *EEOC v. Autozone, Inc.*, 707 F.3d 824, 841 (7th Cir. 2013).

An injunction that does no more than order a party to obey the law is impermissibly overbroad and vague. *See Autozone, Inc.*, 707 F.3d at 841-42. An overbroad "obey the law" injunction departs from the traditional equitable principle that injunctions should prohibit no more than the established violation or conduct reasonably related thereto. *Id*. Similarly, an "obey the law" injunction that is too vague departs from those same principles in that it neglects to describe in reasonable detail the acts being restrained. *Id*. As a whole, these injunctions fail to provide defendants with adequate notice of the conduct that is prohibited and make disputes about potential violations difficult to resolve. *Wolf v. Walker*, 26 F. Supp. 3d 886, 871 (W.D. Wis. 2014).

For instance, in *NRDC v. Metro, Water Reclamation Dist. of Greater Chi.*, this Court denied the NRDC's request for injunctive relief on vagueness grounds because it merely directed the defendant to stop violating the Clean Water Act. 175 F. Supp. 3d 1041, 1062 (N.D. Ill. 2016). In denying the NRDC's request, this Court declined the responsibility of determining which of the defendant's future acts violated the statute. *Id*. (not the Court's task to assign a permissible level of phosphorus above which defendant is liable). Likewise, in *Quad Cities Waterkeeper, Inc. v. Ballegeer*, the Central District of Illinois denied

injunctive relief because the request to "obey the law" was both redundant and wildly overbroad in scope. There, the plaintiff's request that Ballegeer not violate the Clean Water Act was not narrowly tailored to the facts of the case and therefore incorrectly encompassed persons and conduct outside its scope. *Id*.

Like the aforementioned plaintiffs, the SEC has continually proposed an unenforceable obey-the-law injunction against the Defendants. Sections I and II of the Commission's proposed order are verbatim recitations of 17 C.F.R. § 240.10b-5 and 15 U.S.C. § 77q(a), respectively, and simply direct the Defendants to refrain from violating the Securities Exchange Act. As held by the courts cited above, these sections are overbroad and vague – prohibiting more than necessary and not specifying what conduct is even prohibited. Indeed, the Commission's lack of specificity would charge the Defendants with refraining from conduct wholly unrelated to the causes asserted against them, including conduct later negated by an affirmative defense. Such unwieldy prohibitions are also particularly troubling, as is the case here, when the body of law defining the proscribed conduct continues to evolve and grow, encompassing more and different circumstances with each new adjudication. Accordingly, the Defendants would be left in the precarious position of divining whether they will be held in contempt every time the phone rings or an employee engages a prospective client. Neither due process nor this Court should tolerate such uncertainty given the interests at stake.

Section III of the SEC's proposed order similarly falters because it lacks the requisite specificity to prevent uncertainty and reasonably inform the Defendants of the prohibited conduct. For example, the Commission requests that the Defendants be enjoined from engaging in activities for purposes of inducing or attempting to induce the purchase of an EB-5 investment. Does this provision prohibit the Defendants from discussing the EB-5 program altogether? Does it prohibit them from informing clients of EB-5 projects run by

other entities? Does it prohibit them from producing educational videos on the program? Does it prohibit information already available that is obtained hereafter? Does it prohibit them from advising other entities on managing their EB-5 projects? All of these questions are left unanswered by the SEC's proposed order and leave the Defendants in grave insecurity. If the SEC cannot be more specific about what it wants the Defendants to refrain from doing, then how can the Defendants be expected to determine for themselves what is prohibited? The answer to that question is that they cannot.

In the same vein, Section III of the SEC's proposed order is also not warranted because the Commission has failed to demonstrate that there is some reasonable likelihood that the Defendants will violate the federal securities laws in the future. *See United States v. Kaun*, 827 F.2d 1144, 1148 (7th Cir. 1987); *SEC v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982); *see also CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979). In evaluating the reasonable likelihood of future violations, the court must look at the totality of the circumstances surrounding the alleged violations. *SEC v. Suter*, 732 F.2d 1294, 1301 (7th Cir. 1984). In doing so, the court should consider the following factors: (1) the gravity of the harm; (2) the extent of defendant's participation; (3) defendant's degree of scienter; (4) the isolated or recurrent nature of the infraction; (5) the likelihood that defendant's customary business activities might again involve him in such transactions; (6) the defendant's recognition of his own culpability; and (7) the sincerity of defendant's assurances against future violations. *Kaun*, 827 F.2d at 1149-50; *Suter*, 732 F.2d at 1301.

Here, the SEC acknowledges that Mr. Kameli is no longer offering investments in EB-5 projects subject to this litigation. SEC's Mot. for TRO, ¶ 5. Despite this concession, Section III of the Proposed Order requests that Mr. Kameli be enjoined from participating in the offer or sale of any security that constitutes an investment in the EB-5 program. If Section III only governs EB-5 projects managed by Mr. Kameli, then it serves no legitimate

purpose as he has already stopped (and in fact ceased several years ago). However, if Section III governs EB-5 projects managed by persons other than Mr. Kameli, then the SEC's request is overly broad, is unsupported by the totality of the circumstances, and in fact blatantly seeks to enjoin lawful conduct.

First, assuming *arguendo* that the Proposed Order would bar participation in the sale of a security not managed by Mr. Kameli, the SEC has failed to show how participation in such a scheme would violate the Securities Exchange Act. The SEC's Motion for TRO alleges that the Defendants defrauded investors who have invested money in businesses under Mr. Kameli's control. (SEC's Mot. for TRO,¶ 1.) Restricting Mr. Kameli, a licensed attorney practicing immigration law, from assisting current and future clients in investing inEB-5 programs managed and owned by others not only exceeds the scope of the complaint in its entirety, but would also obliterate his legal practice. According to the United States Citizenship and Immigration Service, over eighty percent (80%) of all EB-5 applications are filed through securities offering. If Mr. Kameli can no longer offer these programs to his practice's clients, then he can no longer fulfill his obligation as their attorney and would be forced to withdraw as their counsel. Such a draconian result would not serve to preserve the status quo and would instead only serve to penalize Mr. Kameli for lawful conduct.

Second, the SEC has failed to show that future violations are likely based on the totality of the circumstances. As discussed above, Mr. Kameli no longer offers investments in the projects he is accused of mismanaging. Thus, any purported violation of the Securities Exchange Act would have already occurred and any future violation prevented by this change in circumstance. Significantly, the Defendants have already shown their ability to self-regulate by agreeing to an asset freeze and a prohibition against record destruction. In fact, Mr. Kameli is already in compliance with these proposed provisions, refraining from moving the assets at issue and providing the SEC with evidence thereof on a regular basis.

The Defendants have further eliminated the possibility of future violation by cooperating with the SEC throughout its years of investigation by providing information as requested. In addition, Mr. Kameli has no intention to offer any investments in an EB-5 project managed by himself or anyone in his employ. Accordingly, the likelihood that the Defendants will violate the Securities Exchange Act in the future is nil, and an order restraining them from doing so would be as unnecessary as it is unwarranted.

Third, conduct-based bars do not fall within the statutes giving the SEC the general authority to issue injunctions prohibiting securities violations. Those statutes authorize injunctions when "any person is engaged or about to engage in acts or practices constituting violations of [the securities laws of the United States]." 15 USC Sec 78u(d)(1); see also 15 USC Sec 77t(b). However, by its very nature, the conduct-based bar that the SEC now proposes seeks to enjoin conduct that is not itself a violation of the securities laws. There has been no allegation that Mr. Kameli or Defendants have committed any securities violations outside of the named relief-defendants, despite the SEC's three years of investigation and Defendants' ongoing cooperation and provision of a million-plus pages of documentation and banking records. Thus, not only does the SEC lack authority to issue such an injunction, but there is absolutely no factual basis that would support the SEC's request to enjoin such lawful conduct, even should the SEC possess such authority. Further, it seeks to enjoin many more entities than merely the named Defendants in this case without affording any opportunity of due process or even notification to such other entities, including "agents, servants, employees, attorneys, and those persons in active concert or participation with them", including "directly or indirectly" participating in any manner in relation to an EB-5 investment. See SEC's proposed order. Thus, the SEC's proposed order in this regard is both ultra-vires and not supported by any factual basis.

Conclusion

For all of these reasons, the Defendants respectfully request that this Court convert the SEC's Motion for a Temporary Restraining Order into a Preliminary Injunction Motion and instead enter the Defendants' Proposed Order to Preserve the Status Quo. The Defendants' Proposed Order cures the aforementioned defects while also preserving the status quo until the preliminary injunction hearing through an asset freeze and a prohibition on the destruction of records.

Dated: July 18, 2017

Respectfully submitted,

/s/ J. Nicolas Albukerk

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