

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

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U.S. IMMIGRATION FUND LLC, et al.,

Petitioners,

Index # 159222/2018

-against-

DOUGLAS LITOWITZ, ESQ, et al.,

Respondents.

**MOTION TO STRIKE THE COMPLAINT AND IMPOSE SANCTIONS  
UNDER NYCRR 130-1.1**

Respondent Douglas Litowitz (“Litowitz”) has specially appeared solely to contest personal jurisdiction, and by this motion he also asks this honorable court to impose sanctions on Plaintiff’s counsel. The Complaint is designed solely to harass, annoy, and humiliate the Respondents by airing all their dirty laundry in public – having nothing whatsoever to do with the allegations of the Complaint, which are threadbare, scandalous, and preposterously deficient. Plaintiffs’ counsel is abusing the legal process and using this Court solely as a platform to humiliate the Respondents.

**Background Facts**

Litowitz is an Illinois lawyer who represents Chinese investors trying to get their money out of so-called “EB-5 funds.” He works with an Illinois woman named Zoe Ma who is a former real estate developer and also an advocate for EB-5

investors. Both Litowitz and Ma initially worked on promoting EB-5 transactions to Chinese investors but soon they both saw the underside of the industry and became advocates against it. Litowitz is of the opinion – and he has published articles to this effect - that the entire EB-5 industry is steeped in fraud and systemic violations of the federal and state securities laws. This is not an esoteric opinion, but is shared by many U.S. Senators and Representatives, who are trying to shut down the program (it was temporarily continued until December of 2018). Litowitz and Ma work in conjunction with federal and state agencies on both the civil and criminal side, including the SEC and other agencies that Litowitz cannot reveal here but is pleased to reveal to the Court in a private setting. Litowitz is pleased to provide this Court with contact information for agents from several federal and state agencies who can explain that they work with Litowitz and Ma on fighting fraud and securities violations in the EB-5 industry. These agents will be happy to speak confidentially with the Judge about Petitioner USIF and its affiliates.

Litowitz has made no secret that he believes that USIF has engaged in the issuance of unregistered securities, that it has failed to register as an investment adviser, failed to register as a broker-dealer, failed to register as an investment company, and failed to tell Chinese investors the truth about its CEO Mr. Mastroianni: namely that he was arrested for felony drug possession four times, that he filed bankruptcy, that his companies defaulted in lawsuits and refused to pay, that he was fined by the Department of Labor, that workers died on his worksites, and that he left a trail of lawsuits, default judgments, and failed projects. See Peter

Elkind and Marty Jones, "The Tangled Past of the Hottest Money Raiser in America's Visa for Sale Program," *Fortune Magazine*, October 14, 2014 (copy attached).

And it didn't bode well that Mr. Mastroianni's business lawyer was Michael Cohen, who pleaded guilty to federal crimes. See Bernard Condon, "Immigration Firm Seems to Thrive After Trump Lawyer's Help," *USA Today* (June 11, 2018).

Litowitz believes that if the Chinese had been told about Mastroianni's past, they would not have invested with him, which means that it was a material fact withheld from them, constituting securities fraud.

Litowitz's hunches are pretty good. Shortly after suing CMB Export LLC, perhaps the largest EB-5 company in the nation, the SEC hit them with a massive cease-and-desist order for issuing unregistered securities in 37 investment funds and using unregistered brokers. See *In The Matter of CMB Export LLC and Patrick Hogan*, SEC Admin. Proc. 3-18824 (Sept. 21, 2018). Litowitz is also negotiating for clients trying to get their money out of an EB-5 fund whose CEO was sanctioned by the SEC. See *In The Matter of American Life, Inc. and Henry Liebman*, SEC Admin. Proc. 3-17285 (June 13, 2016).

In the course of his practice, Litowitz represents some Chinese investors who put their money in USIF projects and are very dissatisfied with USIF. They feel defrauded by USIF. This puts Litowitz into contact with USIF on a regular basis, almost daily, to negotiate "outs" for his clients. Litowitz currently has clients in a variety of USIF funds who are profoundly unhappy with USIF. Litowitz did not create these groups of angry investors: they were fully organized long before they reached out to Litowitz. In fact, they communicate in Chinese writing, which

Litowitz cannot even follow, so he relies on Zoe Ma and his wife. Litowitz takes these Chinese people as clients and tries his best to get a return of their investment from USIF. As this Court knows, USIF was just sued by 94 Chinese investors in one fund, and Litowitz is representing investors in two other USIF funds where many dozens of investors are unhappy with USIF and want to get out. These people have the right to a lawyer just like anyone else.

Apparently, USIF wants to silence and paralyze Litowitz, and they are using this lawsuit as their blunt instrument. They have filed a threadbare Complaint that consists almost entirely of character assassination, and they have filed it in New York, where Litowitz has no connections, solely to make his life unpleasant.

### **The Complaint is Scandalous and Sanctionable**

The Complaint has one purpose – to humiliate and degrade Respondents Litowitz and Ma. It is meant to harass, it lacks merit, and it contains false statements that could have been avoided if Plaintiffs’ counsel had bothered to do any homework. Because the Complaint contains so many personal attacks, misstatements, conjectures, innuendos, and sheer trivia, Litowitz requests that this Court strike the Complaint and sanction Plaintiffs’ counsel on an expedited basis.

### **The Complaint is Unprofessional, Vicious, and has Lies in It**

The very first sentence of the Complaint asserts that “This action arises from the seedy side of the legal profession.” That is not a fact. It is not pleaded with particularity. It is not a legal inference. It is an *insult*. It must be stricken.

The very next sentence refers to Litowitz as a “desperate, bankrupt lawyer” who conspired with Zoe Ma to create a business for the purpose of fraud and “maliciously inserting themselves” into the Plaintiff’s business. These are not facts. These are not legal conclusions. These are *insults*. They must be stricken.

Still in the first paragraph, Plaintiff’s counsel accuses Litowitz of numerous “violations of the codes and canons of legal ethics.” These are *insults*. They must be stricken.

Paragraph 4 of the Complaint goes into Litowitz’s employment history, detailing that he got fired from certain jobs and had to file bankruptcy. This has nothing to do with the case whatsoever. These are not relevant facts. They are personal details whose only goal is to humiliate another lawyer. They must be stricken.

Shockingly – and without a shred of relevance to this case - Plaintiffs’ counsel have attached a page-for-page entire Exhibit of Litowitz’s whole bankruptcy petition, which pre-dated anything in this case. This was done purely as an *insult* for humiliation purposes, and has no bearing on the case. The Exhibit must be stricken.

Paragraph 29 goes into Litowitz’s teaching career as a law professor, snidely noting that he “never achieved tenure status and never became a full professor.” This is just an *insult*. It has no possible relevance to the case. To see how this was meant solely to humiliate Litowitz, the Complaint does not mention that Litowitz’s most recent book (*Kafka’s Indictment of Modern Law*) was approved for publication by Justice Richard Posner (who just stepped down from the 7<sup>th</sup> Circuit) and by Stanley Corngold of Princeton University, the leading scholar on Kafka in America,

and that it was reviewed positively in the *Times Literary Supplement*, a rare achievement for even the highest law professor. Nor does it mention that Litowitz left his teaching job to be the first employee of a \$14 billion hedge fund that he helped build from scratch into a worldwide juggernaut with 250 employees. All of these positive achievements are ignored, and the negative are accentuated. And none of it – not the good nor the bad - has any relevance to this lawsuit. The paragraph must be stricken.

Paragraph 29 and 30 reveal that Litowitz was fired from some jobs. Again, this is only an *insult* meant to humiliate. It has no bearing on the case whatsoever and must be stricken.

Paragraph 32 talks about how Zoe Ma lost her life savings in building and trying to operate an adult family home in Wisconsin. This has no possible relevance to the lawsuit. It is just an *insult*. It must be stricken.

The Complaint attaches as an Exhibit the entire Wisconsin Eastern District federal court decision dismissing her lawsuit alleging discriminatory treatment of minority-owned senior care centers in Wisconsin. There is no possible relevance of a constitutional case in Wisconsin to this case. This is included solely to humiliate her, to *insult* her. It must be stricken.

Paragraph 33 alleges that the Respondents came together with a plan to make money by “nefarious means.” Again, this is not a fact. It is an *insult*. It must be stricken.

Paragraph 35 alleges that Litowitz and Zoe Ma together changed the name of a Hong Kong entity. This shows a complete lack of homework. Litowitz has never

had any interest or involvement in any Hong Kong company, let alone any company or business named in the Complaint. Litowitz did not even know Zoe Ma while he was living in Hong Kong: he met her in Chicago. This just shows that Plaintiffs' counsel is making wild, groundless accusations in reckless disregard for the truth. There is no other way to say it: these are *lies*. They must be stricken.

Paragraph 35 says that Litowitz "unveiled a sham organization in Hong Kong." Again, this is not a fact. It is an *insult*, and it lacks any evidentiary basis. Litowitz has no involvement, ownership, interest, or knowledge of any company in Hong Kong, period. The allegation must be stricken.

A quick check of the Companies Registry in Hong Kong would have revealed that Litowitz was not involved with any Hong Kong company at any time. This is basic, elemental homework that Plaintiffs' lawyers neglected. And in any event, it bears no relationship whatsoever to the claims in the case.

Paragraph 39 reveals that Litowitz had a non-dischargeable debt to the First Bank of Omaha, and alludes to his spending habits (in point of fact, Litowitz's bankruptcy was caused by an incredibly onerous child support order against him, a fact that Plaintiffs ignore). But Litowitz's debt has no relevance to anything whatsoever. This is meant to *insult*. It must be stricken.

Paragraph 40 attaches verbatim an agreement between Litowitz and a creditor. This is just for humiliation, and has no bearing on the lawsuit. It is just to *insult*. It must be stricken.

Paragraph 41 suggests that Litowitz committed fraud on the bankruptcy court in his federal district by not disclosing his alleged interest in a Hong Kong

company. But as said before, Litowitz never had any knowledge, interest, or ownership of any Hong Kong company. This is pure conjecture, pure lies, pure *insults*. They must be stricken.

Paragraph 42 says that Zoe Ma “started the campaign to spread lies and defamation.” For the 100<sup>th</sup> time, this is NOT a fact. State courts requires *fact* pleading, not accusation pleading. This must be stricken.

Paragraph 43 asserts that Litowitz violated the laws of Hong Kong by illegally practicing law there without a license. This shows a colossal ignorance of the laws of Hong Kong (which has a distinction between in-house *solicitors* and court-approved *barristers*), and in any event has no relevance whatsoever to this case. It is an *insult*. This must be stricken.

Paragraph 44 asserts that Litowitz has been acting as an unlicensed investment adviser by speaking to potential clients, which is ironic since Plaintiffs are themselves not licensed as investment advisers but give advice and recruit thousands of investors while Litowitz has zero investors. Again, it is not relevant and only an *insult*. Even if it were true – which it isn’t – the issue isn’t before this Court. Again, it is purely an *insult*. This must be stricken.

Paragraph 45 asserts that Litowitz “screams” when he negotiates with the Plaintiffs. Suppose this is true: so what? Suppose it is false: so what? Again, it has no bearing on the case, and is just meant as an *insult*. This must be stricken.

The above is only a fraction of the allegations that must be stricken. The Complaint continues on like this, paragraph after brutal paragraph of character assassination, conjectures, sloppy research, insults, conclusory statements, trivia,



and crazy theories. Finally, in a degrading invasion of privacy, the Exhibits include an unredacted copy of a retainer agreement. Plaintiffs' counsel have found every irrelevant aspect of Respondents lives and exposed them – for no legal reason. It is a complete and total airing of dirty laundry that has nothing to do with this case.

Litowitz could continue with a paragraph-by-paragraph analysis, but he hopes that the Court has seen enough. This is easily the most vile complaint that Litowitz has ever seen, and probably the worst that this Court has ever seen as well.

### **The Counts Make No Sense**

The Complaint is so badly constructed that it was obviously put together simply to assemble all the humiliating material about the Respondents in one location, not to state a legal claim in this Court.

For example, Count I for Fraud does not assert that Litowitz made any false statements that amounted to fraud. CPLR 3016(b) requires that fraud be pled with particularity: there has to be a time, place, statement, legal effect, causation, and so forth – but Count I just repeats a conclusion over and over again in paragraphs 61-64. It gives no time, date, effect, or rationale for the damage figure of \$10 million. Count II for Defamation does not state the supposedly defamatory statements of fact: it merely asserts a free-floating damage to reputation. Count III for Breach of Contract is truly bizarre since Litowitz never signed any contract with USIF. Let me repeat that and let it sink in to the Court. Count III alleges that Litowitz breached a contract to which he was not a party. See paragraphs 52-54. Count IV alleges tortious interference amounting to a “crime or independent tort” but it isn't clear

that Litowitz did anything other than state his opinions about USIF (to which he is entitled) and represent clients trying to get money out of USIF funds. Count V is something called “Prima Facie Tort” which we don’t have in Illinois but apparently goes back to the common law, but in any case it requires a statement of identifiable and *measurable* damages. *Broadway & 67th St. Corp. v City of New York*, 100 A.D.2d 478, 486, 475 N.Y.S.2d 1 (1st Dept. 1984)(“An essential element of such a cause of action is an allegation of special damages, fully and accurately stated with sufficient particularity as to identify and causally relate the actual losses to the allegedly tortious acts. Failure to do so lays the cause of action open to summary dismissal.”) In complete disregard of this basic element of specificity, Plaintiffs’ counsel asks for “an amount to be determined at trial.” Astonishingly, the prayer for relief is for \$10 million on each of two counts and \$1 million on the others.

These round figures are the telltale signs of wild conjecture: when a petitioner is too lazy to compute damages, or more likely, has no damages to compute, he throws out a round number like \$1 million, \$5 million, or \$10 million.

This Complaint is so bad that there must be some explanation for it other than mere incompetence. Plaintiffs’ counsel are using this Court as their platform to insult Respondents under the guise of a “lawsuit.” It’s that simple. They are manipulating and abusing the legal process to air the dirty laundry of Respondents because the Respondents are costing them money because they dare to help people get their own money back from bad investments with USIF.

This is an important point: Litowitz has NEVER – NEVER – asked USIF for a penny of damages other than a simple return of an investor’s money. The Chinese

investors felt tricked into giving USIF and its affiliates \$550,000, and they simply want it back, that's all. Its *their* money, they felt it was taken by USIF under false pretenses, and they want it back. But USIF doesn't want to give it back. The point is this: Litowitz's only 'crime' against USIF is to help Chinese investors ask USIF for their own money back, and to assert that the investors have a right to this money under the securities laws.

But USIF doesn't want to give investors back their own money. And they don't want Litowitz insinuating that he might sue them for securities law violations. So they are using the legal process to shut up Litowitz. They are manipulating, twisting, and prostituting this Court to become their personal platform for insulting the Respondents in the hopes that they will skulk away.

Now, USIF is entitled to dislike and hate Litowitz, or want to see him dead. That's fine. They have a bad opinion of him. And he certainly has a bad opinion of them, as is clear from the messages they have managed to collect somehow from private chat rooms and private emails. So the parties dislike each other – so what? That's true of innumerable people in the world, but it doesn't provide grounds for a *lawsuit*.

In conclusion, this lawsuit is an abuse of legal process: USIF is using the Courts to settle a score, not because there is any cognizable cause of action, but just to put their enemies in the worst possible light.

This is not a *real* lawsuit. It is a compendium of dirt with a few legal terms thrown in.

WHEREFORE, Respondent Litowitz asks that the Complaint be stricken and withdrawn, and that Plaintiffs' counsel be sanctioned.

Dated: October 7, 2018

Respectfully Submitted,

/s/ Douglas Litowitz