

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

Case No. 8:19-cv-00886-VMC-SPF

OASIS INTERNATIONAL GROUP,
LIMITED, ET AL.,

Defendants,

and

MAINSTREAM FUND SERVICES,
INC., ET AL.,

Relief Defendants.

**PLAINTIFF'S MOTION FOR LEAVE TO FILE A REPLY BRIEF IN FURTHER
SUPPORT OF ITS MOTION FOR A PRELIMINARY INJUNCTION**

I. INTRODUCTION

On April 15, 2019, Plaintiff Commodity Futures Trading Commission (“CFTC”) filed its Emergency Ex Parte Motion for a Statutory Restraining Order, Preliminary Injunction, and Other Equitable Relief and Memorandum in Support (“Motion for Preliminary Injunction”). Doc. #4. On April 29, five of the defendants and eight of the relief defendants consented to entry of orders of preliminary injunction against them. Doc. ##35 and 43.¹ Defendants Satellite Holdings Company, John J. Haas (“Haas”), and Raymond P. Montie, III (“Montie”) (collectively, “Non-Consenting Defendants”) did not consent. The preliminary injunction hearing for the Non-Consenting Defendants is set for July 1. Doc. #79. On June 24, pursuant to Local Rule 4.06(b)(3), the Non-Consenting Defendants filed their briefs in opposition to the CFTC’s Motion for Preliminary Injunction. Doc. ##142 and 143. The briefs are nearly identical in form and substance.

II. PRECISE RELIEF REQUESTED

Pursuant to Local Rule 3.01(d), the CFTC moves the Court for leave to file a reply brief not to exceed twenty pages, plus affidavits, in further support of its Motion for Preliminary Injunction. The CFTC also requests an order that continues the hearing for a period of at least seven days to allow the CFTC to file and serve its reply brief within the time limits imposed by Local Rule 4.06(b)(3).

III. BASIS FOR THE REQUEST

The Non-Consenting Defendants’ briefs include new and unsubstantiated factual evidence. The briefs also misstate some of the applicable law. Therefore, the CFTC seeks

¹ Relief Defendant Mainstream Fund Services, Inc. consented on May 28, 2019. Doc. ##82 and 85.

leave of Court to file a reply brief to rebut the factual allegations in the briefs and affidavits and to correct misstatements of and elaborate on the law cited by the Non-Consenting Defendants in their briefs.

IV. MEMORANDUM OF LEGAL AUTHORITY

A. Local Rule 3.01 Provides a Mechanism for Seeking Leave to File a Reply

Local Rule 3.01(c) states that “No party shall file any reply or further memorandum directed to the motion or response allowed... unless the Court grants leave.” Local Rule 3.01(d) provides the mechanism for seeking leave.

B. The CFTC Can Show Good Cause for This Request

The CFTC can show good cause for its request for leave to file a reply. First, there is new and unsubstantiated factual evidence in the Non-Consenting Defendants’ briefs and the CFTC should be allowed to rebut it. Since April 15, the CFTC has received additional, relevant evidence regarding the Oasis fraud. For example, since April 24, at least seventy-five Oasis pool participants have contacted the CFTC and provided new evidence about Montie’s and Haas’s role in the fraud. Similarly, since his appointment, the Receiver has received additional, relevant evidence regarding the Oasis fraud. *See* The Receiver’s First Interim Report, which notes his receipt of “abundant evidence that the defendants were operating a fraudulent investment scheme.” Doc. #113 at 9.

Second, Montie and Haas take the position that they are victims of the Oasis fraud because they lost money and, as they attempt to argue by way of third-party affiants, did not know about DaCorta’s and Anile’s lies and false representations. The CFTC will show that Montie and Haas made money in the fraud. The CFTC will also show that the law is clear

that Montie's and Haas's contention that they believed what DaCorta and Anile told them about Oasis does not insulate them from liability here. *See CFTC v. Complete Developments, LLC*, 2014 WL 794181 at *17 (N.D. Ohio, Feb. 26, 2014) (holding that promoter of forex investment programs was at least reckless when it made false representations to potential investors without independent verification of the accuracy of the information provided by corporate representatives regarding the forex programs). Neither Montie nor Haas has provided any evidence in their briefs to suggest that they—not their affiants—undertook any sort of due diligence to independently verify the accuracy of what DaCorta and Anile were telling them about the Oasis Pools before soliciting pool participants.

V. CONCLUSION

For good cause shown, the CFTC moves this Court for leave to file a reply brief not to exceed twenty pages in further support of its Motion for Preliminary Injunction. In the alternative, if this Court does not grant the CFTC leave to file a reply brief, then the CFTC hereby requests leave to supplement its Motion for Preliminary Injunction after the hearing with additional evidence for the Court's consideration. *See Tempur-Pedic North America, LLC v. Mattress Firm, Inc.*, 2019 WL 2255022 at *1 (W.D. Fla., Jan. 11, 2019) (noting that the parties were allowed to supplement their briefs with evidence for the Court's consideration after the preliminary injunction hearing, which was limited by Local Rule 4.06(b) to the arguments of the attorneys).

Dated: June 25, 2019

Respectfully submitted,

**COMMODITY FUTURES TRADING
COMMISSION**

By: /s/ Jennifer J. Chapin

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LOCAL RULE 3.01(G) CERTIFICATION

I hereby certify that on June 25, 2019, prior to filing this motion, counsel for the CFTC (Jo Mettenburg, Jennifer Chapin, and Alison Auxter) conferred with counsel for Defendants John J. Haas and Satellite Holdings Company (Patricia Carbone) and counsel for Defendant Raymond P. Montie, III (Mark Horwitz and Vincent Citro), who advised that they do not oppose the CFTC's request for leave to file a reply brief. Counsel for Montie do object to a seven-day continuance of the July 1 preliminary injunction hearing because they are unavailable to appear in Court from July 8-11. Counsel for Haas, Satellite Holdings Company and Montie also expressed an interest in seeking leave to file sur-replies upon receipt and review of the CFTC's reply, should leave be granted to file one. Finally, counsel for Haas, Satellite Holdings Company and Montie stated that they would prefer to receive the CFTC's reply brief on Friday, June 28, should leave be granted to file one.

I hereby certify that on June 25, 2019, the same CFTC counsel also conferred with counsel for Defendant Francisco "Frank" L. Duran (Allan Lerner) and counsel for Relief Defendant Mainstream Fund Services, Inc. (Scott Allen), neither of whom opposes this motion.

I hereby certify that on June 25, 2019, the same counsel for the CFTC conferred with counsel for the Receiver (Jared Perez), who advised that the Receiver does not take a position because he is not a party to the litigation.

I hereby certify that on June 25, 2019, the same counsel for the CFTC attempted to confer with counsel for Defendant Joseph S. Anile, II (Gerard Marrone) and with Mr. DaCorta, who is unrepresented. Counsel for the CFTC was unable to confer with either

counsel for Anile or with Mr. DaCorta and will accordingly supplement this Local Rule 3.01(g) certification after such conferences occur and their positions are learned.

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2019, I filed a copy of the foregoing with the Clerk of the Court via the CM/ECF system, which served all parties of record who are equipped to receive service of documents via the CM/ECF system.

I hereby certify that on June 25, 2019, I provided service of the foregoing via electronic mail to:

Gerard Marrone
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66-85 73rd Place
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gmarronelaw@gmail.com

COUNSEL FOR DEFENDANT JOSEPH S. ANILE, II

I hereby certify that on June 25, 2019, I provided service of the foregoing via electronic mail to the following unrepresented party:

Michael J. DaCorta
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