UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

OASIS INTERNATIONAL GROUP, LIMITED, ET AL.,

Defendants,

and

MAINSTREAM FUND SERVICES, INC., ET AL.,

Relief Defendants.
_____/

CASE NO.: 8:19-cv-886-T-33SPF

DEFENDANT RAYMOND P. MONTIE, III's SUR-REPLY

Raymond P. Montie III, by and through his undersigned counsel, pursuant to this Court's Order, Doc. 151, files this sur-reply to the plaintiff's reply, Doc.165. The plaintiff may be entitled to preliminary injunction only if it made a *prima facie* showing that Mr. Montie engaged in violations of commodities laws and a reasonable likelihood exists that future violations will occur. The plaintiff's reply, like its motion, fail to make both showings, much less either one.

A. Reply Brief's Additional Facts Fail to Prove the Plaintiff's Claims

1. Plaintiff Lacks Evidence Proving Mr. Montie Participated in Fraud

The plaintiff asks the Court to conclude the receiver's statements and attachments prove Mr. Montie participated in a fraud. In support of its position, the plaintiff contends that a Confidential Private Placement Memorandum ("PPM") the receiver found is proof. Docs. 165 at 2[1]; 165-1 at 6; Doc. 165-2. While the receiver asserts the PPM "was used to sell" shares, the receiver conspicuously fails to identify anyone who received the PPM. Indeed, the attached PPM is unexecuted. Further, the receiver, despite having access to the Oasis electronic records, provided no evidence that Mr. Montie agreed the representations about him in the unexecuted and unused PPM were true and correct. The receiver's overbroad allegations cannot be afforded any weight.

Using the unexecuted PPM, the plaintiff alleged that Mr. Montie was a Vice President and Director of Sales. Doc. 165 at 2. However, on the same page, the plaintiff advises the Court that "staff considered Montie a 'recruiter of investors,'" not a vice president or director of sales. *Id.* The receiver determined Mr. Montie was "responsible for directly and indirectly recruiting investors," but did not conclude that Mr. Montie was a vice president or director of sales. Doc. 165-1 at 9 ¶ 20. Again, these conclusory allegations cannot be afforded any weight.

The plaintiff begs the Court to credit the receiver's allegation that Mr. Montie "controlled" Oasis International Group, Ltd. ("OIG"). The receiver currently controls the

[1] The plaintiff's reply starts page numbering page 2 but begins with the number 1. For convenience, references to pages in doc. 165 are to the plaintiff's page numbering.

OIG bank accounts and did not state under oath that Mr. Montie had any authority over the OIG bank accounts. The receiver also controls the OIG servers and did not state under oath that Mr. Montie had administrator access to the IT infrastructure, or much less access to any accounts other than his own.

When looking at what the receiver did provide the Court, it is important to note the lack of e-mails between Mr. Montie and an investor. The e-mail the plaintiff and receiver make much ado about shows joking between Mr. Montie, defendant DaCorta, and Gil Wilson. It does not include the actual response that was sent to the unknown potential investor. The receiver's bare allegations of control cannot be afforded any weight.

The plaintiff also makes several representations about calls Mr. Montie made to potential and current Oasis investors. Doc. 165 at 5. The most scandalous representation the plaintiff alleged was that Mr. Montie said, "the Oasis Pools had never had a down day." Doc. 165 at 5. To support the claims the receiver attached transcripts of several calls wherein Mr. Montie made representations to potential and current Oasis investors. Docs. 165-5, 165-6. That "down day" representation is not made in any of those calls.

The most disingenuous "evidence" provided to the Court is the financial analysis the receiver provided.[2] Doc. 165-10. The plaintiff advises the Court that Mr. Montie "profited $556,366.54," which includes payments to Mr. Montie's father and former fiancée. Doc. 165 at 5. Neither receiver nor plaintiff put forth any facts showing that Mr. Montie's father or his

[2] On June 6, 2019, the receiver advised this Court that he would make records in his possession available to counsel. On June 25, 2019, the undersigned requested the receiver to provide access to the Oasis financial records. The receiver has yet to respond to that request, but managed to prepare doc. 165-10 for the plaintiff to include in its reply. According to Mr. Montie's bank records, Mr. Montie invested more than $1.3 million dollars into the various Oasis entities, including funds paid to professionals providing services to Oasis. Ultimately, Mr. Montie's net gain was less than $150,000 more than his investment.

former fiancée participated in any fraud or knew a fraud took place. Consequently, it is not clear why sums paid to Mr. Montie's father and his former fiancée are included in this total. The funds invested into the Oasis entities also fails to include other funds Mr. Montie paid to, or on behalf of, Oasis. The receiver's agent prepared the "financial analysis" at Doc. 165-10 and, with good reason, advises the reader to take heed: "No one may rely on this draft." The Court should heed the receiver's warning and not rely on it either.[3]

2. Plaintiff Failed to Address DaCorta's Confession and Why Mr. Montie Could Not Rely on Defendant Anile, a Licensed Lawyer

The plaintiff complains that the failure to prove that Mr. Montie did not act with the requisite scienter should be excused because Mr. Montie acted recklessly. Doc. 165 at 11. Yet the plaintiff fails to explain how Mr. Monte could have acted recklessly, in light of defendant DaCorta's confession that the fraud was hidden from Mr. Montie, doc. 142-1. It also fails to explain how it was reckless to rely on defendant Anile, who was at all times referred to in the complaint as licensed to practice law. The plaintiff further failed to address how it was reckless to rely on the returns shown on the "back office."[4] The plaintiff justifies the overreach in the first amended complaint by suggesting that Mr. Montie should have assumed that everything defendants DaCorta and Anile said or did was a lie. This might be reasonable had the plaintiff made defendant DaCorta's debarment from the NFA, or even the details leading to the debarment, reasonably available to the public.

[3] At the appropriate time the undersigned will object to the receiver, his lawyers, and vendors being compensated for coordinating with the plaintiff to prepare the reply and time spent creating the documents attached to it, which "no one may rely on..."

[4] As noted in Mr. Montie's response, doc. 142, the back office was the electronic portal Oasis investors, including Mr. Montie, used to view their accounts. Defendant DaCorta admitted, doc. 142-1, that the back office presented fabricated information to investors, so the investors did not see the Oasis losses.

3. Recorded Call on May 21, 2018 with Experience Securities Trader

On May 21, 2018, several people participated in a recorded call with defendant DaCorta, including someone named "Joanne." The undersigned caused a transcript of this conversation to be prepared, which is attached as Exhibit A. Mr. Montie did not participate in this call. Neither the plaintiff nor receiver included a transcript of this call in the reply. Joanne began, on the page numbered 6 of the transcript, "So, I have a little bit more of a background than the normal person would have with this. So, I just have some questions, I don't know whether they pertain to all of this but there were just question that came up." Exhibit A at 7. Defendant DaCorta answered Joanne's questions about how Oasis operated, guaranteed a profit, and could not lose money such that Joanne concluded with "No. I totally -- when I tell you totally understand, I totally, totally understand so, I get it," and "All right, thank you very much, you answered a lot of our questions. Thank you for your time, I appreciate it very much." Exhibit A at 12-13. As we all know now, defendant DaCorta deftly defrauded business people, like Mr. Montie, experienced securities traders, like Joanne, and approximately 800 others.

B. Memorandum of Law

1. Plaintiff's Allegations of Future Violations Are Tantamount to a Guess

To determine whether Mr. Montie poses a "reasonable likelihood" of future commodities violations, the Court must consider: (1) the nature of the past violations; (2) Mr. Montie's present attitude; and (3) objective constraints on (or opportunities for) future violations. *CFTC v. Garcia*, 2:15-cv-237, 2015 WL 3453472, at *3 (M.D. Fla. May 29, 2015). As to the first factor, the plaintiff has not met its burden, even now when the

allegations have not been tested. The evidence before the Court makes clear that Mr. Montie did not knowingly participate in the Oasis fraud. The lack of evidence in the plaintiff's more than 800 pages of pleadings, and the evidence submitted in support of Mr. Montie's response make clear that Mr. Montie did not participate in the fraud. As to the second factor, the plaintiff suggests that the Court should conclude that because Mr. Montie is defending himself rather than admitting the plaintiff's allegations, Mr. Montie has an attitude which the Court can, and should, construe against him. Indeed, to do so (and for a government agency to advocate so) is the very antitheses to the vital role the judiciary has in our government. Finally, the plaintiff's assertion that Mr. Montie is "susceptible to fraudulent schemes" is inane. The plaintiff urges this Court to punish Mr. Montie not because he did anything wrong but because he was and is easy to deceive, and because the plaintiff is afraid this characteristic will allow him to be so used by other fraudsters. The plaintiff provides no evidence that Mr. Montie is currently involved in currency speculation or intends to engage in currency speculation in the future. The plaintiff's argument should be afforded no weight

2. Ms. Robinson's Broad-Brush-Stroke Supplemental Declaration

Like Ms. Robinson's first declaration, Doc. 4-1, a cursory inspection of Ms. Robinson's supplemental declaration reveals it lacks meaningful evidence. The sole point of Ms. Robinson's supplemental declaration is to support the plaintiff's fraud allegations. However, it fails to allege most facts with particularity. Rule 9(b) requires a party to "state with particularity the circumstances constituting fraud or mistake" in a complaint. If the Court cannot rely on vague allegations in a complaint, it logically follows that it cannot rely

on those same vague allegations to impose a preliminary injunction that incorporate the allegations in the complaint and first amended complaint.

In paragraph 9, Ms. Robinson recounts an interview from a person with the initials K.M. In subpart (b) Ms. Robinson identifies several statements but fails to allege with particularity what statements Mr. Montie made and what statements defendant DaCorta made. Doc. 165-16 at 3. The transcriptions of the calls in Doc. 165-5 show defendant DaCorta likely made the representations Ms. Robinson recounted in paragraph 9(b). Curiously, the receiver did not have that call transcribed for the Court to read who said what. This same lack of particularity can be found in the statements recounted in paragraphs 10(d) and (f), 11(d), 12, and 13(d). At this evidentiary stage, the Court should not accept as true, the vague allegations found in Ms. Robinson's supplemental declaration.

There are several other allegations in Ms. Robinson's supplemental declaration that the Court should discount. For example, in paragraph 10(e), Ms. Robinson summarizes a statement from G.M. that he "assumed Mr. Montie, as a principal, was receiving Oasis financial statements and other information to verify the representations made about Oasis and the Oasis Pools." A third-party's assumption of facts is not proof that Mr. Montie actually controlled any Oasis entity. Further, Ms. Robinson fails to identify for the Court whether G.M. was speaking about Mr. Montie's representations or the representations made by others about Oasis. As the plaintiff failed to include an affidavit from G.M., the vague summary of the conversation Ms. Robinson had with G.M. should not be afforded any weight.

In paragraph 11(c), Ms. Robinson recounts a summary of her conversation with M.B. M.B. allegedly had a conversation with Mr. Montie, during which Mr. Montie made

assertions that he had "access to the Oasis accounts and logins to the bank accounts." This statement is not found in any of the transcriptions of recorded calls with actual and potential investors. If the statements M.B. alleges were actually said, it is logical to assume it would be something Mr. Montie would have often said to others. Yet it appears in none of the more than 800 pages the plaintiff put before the Court. As with G.M., the plaintiff failed to obtain an affidavit from M.B., and Ms. Robinson's vague summary of her conversation with M.B. should not be afforded any weight.

In paragraph 13(a), Ms. Robinson recounts a summary of her conversation with C.M. C.M. allegedly had a conversation with Mr. Montie, during which Mr. Montie said "Oasis Pools never had a down day…" Again, this statement is not found in any of the transcriptions of calls that were filed with the reply. As with C.M., the plaintiff failed to obtain an affidavit from C.M., and Ms. Robinson's vague summary of her conversation with C.M. should not be afforded any weight.

3. Plaintiff Failed to Address DaCorta's Confession or the FBI's Conclusion

The plaintiff cites several cases for general propositions. None of the cases have facts like the one at Bar. Here, the lead fraudster, defendant DaCorta, admitted to federal agents that he hid the fraud from Mr. Montie and others. Doc. 142-1. Also, the FBI concluded defendant DaCorta began defrauding Mr. Montie shortly after Mr. Montie's first investment of funds. Doc. 142-2. Furthermore, electronic evidence, specifically the information in the back office, was fabricated to hide the fraud from victims, including Mr. Montie. Doc. 142-1. The plaintiff's reply fails to address these facts and how they negate the plaintiff's position that Mr. Montie made fraudulent statements, acted with reckless disregard (or careless

disregard) for the truth of the statements, or had controlling authority. The plaintiff also asserts Mr. Montie failed to verify the legitimacy of Oasis but does not explain why Mr. Montie should not have relied on defendant Anile, a licensed lawyer who touted that he kept Oasis compliant with all laws. Both defendant Anile and Mr. Montie were on the board of directors for OIG. While defendant Anile worked full time for Oasis, albeit defrauding investors, Mr. Montie did not work for Oasis and was not recruiting new investors as a full-time job. Unlike defendants DaCorta and Anile, Mr. Montie was not paid a salary. Doc. 142-1.

4. Plaintiff Failed to Prove Mr. Montie had Control

The plaintiff summarily concludes that the statement on a draft PPM is sufficient to prove Mr. Montie had control, despite defendant DaCorta's confession, lack of corroborating evidence from the receiver, and lack of corroborating evidence from Oasis employees. Further, the receiver provides no evidence that Mr. Montie had administrator rights over the Oasis servers or was listed on any Oasis bank account as someone authorized to control funds. Every case the plaintiff has cited in support of its theory involves a factual inquiry into the question of whether the person had actual control -- a factual inquiry which plaintiff has not made. Instead, the plaintiff relies on unsupported conclusory allegations as a means of circumventing a factual analysis. This, the Court cannot do.

A person does not have control simply by virtue of his or her title as an officer or director. *See CFTC v. Avco Fin. Corp.*, 28 F. Supp. 2d 104, 114-17 (S.D.N.Y. 1998), opinion modified by *CFTC v. Avco Financial Corp.*, 1998 WL 524901 (1998), and *aff'd in part rev'd in part on other grounds by CFTC v. Vartuli*, 228 F.3d 94 (2nd Cir. 2000) (researcher with

title of "vice president," who helped produce software used in fraud, was not controlling person). A "controlling person must have *actually* exercised general control over the operation of the entity principally liable." *Monieson v. CFTC*, 996 F.2d 852, 859 (7th Cir. 1993); *see also CFTC v. Baragosh*, 278 F.3d 319, 330-31 (4th Cir. 2002). The plaintiff, working in concert with the receiver, has failed to establish that Mr. Montie actually exercised general control over OIG.

C. CONCLUSION

The plaintiff begs this Court to ignore its overreaching complaint, the lack of evidence supporting its motion, and the evidence contrary to its position. As the plaintiff asserts, defendant DaCorta defrauded 800 victims, and Mr. Montie was one of them.

Wherefore, Mr. Montie asks this Court to:

1. Deny the plaintiff's motion for a preliminary injunction; and
2. Dissolve the receivership as it applies to Mr. Montie, or

3. Modify the receivership to remove Mr. Montie's income from his businesses unrelated to the Ponzi scheme, and his real properties.

Respectfully submitted on July 8, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 8, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all parties of record who are equipped to receive service of documents via the CM/ECF system.

I hereby further certify that on July 8, 2019, I provided service of the foregoing via electronic mail to:

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