

14 MISC 0061

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:
	:
Applicant,	:
-against-	:
	:
CHARLES RIEL III a/k/a CHUCK RIEL and	:
REINVEST LLC,	:
	:
Respondents.	:
-----X	

Case No. _____
ECF CASE

**SECURITIES AND EXCHANGE COMMISSION'S
APPLICATION FOR AN ORDER TO SHOW CAUSE AND
FOR AN ORDER REQUIRING COMPLIANCE WITH SUBPOENAS**

The Securities and Exchange Commission ("Commission"), by its undersigned counsel, respectfully submits this Application for an Order to Show Cause and for an Order Requiring Compliance with Subpoenas ("Application"), together with the supporting memorandum of law, and Declaration of Christopher M. Castano ("Castano Decl.") and exhibits thereto, based on the following:

1. Respondents Charles Riel III a/k/a Chuck Riel ("Riel") and REinvest LLC ("REinvest") (together, "Respondents") have refused to comply with lawful Commission investigative subpoenas. The subpoenas require REinvest and Riel to produce documents and Riel

to appear for testimony in the Commission's investigation titled *In the Matter of REinvest LLC*, Internal File No. NY-09029 (the "REinvest Investigation").

2. On January 10, 2014, the Commission issued an Order Directing Private Investigation and Designating Officers to Take Testimony (the "Formal Order") in the REinvest Investigation, under Section 20(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77t(a), and Section 21(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78 u(a).

3. Pursuant to the Formal Order, the Commission is investigating whether Respondents or others have violated or are violating antifraud provisions of the federal securities laws — including Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder — by making materially false or misleading statements in connection with the offer or sale of securities, among other things.

4. The Formal Order designates certain individuals as officers of the Commission empowered to subpoena witnesses, to take evidence, and to require the production of any records deemed relevant or material to the investigation, pursuant to Section 19(c) of the Securities Act, 15 U.S.C. § 77s(c), and Section 21(b) of the Exchange Act, 15 U.S.C. § 78u(b).

5. On January 13, 2014, one of the designated Commission officers issued a subpoena and properly served it on REinvest under the Commission's Rules of Practice. The subpoena required REinvest to produce responsive documents to the Commission's New York Regional Office by January 21, 2014.

6. On January 31, 2014, the same designated Commission officer issued a subpoena and properly served it on Riel under the Commission's Rules of Practice. The subpoena required Riel to produce the responsive documents by February 6, 2014, and to appear for testimony at the Commission's New York Regional Office on February 12, 2014.

7. To date, neither Riel nor REinvest has produced any documents in response to the subpoenas. Nor has Riel appeared for testimony.

8. The Commission therefore submits this Application for an Order to Show Cause, in the form attached, requiring Riel and REinvest to show cause why they should not be ordered to comply with the subpoenas by producing all responsive documents and, in Riel's case, testifying at the Commission's New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

9. The Commission further requests that, absent just cause for Respondents' failure to comply with the subpoenas, the Court enter an Order requiring Riel and REinvest to comply with the subpoenas within twenty (20) days.

10. Jurisdiction is conferred upon this Court, and venue properly lies in this District, pursuant to Section 21(c) of the Exchange Act, 15 U.S.C. § 78u(c).

WHEREFORE, the Commission respectfully requests:

I.

That the Court enter an Order to Show Cause, directing Respondents to show cause why this Court should not enter an Order requiring each of them to produce the subpoenaed documents and Riel to appear for testimony before the Commission.

II.

That the Court enter an Order requiring each Respondent to submit a sworn statement to the Commission describing efforts made to locate responsive documents and the results of those efforts if the Respondent does not have documents within his or its possession, custody, or control that are responsive to any document request contained in his or its respective subpoena.

III.

That the Court enter an Order requiring Respondents to comply fully with the subpoenas within twenty (20) days.

IV.

That the Court order such other and further relief as may be necessary and appropriate to achieve compliance with the subpoenas within the time period set forth in the proposed Order to Show Cause.

Dated: March 13, 2014
New York, New York

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UNITED STATES DISTRICT COURT
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SECURITIES AND EXCHANGE COMMISSION,

Applicant,
-against-

CHARLES RIEL III a/k/a Chuck Riel and
REINVEST LLC,

Respondents.
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Case No. _____
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**MEMORANDUM OF LAW IN SUPPORT OF
SECURITIES AND EXCHANGE COMMISSION'S
APPLICATION FOR AN ORDER TO SHOW CAUSE AND
FOR AN ORDER REQUIRING COMPLIANCE WITH SUBPOENAS**

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March 13, 2014

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The United States Securities and Exchange Commission (“Commission”) respectfully submits this memorandum of law in support of its Application for an Order to Show Cause and for an Order Requiring Compliance with Subpoenas (“Application”). For the reasons set forth below, and in the accompanying Declaration of Christopher M. Castano (“Castano Declaration”) and the exhibits thereto, the Commission respectfully requests that the Court enter an Order, in the form attached to this Application, directing respondents Charles Riel III a/k/a Chuck Riel (“Riel”) and REinvest LLC (“REinvest”) (collectively, “Respondents”) to comply with the investigative subpoenas the Commission lawfully issued and served on them (the “Subpoenas”).

PRELIMINARY STATEMENT

Respondents’ website marketed a high-yield investment whose terms appear suspicious: it promised fixed returns of 50% to 150% over a five-year period with “inherently low risk” and no explanation of its methodology. The Commission is investigating whether Respondents defrauded investors. Two months ago, the Commission properly issued investigative Subpoenas seeking documents and Riel’s testimony and served them on Respondents. The subpoenaed documents concern the identity of REinvest’s investors, REinvest’s marketing and offering materials, its investment methodology, and its use of investor funds — documents critical to the Commission’s investigation. Respondents have refused to produce any documents, and Riel has refused to appear for testimony. The Court should order Respondents to comply with the Subpoenas promptly so that the Commission can probe Respondents’ investment claims.

STATEMENT OF FACTS

I. Respondents and Their Website

REinvest is a New York limited liability company with its office in Clay, New York. (Castano Decl. ¶ 6 & Exs. 1, 2.) REinvest appears to operate a website, www.150Percentreturn.com

(the “150% Website”). (Castano Decl. ¶ 5 & Ex. 1.) REinvest purports to provide “high yield private transactional investment and financial consulting services.” (Castano Decl. ¶ 7 & Ex. 3.)

Riel appears to reside in Clay, New York. (Castano Decl. ¶ 8 & Ex. 4.) Riel and REinvest apparently share the same mailing address. (Castano Decl. ¶ 9 & Exs. 1, 2, 3, 4.) Riel is REinvest’s chief financial officer and one of its principals. (Castano Decl. ¶ 8 & Ex. 3.) The 150% Website lists Riel as its primary contact. (Castano Decl. ¶ 10 & Ex. 1.)

The 150% Website offers a “high yield investment” that uses a “proprietary method” to provide returns of “50% – 150%” over a 60-month term “with inherently low risk” and a “built-in safety net process.” (Castano Decl. Ex. 1 (emphasis in original).) The 150% Website promises:

Introducing a very Profitable AMERICAN opportunity... (How to Get a Legitimate 150+ Percent Return on your money) Attention all profit motivated individuals that are seriously interested in a valid high return investment, a legitimate accelerated profit generating *proprietary* financial growth opportunity that brings a highest investment return that will help to protect your accustomed lifestyle, and enable you to do more for your loved ones.... Looking for a legitimate high return investment, an accelerated high yield predictable profit with a safe, and local high return investment? Take a look at what is currently available.

(*Id.* (emphases in original).) The 150% Website does not explain its “proprietary” investment method or how the funds will be invested. (*Id.*) It claims to have already raised over \$43 million from investors. (Castano Decl. ¶ 7 & Ex. 1.)

II. The Commission’s Investigation

On January 10,¹ the Commission issued an Order Directing Private Investigation and Designating Officers to Take Testimony (the “Formal Order”) pursuant to statutory authority.² (Castano Decl. ¶ 11.) The Formal Order designates certain individuals as officers of the Commission

¹ All dates are in 2014, unless otherwise indicated.

² Section 20(a) of the Securities Act of 1933 (the “Securities Act”) and Section 21(a) of the Securities Exchange Act of 1934 (“Exchange Act”) authorize the Commission to conduct investigations. *See* 15 U.S.C. §§ 77t(a) & 78u(a).

empowered to issue subpoenas and take evidence in the Commission's non-public investigation entitled *In the Matter of REinvest LLC* (the "REinvest Investigation").³ (*Id.* at ¶¶ 3, 11.) The Commission staff is investigating whether Respondents defrauded investors by making material misrepresentations in the offer or sale of the investments marketed on the 150% Website or otherwise violated the federal securities laws.

III. The Investigative Subpoenas

A. *The Subpoena to REinvest*

On January 13, the Commission staff issued a subpoena to REinvest (the "REinvest Subpoena") pursuant to the Formal Order. (*Id.* at ¶ 12 & Ex. 5.) The staff served the REinvest Subpoena by United Parcel Service ("UPS") overnight delivery to REinvest's office, pursuant to the Commission's Rules of Practice. (Castano Decl. ¶ 12 & Ex. 6); *see* 17 C.F.R. §§ 201.232(c) & 201.150(c)(3). The subpoena required REinvest to produce documents concerning the identity of REinvest's investors, its marketing and offering materials, its investment methodology, and its use of investor funds, among other things, by January 21. (Castano Decl. ¶ 13 & Ex. 5.)

On January 16, Riel responded to the subpoena by letter. (Castano Decl. ¶ 15 & Ex. 8.) Riel claimed that REinvest was a "small project," that REinvest did not offer securities, that he had removed certain "questionable content" from the 150% Website, that he was not violating the law, and that the Commission's "time, attention and scrutiny are absolutely not warranted here."

(Castano Decl. Ex. 8.) Riel neither enclosed nor agreed to produce documents. (Castano Decl. ¶¶ 15, 18 & Ex. 8.)

³ Commission formal orders are not public. The Commission has not included a copy of the Formal Order with this Application and respectfully requests that the Court conduct an *in camera* review if the Court wishes to examine it.

On January 27, the Commission staff spoke with Riel by phone. (Castano Decl. ¶ 16.) The staff told Riel that REinvest was required to comply with the subpoena and that Riel's letter provided no legitimate ground for failing to do so. (*Id.*) Riel told the staff in substance that REinvest did not intend to comply with the subpoena. (*Id.*)

On February 6, the Commission staff sent REinvest a letter by UPS and e-mail. (Castano Decl. ¶ 17 & Ex. 9.) The letter advised REinvest that the Commission had statutory authority to obtain an order in federal court enforcing its subpoena and that the staff would recommend such an action if REinvest did not produce responsive documents by February 12. (Castano Decl. Ex. 9.) To date, REinvest has not produced any documents. (Castano Decl. ¶ 18.)

B. *The Subpoena to Riel*

On January 31, the Commission staff issued a subpoena to Riel (the "Riel Subpoena") pursuant to the Formal Order. (*Id.* at ¶ 19 & Ex. 11.) The staff served the subpoena by UPS overnight delivery to Riel's home address, pursuant to the Commission's Rules of Practice. (Castano Decl. ¶ 19 & Ex. 12); *see* 17 C.F.R. §§ 201.232(c) & 201.150(c)(3). The subpoena required Riel to produce, by February 6, substantially the same documents as the Reinvest Subpoena. (Castano Decl. ¶ 20 & Ex. 11.) The subpoena also required Riel to appear for testimony on February 12 at 9:30 a.m. at the Commission's New York Regional Office. (Castano Decl. Ex. 11.)

On February 4, Riel responded to the subpoena by letter. (Castano Decl. ¶ 22 & Ex. 14.) Riel refused to produce responsive documents because he "simply cannot take the chance that records are not complete enough, or detailed enough to satisfy any concerns that you might have." (Castano Decl. Ex. 14.) Instead, Riel offered to "give [the Commission] full details and information on every person and agreement that has ever been in existence (since inception) AFTER each one of them have [sic] been completely paid, and the financial obligation(s) is/are fully satisfied." (*Id.* (emphases

in original).) Riel further claimed that the 150% Website did not offer securities but would cease marketing its investment. (*Id.*)

On February 12, Riel failed to appear for testimony. (Castano Decl. ¶ 23.) Later that day, the Commission staff sent Riel a letter, by UPS and email, similar to the one it had sent REinvest on February 6. (*Id.* at ¶ 24 & Ex. 16.) The letter advised Riel that the Commission had statutory authority to obtain an order in federal court enforcing its subpoena and that the staff would recommend such an action if Riel did not produce responsive documents and appear for testimony by February 19. (Castano Decl. Ex. 16.) To date, Riel has not produced any documents or appeared for investigative testimony. (Castano Decl. ¶ 25.)

ARGUMENT

The Commission properly served the Subpoenas on Respondents to investigate an offering that bears the hallmarks of a fraud: a purportedly low-risk investment vehicle with a high, fixed rate of return and no explanation of its methodology. Respondents refuse to comply with the Subpoenas. The Commission satisfies each of the requirements for enforcement of its Subpoenas, and Respondents can offer no legitimate reason why they should not be enforced. The Court should therefore order Respondents to promptly comply with the Subpoenas.

The Commission has “broad authority to conduct investigations into possible violations of the federal securities laws and to demand production of evidence relevant to such investigations.” *SEC v. Jerry T. O’Brien, Inc.*, 467 U.S. 735, 741 (1984); *see also* 15 U.S.C. § 78u(a)(1). Section 21(c) of the Exchange Act authorizes the Commission to seek an order from this Court compelling Respondents to comply with the subpoenas.⁴ *See* 15 U.S.C. § 78u(c).

⁴ Venue properly lies in the Southern District of New York because this District is “the jurisdiction [in] which [the] investigation . . . is carried on.” 15 U.S.C. § 78u(c).

“The courts’ role in a proceeding to enforce an administrative subpoena is extremely limited.” *RNR Enters., Inc. v. SEC*, 122 F.3d 93, 96–97 (2d Cir. 1997) (quoting *In re McVane*, 44 F.3d 1127, 1135 (2d Cir. 1995)) (affirming order directing compliance with Commission subpoenas). The Court should enforce the Subpoenas if the information sought is “within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.” *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). To obtain an order enforcing the Subpoenas, the Commission need only demonstrate that it meets four requirements: “[1] that the investigation will be conducted pursuant to a legitimate purpose, [2] that the inquiry may be relevant to the purpose, [3] that the information sought is not already within the Commission[’s] possession, and [4] that the administrative steps required...have been followed.” *RNR Enters.*, 122 F.3d at 96–97 (quoting *United States v. Powell*, 379 U.S. 48, 57–58 (1964)); see also *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1021, 1024 (D.C. Cir. 1978) (affirming the enforcement of Commission subpoenas). “An affidavit from a governmental official is sufficient to establish a *prima facie* showing that these requirements have been met.” *RNR Enters.*, 122 F.3d at 97 (quoting *McVane*, 44 F.3d at 1136). The Commission satisfies each of the four *prima facie* requirements for enforcement of the Subpoenas.⁵

First, the Commission is conducting the REinvest Investigation for a legitimate purpose: to determine whether Respondents, through their 150% Website, have violated anti-fraud or other provisions of the securities laws. See *RNR Enters.*, 122 F.3d at 97 (holding that an investigation into

⁵ Once the Commission makes a *prima facie* showing, Respondents can defeat the enforcement of the Subpoenas only by demonstrating that they are “unreasonabl[e],” they are “issued in bad faith or for an ‘improper purpose,’” or “compliance would be ‘unnecessarily burdensome.’” *RNR Enters.*, 122 F.3d at 97 (quoting *SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1056 (2d Cir. 1973)) (emphasis in original). Respondents cannot contest the Subpoenas on the ground that Respondents’ conduct was legal or the investment vehicles were not securities. See, e.g., *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943); *United States v. Construction Products Research, Inc.*, 73 F.3d 464, 470 (2d Cir. 1996); *NLRB v. C.C.C. Assocs., Inc.*, 306 F.2d 534, 538 (2d Cir. 1962); see also *FTC v. Texaco, Inc.*, 555 F.2d 862, 879 (D.C. Cir. 1977) (“If parties under investigation could contest substantive issues in an enforcement proceeding, when the agency lacks the information to establish its case, administrative investigations would be foreclosed or at least substantially delayed.”).

potential securities law violations reflects a “legitimate investigatory purpose”); *SEC v. Finazzo*, 543 F. Supp. 2d 224, 227 (S.D.N.Y. 2008); *Arthur Young & Co.*, 584 F.2d at 1024.

Second, the Commission seeks documents and testimony relevant to the REinvest Investigation. To satisfy this requirement, the Commission need only show that the information sought is “not plainly incompetent or irrelevant to any lawful purpose.” *Arthur Young & Co.*, 584 F.2d at 1029 (quoting *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943)). Courts “defer to the agency’s appraisal of relevancy, which must be accepted so long as it is not obviously wrong.” *RNR Enters.*, 122 F.3d at 97 (quoting *McVane*, 44 F.3d at 1135). The Subpoenas seek documents about the identity of REinvest’s investors, REinvest’s marketing and offering materials, its other communications with investors, its investment methodology, and its use of investor funds, among other things. (Castano Decl. ¶¶ 13, 20 & Exs. 5, 11.) This information, along with Riel’s testimony on similar issues, is not only relevant but critical to the Commission’s investigation. Without it, the Commission cannot fully investigate the accuracy of the 150% Website’s claims.

Third, the Commission does not already have the information the Subpoenas seek. Neither Riel nor REinvest has produced any documents, and Riel has not testified in this matter. (Castano Decl. ¶¶ 15, 18, 25.) Also, without documents or testimony identifying REinvest’s investors, which the Subpoenas would provide, the Commission likely cannot obtain important information from other sources.

Finally, the Commission issued and served the Subpoenas in accordance with “the administrative steps required.” *RNR Enters.*, 122 F.3d at 96–97 (quoting *Powell*, 379 U.S. at 57–58). The Commission lawyer who issued the Subpoenas was authorized by the Formal Order to issue subpoenas in the REinvest Investigation. (Castano Decl. ¶11.) The Commission also properly served the Subpoenas on Respondents. The Commission’s Rules of Practice govern the procedures for Commission proceedings. Rule 232(c) provides that service of Commission investigative subpoenas

must be made under the provisions of Rule 150(b) through (d). *See* 17 C.F.R. § 201.232(c). Rule 150(c)(3) permits service of Commission investigative subpoenas by “sending the papers through a commercial courier service or express delivery service.” 17 C.F.R. § 201.150(c)(3). The Commission staff served the Subpoenas by overnight UPS delivery and therefore properly served them under the Commission’s Rules. (Castano Decl. ¶¶ 12, 19.)

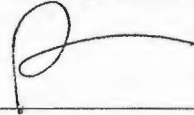
CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court order Respondents to show cause why they should not comply with the Subpoenas and, absent such cause, order them to comply with the Subpoenas.

Dated: March 13, 2014
New York, New York

SECURITIES AND EXCHANGE COMMISSION

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