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Courts for the District of Columbia

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

U.S. Securities and Exchange Commission)
 100 F St, NE,)
 Washington, DC 20549,)
)
) Movant,)
)
) -v-)
Steve H. Karroum,)
 8264 Trailwood Court,)
 Vienna, VA 22182,)
)
) and)
)
FX & Beyond Corporation)
 5659 Columbia Pike, Ste #201,)
 Falls Church, VA 22041,)
)
)
 _____ Respondents.)

Case: 1:15-mc-00590
Assigned To : Boasberg, James E.
Assign. Date : 5/11/2015
Description: Miscellaneous

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

The Securities and Exchange Commission, pursuant to Section 21(c) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(c)] and Section 22(b) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §77v(b)], hereby applies *ex parte* for an order requiring Steve H. Karroum and FX & Beyond Corporation (collectively, “Respondents”) to show cause why they should not be ordered to comply with administrative subpoenas served on them by the Commission in connection with a Commission investigation styled *In the Matter of FX & Beyond Corporation*, SEC File No. HO-12565 (the “Investigation”). The Commission further requests that, after Respondents have an opportunity to be heard, this Court enter an order directing compliance with the subpoenas.

In support of its Application, the Commission states as follows:

1. The Commission has properly issued and served an administrative subpoena on each Respondent in connection with an investigation it is conducting pursuant to its statutory authority.

2. Pursuant to the Investigation, the staff of the Commission is investigating, among other things, whether Sections 5(a) and 5(c) and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, have been or are being violated in connection with the activities of Karroum and his company FX & Beyond, a Virginia corporation with its principal place of business in Vienna, Virginia. The staff is further investigating whether any person or entity involved in the matter has engaged in “any acts or practices of similar purport or object.”

3. On January 14, 2015, Karroum was personally served with a subpoena issued to him by the Commission on January 12, 2015 (the “Karroum Subpoena”), requiring him to produce documents, computers and other items no later than January 27, 2015, and to appear and testify on February 19, 2015 at the Commission’s Washington, DC offices. In his capacity as registered agent and principal of FX & Beyond, Karroum was also personally served with a subpoena issued to FX & Beyond by the Commission on January 12, 2015 (the “FX & Beyond Subpoena” and, together with the Karroum Subpoena, the “Subpoenas”), requiring the company to produce documents no later than, January 27, 2015 and for its representative to appear for testimony on February 19, 2015 at the Commission’s Washington, DC offices.

4. Karroum failed to provide documents and other materials responsive to the Karroum Subpoena by the date specified on the subpoena. On March 2, 2015, he provided one production of approximately 33 documents but the production is limited and incomplete, and his

response indicated that additional responsive documents or items were in his possession, custody or control. Karroum and his attorney have failed to respond to requests to complete the production or provide satisfactory explanations for his failure to produce the majority of items required by the Karroum Subpoena.

5. Karroum failed to appear for testimony on the date specified on the Karroum Subpoena or on a later date that was agreed to by his counsel and Commission staff. Both times, he canceled his testimony only a few days before he was scheduled to appear. He has now rescheduled again. The Commission will notify the Court if he testifies as scheduled, although the Commission reserves the right to ask the Court to order Karroum to provide additional testimony after he has completed his document production.

6. FX & Beyond has not responded to the FX & Beyond Subpoena in any way. FX & Beyond has not produced any documents and its representative did not appear for testimony.

7. Because the Commission has fulfilled all administrative and legal prerequisites to enforcement of the Subpoenas, the Court should enter an order to show cause why Respondents should not be ordered to comply with the Subpoenas, and, once Respondents have an opportunity to be heard, enter an order directing compliance with the Subpoenas.

8. In support of this application, the Commission submits the accompanying Memorandum of Points and Authorities in Support of Application for Order to Show Cause and Declaration of Stephen T. Kaiser, Esq. Copies of the Subpoenas are attached as Exhibits 4 and 5 to the Declaration.

9. This Court has jurisdiction over this action pursuant to Section 22(b) of the Securities Act [15 U.S.C. § 77v(b)] and Section 21(c) of the Exchange Act [15 U.S.C. § 78u(c)].

Venue properly lies within the District of Columbia pursuant to Section 21(c) of the Exchange Act [15 U.S.C. §78u(c)] because the investigation is being carried on in the District of Columbia and because the Subpoenas require both Respondents' testimony and production of documents, computers and other materials in the District of Columbia.

WHEREFORE, the Commission respectfully requests that the Court:

(A) Enter an Order to Show Cause, in the form submitted, directing Respondents to show cause why this Court should not enter an order requiring Respondents to comply with the Subpoenas;

(B) Authorize service of the Order to Show Cause by facsimile, mail, e-mail, overnight delivery, special process server, personal service by any employee of the Securities and Exchange Commission, or in any other manner authorized by Rule 5 of the Federal Rules of Civil Procedure, on Respondents;


(C) After Respondents have had an opportunity to be heard, enter an Order, in the form submitted with this Application, directing Respondents to comply fully with the Subpoenas, preserve and produce documents and other responsive items, and appear for testimony, as directed;

(D) Retain jurisdiction over this proceeding until such time as Respondents comply fully with the terms of the Subpoenas; and

(E) Order such other and further relief as may be necessary and appropriate to achieve compliance with the Subpoenas directed to Respondents.

Date: May 11, 2015

Respectfully submitted,



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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100 F Street, NE,)
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Movant,)

MISC. No. _____

-v-

Steve H. Karroum,)
8264 Trailwood Court,)
Vienna, VA 22182,)

and)

FX & Beyond Corporation)
5659 Columbia Pike, Ste #201,)
Falls Church, VA 22041,)

Respondents.)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE
SECURITIES AND EXCHANGE COMMISSION'S APPLICATION FOR ORDER TO
SHOW CAUSE AND ORDER REQUIRING COMPLIANCE WITH SUBPOENAS**

The Securities and Exchange Commission ("SEC" or "Commission") seeks enforcement of two administrative subpoenas issued to Steve H. Karroum and FX & Beyond Corporation (collectively, "Respondents") as part of an investigation into possible violations of the federal securities laws. The documents and testimony subpoenaed from Respondents are highly relevant to the investigation. Indeed, they go to factual issues at the heart of the investigation. Respondents have failed to comply with the subpoenas without any valid justification. The Commission therefore respectfully requests that the Court order Respondents to show cause why they should not be ordered to comply with the subpoenas and, if they cannot make an adequate showing, order Respondents to comply by providing all responsive documents and testimony.

I. STATEMENT OF FACTS

A. The Investigation

Karroum is the President of FX & Beyond, a Virginia corporation with its principal place of business in Falls Church, Virginia. Declaration of Stephen T. Kaiser (“Kaiser Decl.”), ¶¶ 4, 8.

On November 25, 2014, the Commission issued a Corrected Order Directing Private Investigation and Designating Officers to Take Testimony in a matter entitled *In the Matter of FX & Beyond Corporation*, File No. HO-12565 (the “Formal Order”). Kaiser Decl., Exh. 1. The Formal Order authorizes the SEC staff to investigate whether persons or entities have violated or are violating the registration, antifraud, and broker-dealer registration provisions of the federal securities laws in connection with the activities of Karroum and FX & Beyond. *Id.* In particular, the Formal Order authorizes certain members of the SEC staff to, among other things, “subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry.” *Id.* at 3.

Pursuant to the Formal Order, the SEC is investigating whether Karroum and FX & Beyond have engaged in a Ponzi scheme or other scheme to defraud investors and to misappropriate investor funds. Kaiser Decl., ¶ 7. The evidence gathered in the course of the SEC’s investigation suggests that since December 2007, Respondents have received at least \$3.9 million from investors, purportedly to invest in foreign exchange transactions, and have offered investors guaranteed returns of up to 30%. *Id.* at ¶ 8. The evidence further suggests that Respondents have used certain investor funds to make Ponzi payments to other investors. *Id.* at ¶¶ 9, 11. Neither Karroum nor FX & Beyond is registered with the SEC as a broker, nor have

they filed any registration statement concerning the investment offered to investors. *Id.* at ¶¶ 8, 10.

B. The Subpoenas

On January 14, 2015, the SEC staff served each Respondent with a properly issued subpoena *duces tecum* and *ad testificandum* (the “Subpoenas”) in connection with its investigation. Kaiser Decl., ¶ 14, Exhs. 4, 5. In general, the Subpoenas required Respondents to produce, no later than January 27, 2015, any documents, computers or other materials related to their investment, business, and financial activities. *Id.* The Subpoenas further required Karroum and a representative of FX & Beyond to appear at the Commission’s offices in Washington, D.C. for testimony on February 19, 2015. *Id.*

After effecting service on Respondents, the SEC staff made repeated efforts to contact Karroum regarding the Subpoenas and to request his compliance and the compliance of FX & Beyond.¹ In the days leading up to January 27, 2015, when Respondents were required to produce responsive documents, the staff repeatedly reached out to Karroum by telephone, but he did not return their calls. *Id.* at ¶ 15. Three days before Karroum and an FX & Beyond representative were to appear to testify, an attorney purporting to represent Karroum (but not FX & Beyond) contacted the SEC staff to reschedule Karroum’s testimony. *Id.* at ¶¶ 17, 19. The parties eventually rescheduled Karroum’s testimony for March 17, 2015 and agreed that Karroum would complete his production of documents by March 13, 2015. *Id.*

¹ A more detailed account of the SEC staff’s attempts to contact and coordinate with Karroum and his counsel appears at paragraphs 15-26 of the Kaiser declaration.

On March 2, 2015, Karroum produced approximately 33 documents consisting mostly of corporate and tax records. *Id.* at ¶ 20. Karroum's production contains no email communications with investors. *Id.*

Accompanying Karroum's production was a "Response of Steve Karroum to Securities and Exchange Subpoena." Kaiser Decl., Exh. 15. In response to requests for bank records, Karroum wrote, "Documents to be provided; request currently made." *Compare* Kaiser Decl., Exh. 4, Requests 11, 12, 22.a, 22.b *with* Exh. 15, Responses 11, 12, 22.a, 22.b. In other responses, Karroum represented that he has no emails sent or received at any time since January 1, 2006. *Compare* Exh. 4, Request 29 *with* Exh. 15, Response 29. He also represented that he has no computers, mobile phones or portable hardware devices in the United States. *Compare* Exh. 4, Request 30 *with* Exh. 15, Response 30.

On March 16, 2015, the day before Karroum was rescheduled to appear and testify, Karroum's attorney emailed the SEC staff to inform them that Karroum would not appear the next day. Kaiser Decl., Exh. 17. On March 23, 2015, Karroum's attorney responded to the SEC staff's request to reschedule Karroum's testimony a second time, stating Karroum would not be available until "the latter part of April." Kaiser Decl., Exh. 19. That same day, the SEC staff requested specific dates Karroum would be available. Kaiser Decl., Exh. 20. On March 25, 2015, Karroum's attorney responded that his client was "on travel for business and will be on travel in April," but that he would ask Karroum for dates he would be available to appear and testify. *Id.*

Karroum's attorney never offered specific dates in late April for Karroum to appear for testimony. *Id.* at ¶ 24. The SEC staff emailed Karroum's counsel on May 1, 2015, to offer one

more opportunity for Karroum to comply with the Subpoenas and avoid this subpoena enforcement action. *Id.* at Exh. 21. Karroum's attorney responded that he could not offer specific dates and that his client would not be available for another "several weeks." *Id.* On May 4, 2014, Karroum's attorney stated in an email that his client had no further responsive documents, *id.* at Exh. 22, notwithstanding (1) Karroum's written response to his Subpoena that stated that Karroum would provide bank records, *see id.* at Exh. 15, and indeed has recently provided bank records to a third party, *id.* at Exh. 24, and (2) questions raised by the SEC staff and documents and information indicating the implausibility of Karroum's representation that he has no emails and no computers or phones in the United States, *see id.* at ¶¶ 28-29 and Exhs. 9, 16, 25.

On May 8, 2015, Karroum's attorney emailed the SEC staff to reschedule Karroum's testimony. Kaiser Decl., ¶ 26 and Exh. 23. Karroum is presently scheduled to appear for testimony on May 18 and 19, 2015.²

Karroum has not objected to the scope of the Subpoenas. Kaiser Decl., Exh. 15. FX & Beyond has never responded to the Subpoenas in any manner. *Id.* at ¶ 30.

² Because the Karroum has twice cancelled his testimony date in the days before he was to testify and because Karroum has not complied with his Subpoena to the extent it requires the production of all relevant documents, the Commission is filing this Application despite Karroum's most recent offer to appear to testify. If Karroum appears for testimony, the Commission will notify the Court. The Commission reserves the right, however, to ask that Karroum be ordered to provide additional testimony after he completes his document production.

C. Evidence That Karroum Has Responsive Documents In His Possession, Custody or Control That He Has Not Produced

Karroum claims not to have any emails in his possession, custody or control. Evidence developed in the course of the SEC's investigation, however, shows that Karroum communicated with investors by email. *Id.* at ¶¶ 13, 28. These communications included representations about the investments. *Id.* at ¶ 13. Karroum has also corresponded with the SEC staff by email. *Id.* at ¶ 17 and Exh. 9.

Karroum also claims not to have any computers in the United States. But as recently as January 24, 2015, Karroum stored at least five computers in his home in Virginia. Declaration of Bassam A. Atiyeh ("Atiyeh Decl."), ¶¶ 5-6. On that date, at least one of those computers contained files regarding investors. *Id.* Karroum told an investor that he uses these computers to run his investment program. *Id.* at ¶ 8. A picture of the interior of Karroum's residence on a Sotheby's International Realty website, which the SEC staff understands was taken in December 2014, appears to show the five computers in the residence. Kaiser Decl., ¶ 29 and Exh. 25. The staff has reason to believe that the computers are still present in Karroum's home. *Id.* at ¶ 29.

Karroum has not produced any bank records in response to his Subpoena. But the SEC staff has obtained evidence indicating that as recently as April 3, 2015, Karroum has obtained and produced his bank records to a third party. *Id.* at ¶ 27 and Exh. 24.

II. ARGUMENT

Respondents should be ordered to comply with the Commission's Subpoenas. A district court is bound to enforce an administrative subpoena if the subpoena was properly issued and the information sought is reasonably relevant to a legitimate inquiry. Because the Commission has fulfilled these limited requirements, and because Respondents have not raised any challenge to

the Subpoenas, this Court should enter a show cause order against Respondents and, after they have had an opportunity to be heard, require compliance with the Subpoenas.

A. This Court Is a Proper Forum for This Action

Congress has explicitly authorized the Commission to seek, and the federal district courts to issue, an order compelling compliance with a Commission subpoena if a person refuses to comply. 15 U.S.C. §77v(b); 15 U.S.C. § 78u(c).³ Venue is proper in this Court because an SEC subpoena enforcement action may be brought in any United States District Court “within the jurisdiction of which such investigation or proceeding is carried on.” 15 U.S.C. § 78u(c). This investigation is being conducted at the SEC’s Washington, D.C. office, and the Subpoenas require that Respondents appear for testimony and produce documents and other materials there.

B. The Subpoenas Were Properly Issued and Served

Section 19(c) of the Securities Act and Section 21(b) of the Exchange Act provide that the SEC may, in the course of conducting investigations, designate officers and empower them to subpoena documents and witnesses. 15 U.S.C. §77s(c); 15 U.S.C. §78u(b). Rule 8 of the SEC’s Rules Relating to Investigations provides that investigative subpoenas may be served by several methods, including by personal service. 17 C.F.R. §§ 203.8, 201.150(c). Here, Respondents were personally served with the Subpoenas by process server. Respondents also have actual notice of the Subpoenas, as evidenced by the fact that Karroum hired an attorney to communicate with the SEC staff regarding the Subpoenas and has made a limited document production.

³ Subpoena enforcement proceedings may be summary in nature because these statutory authorizations satisfy an exception to the general applicability of the Federal Rules of Civil Procedure. *See, e.g., SEC v. Sprecher*, 594 F.2d 317, 319-20 (2d Cir. 1979), *SEC v. Knopfler*, 658 F.2d 25, 26 (2d Cir. 1981).

C. Respondents Have Not Complied With the Subpoenas

FX and Beyond has not responded to its Subpoena in any way. Karroum has failed to comply with his Subpoena by not appearing for testimony on the required date and repeatedly canceling his rescheduled testimony at the last minute. The SEC staff has made more than reasonable efforts to accommodate Karroum's schedule. It has become apparent that Karroum will not appear for testimony without Court intervention.

Karroum has made a limited production of documents accompanied by written responses, but they are facially inadequate. For example, in his written responses, Karroum represented that he had requested bank records that he would subsequently produce. Now, however, his lawyer has represented that he has produced all responsive documents in his possession, custody or control, even though it seems Karroum provided bank statements to a third party three months after the Subpoena was served, *see* Kaiser Decl., Exh. 24. Similarly, Karroum represented that he did not produce any computers because he had "[n]one in the United States." But the location of his computers is irrelevant if they are within his possession, custody or control. *See CFTC v. Nahas*, 738 F.2d 487, 492 & n. 11 (D.C. Cir.1984) (collecting cases of subpoena enforcement actions of where respondents were required to produce documents held abroad).

In addition, the evidence suggests that Karroum's claims in his written response that he has no responsive documents to certain requests are not credible. The SEC staff has gathered evidence that Karroum had extensive email communications with investors, Kaiser Decl., ¶¶ 13, 28, yet he claims to have no emails at all. And at least one investor has seen multiple computers in Karroum's home in Virginia—computers on which Karroum kept files related to FX & Beyond and its investors—since the date on which the Subpoenas were initially served. Atiyeh

Decl., ¶¶ 5-6. A photo of Karroum's home taken approximately a month before the Subpoenas were served shows the computers in Karroum's home as described by the investor. *Compare id.* (describing five computers connected to a single monitor in a home office space) *with* Kaiser Decl., Exh. 25 (photograph showing multiple computers connected to a single monitor in a home office space). The SEC staff has reason to believe that the computers are still in Karroum's home to this day. Kaiser Decl., ¶ 29.

D. The Commission Has Met Its Burden for Enforcement of the Subpoenas

A court must enforce an administrative subpoena if “the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.” *U.S. Int'l Trade Comm'n v. ASAT, Inc.*, 411 F.3d 245, 253 (D.C. Cir. 2005) (citing *United States v. Powell*, 379 U.S. 48, 57-58 (1964)); *SEC v. Deloitte Touche Tohmatsu CPA Ltd.*, 928 F. Supp. 2d 43, 48 (D.D.C. 2013), *objections overruled sub nom. SEC v. Deloitte Touche Tohmatsu CPA Ltd.*, 940 F. Supp. 2d 10 (D.D.C. 2013).

(i) The Subpoena is Within the Agency's Authority

The Commission's investigation is being conducted pursuant to authority vested in the Commission by Congress. *See* 15 U.S.C. §§77s(c), 78u(b). Congress created the SEC as an independent regulatory agency having the primary responsibility to enforce the federal securities laws and to protect the integrity of the nation's capital markets. To that end, Congress gave the SEC broad authority to conduct such investigations as it deems necessary to determine whether any person “has violated, is violating or is about to violate” any provision of the federal securities laws. 15 U.S.C. §§ 77t(a), § 78u(a) (empowering the Commission to subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers,

correspondence, memoranda, or other records which the Commission deems relevant or material to the inquiry); *see also SEC v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 740 (1984). Further, Congress gave the SEC authority to investigate “any facts, conditions, practices or matters” that, in its discretion, the SEC deems necessary or proper to aid in the enforcement of the federal securities laws. 15 U.S.C. § 78u(a)1. The Staff’s investigation into Respondents’ potential securities law violations and the Subpoenas issued in the course of that investigation fall squarely within the scope of that authority.

(ii) The SEC’s Investigation Seeks Relevant Documents and Testimony

Information is reasonably relevant to an administrative investigation when it is “not plainly incompetent or irrelevant to any lawful purpose of the [agency].” *FTC v. Church & Dwight Co.*, 665 F.3d 1312, 1315 (D.C. Cir. 2011) (quoting *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992)). When assessing the relevance of information sought in an administrative subpoena, courts defer to the agency’s determination of the scope of their investigative authority. *Id.* at 1316 (citing *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001), and *EEOC v. Lutheran Social Servs.*, 186 F.3d 959, 965 (D.C. Cir. 1999)).

The Subpoenas seek core documents, materials and testimony necessary to investigate and follow leads mandated by the Commission’s Formal Order. For example, the Subpoenas require the production of emails that would show what representations Respondents made to investors. They also seek records that show the disposition of investor funds. And they require Respondents to give testimony so they can answer questions about information in the documents produced, about their oral representations to investors, and about how they used investors’ money.

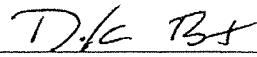
Taking Respondents' testimony is all the more critical to the investigation given that Karroum has represented that he has no emails at all and no computers in the United States. The SEC staff has gathered evidence that Karroum frequently emailed with investors and he presently has (and certainly had as recently as January 24, 2015, *after* the Subpoenas were initially served) up to five computers in his home in Virginia on which he kept files related to investors. The SEC staff needs to question Karroum to resolve these apparent discrepancies and determine if Karroum has improperly withheld or even destroyed responsive documents.

III. CONCLUSION

As a result of Respondents' refusal to comply with the Subpoenas, the Commission is unable to gain access to relevant information, documents and other materials in an investigation that has been authorized lawfully for the protection of investors. Respondents have not asserted any valid excuse for their failures to comply with the Subpoenas. Accordingly, the Commission requests that the Court act expeditiously to grant this Application and issue an order, in the form submitted, requiring Respondents to show cause why they should not be ordered to comply with the Subpoenas. In the event Respondents fail to show adequate cause for their refusal to comply with the Subpoenas, the Commission further requests that the Court (i) order Respondents to comply with the Subpoenas by promptly producing all responsive documents and other materials and appear for testimony, (ii) order Respondents to preserve all responsive documents and any computers in their possession, custody or control, wherever located, and (iii) retain jurisdiction over this proceeding until such time as the Respondents comply fully with the terms of the Subpoenas. The Commission finally requests such other and further relief as may be necessary and appropriate to achieve compliance with the Subpoenas directed to Respondents.

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