

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

DEFENDANT VAGNOZZI'S MOTION IN LIMINE

Pursuant to this Court's Amended Order Setting Jury Trial Schedule, Requiring Mediation, And Referring Certain Matters to Magistrate Judge [ECF No. 521] and Paperless Order Granting Joint Motion to Extend Time [ECF No. 913], defendant Dean Vagnozzi ("Vagnozzi") hereby moves *in limine* to preclude the plaintiff SEC from introducing certain evidence, and respectfully states in support as follows:

ARGUMENT

A. THE SEC SHOULD BE PRECLUDED FROM INTRODUCING EVIDENCE REGARDING VAGNOZZI'S CONDUCT AND INVESTMENTS THAT ARE NOT ALLEGED IN THE AMENDED COMPLAINT.

Defendant Vagnozzi is concerned that the SEC may attempt to introduce evidence and testimony regarding events, investments, and conduct that is not alleged as to him in the operative Amended Complaint. This Court should enter an order *in limine* precluding such evidence.

In the Amended Complaint, the SEC alleges that Vagnozzi violated the federal securities laws with regard to investment offerings by two of his entities, defendants ABFP Income Fund

LLC "ABFP Income Fund 1" and ABFP Income Fund 2 LLC ("ABFP Income Fund 2"). Those offerings took place in 2018. The SEC has indicated that it intends to introduce evidence and arguments regarding Vagnozzi's alleged conduct in connection with other investment funds¹ and for time periods following the 2018 offerings of ABFP Income Fund 1 and 2.²

According to the SEC's Amended Complaint, Vagnozzi allegedly violated the federal securities laws through failing to register certain securities the SEC alleges should have been registered and by allegedly committing fraud in connection with the sale of securities.

First, the SEC alleges that Par Funding directly sold promissory notes to investors from August 2012 to December 2017, and that Vagnozzi allegedly raised \$20 million during that time period and was paid a 6 or 7 percent commission. Am. Compl. ¶ 57. This is the so-called "Finder's Fee" era.

Second, the SEC alleges that Vagnozzi played a role in creating "Agent Funds," and that he sold notes through his own Agent Funds. Specifically, the SEC alleges that Vagnozzi did so through "ABFP Income Fund and ABFP Income Fund 2 (collectively, the "ABFP Funds"). Am. Compl ¶ 86. The SEC then goes on to discuss at length the process of how investors allegedly invest in these two "ABFP Funds" and what was described in the private placement memoranda for the two "ABFP Funds." Am. Compl. ¶¶ 87-92. The SEC alleges that ABFP Income Fund raised \$22.3 million and ABFP Income Fund 2 raised \$6.3 million. Am. Compl. ¶ 107.

¹ The SEC has indicated that it only intends to offer evidence regarding other Vagnozzi investment funds that sold interests backed by Par Funding promissory notes. Vagnozzi understands that the SEC does not intend to offer evidence regarding Vagnozzi's other businesses or investment funds that offered investments unrelated to Par Funding, such as life insurance, life settlements, real estate investments, litigation funding, or the like.

² The SEC's Amended Complaint also contains allegations regarding the "exchange offers" conducted in April 2020 for ABFP Income Fund 1 and 2. This Motion does not seek an order preemptively excluding evidence regarding those events.

Third, the SEC alleges that Vagnozzi offered "Exchange Notes" for the two "ABFP Funds," and that he allegedly violated the federal securities laws in doing so. Am. Compl. ¶ 140.

The SEC's proffered evidence shows that the offerings for ABFP Income Fund 1 and 2 took place in 2018. Vagnozzi's attorney, John Pauciulo, filed Form Ds with the SEC in accordance with Regulation D governing the sale of unregistered securities, reflecting the dates of offering. [ECF Nos. 24, 24-2].

Notwithstanding these allegations in its Amended Complaint, the SEC contends that it should be free to introduce evidence regarding other investment funds subsequently offered by Vagnozzi that are not even mentioned in the operative complaint, or evidence regarding alleged sales activities that took place after the offerings of ABFP Income Fund 1 and 2 concluded. But the problem with the SEC's position is that such other alleged misconduct and alleged unregistered offerings quite simply are not pled in the Amended Complaint.

Courts within this District have excluded evidence on issues not specifically alleged in the complaint. *See, e.g., Landsman v. City of Vero Beach*, No. 13-14375-CIV, 2015 WL 10963709, at *3 (S.D. Fla. Oct. 28, 2015) (excluding expert's opinion regarding special damages and another expert's testimony regarding the inadequacy of an investigation because there was no claim for special damages or negligent investigation alleged in the complaint, making the evidence irrelevant); *Ulysse v. Waste Mgmt. Inc. of Fla.*, No. 11-CV-80723, 2013 WL 12177853, at *1 (S.D. Fla. Nov. 4, 2013) (holding that evidence of disparate treatment based on national origin in the work place that was "not mentioned in the complaint . . . should be excluded").³

³ Vagnozzi also candidly acknowledges that other cases in this District have declined to exclude evidence based on this same argument. *E.g., SEC v. BankAtlantic Bancorp, Inc.*, No. 12-CV-60082-FNS, 2013 WL 11941575 (S.D. Fla. Oct. 16, 2013) (denying motion *in limine* based on argument that SEC expanded allegations beyond the complaint because its summary judgment use of an "artful phrase – 'a known trend of crumbling creditworthiness'" was the same as the "gist"

The Federal Rules of Evidence also support exclusion of the SEC's proffered evidence. Federal Rule of Evidence 401 of course provides that only relevant evidence is admissible at trial. Under that Rule, evidence is relevant only if "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. Rule 402 of course provides the corollary of this, that "[i]rrelevant evidence is not admissible." Fed. R. Evid. 402. And finally, Rule 403 provides that the court "may exclude evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

The Court should preclude evidence proffered by the SEC on matters that are not alleged in the Amended Complaint because such evidence is not relevant under Rule 401. Moreover, Rule 403 applies because such evidence's probative value would be substantially outweighed by a danger of unfair prejudice by suggesting that Vagnozzi engaged in other improper conduct, and confusing the issues, misleading the jury, and wasting time by focusing on investments that are not pled in the Amended Complaint.

In conclusion, this Court should enter an order *in limine* precluding the SEC from offering evidence regarding any investment funds offered by Vagnozzi other than ABFP Income Funds 1 and 2, and precluding the SEC from offering evidence regarding any sales activity or other conduct that took place after the initial offering of promissory notes by ABFP Income Fund 1 and 2 concluded. (other than the Exchange Offers for ABFP Income Funds 1 and 2).

of the SEC's allegations in its complaints regarding disclosures of a known trend of downgraded loans). However, each case must be viewed on its own, and in this case the SEC's attempt to bring in evidence regarding time periods and investments beyond the two specific funds alleged in the Amended Complaint goes too far.

B. THE SEC SHOULD BE PRECLUDED FROM PRESENTING EVIDENCE REGARDING A PROPOSED BANK PURCHASE, REFERRING TO PAR FUNDING AS A "PONZI SCHEME" OR "USURIOUS," REGARDING LAFORTE'S CRIMINAL BACKGROUND, SEIZURE, OR PENDING CASE, TESTIMONY BY BRADLEY SHARP, THE TEXAS STATE SECURITIES BOARD, AND EVIDENCE OF REPAYMENTS DURING COVID-19.

Vagnozzi fully adopts and incorporates the *in limine* arguments raised by defendants Laforte, McElhone, Cole, and Abbonizio in their motions *in limine*, seeking preclusion of all evidence regarding a proposed bank purchase, precluding the SEC from referring to Par Funding as a "Ponzi Scheme" or that it made "usurious loans" or similar terminology, precluding evidence of defendant Laforte's criminal background or cases, precluding testimony from Bradley Sharp, precluding evidence of the Texas State Securities Board's unproven allegations, and precluding evidence that some noteholders who did not accept the April 2020 exchange offer negotiated payouts of their promissory notes.

In addition to the reasons stated by such other defendants, Vagnozzi also notes that all deposits made by his prospective investors in a proposed offering to invest in the proposed bank purchase (which he offered through a fund only to accredited investors pursuant to Rule 506(c) of Regulation D) were returned to those prospective investors in April through July 2020 as the bank purchase was not being completed – well prior to the SEC filing suit in this matter. Vagnozzi also notes that he was never named as a defendant in the Texas State Securities Board action.

CONCLUSION

For the foregoing reasons, defendant Vagnozzi respectfully requests that this Court grant his motion *in limine* precluding certain evidence by the plaintiff SEC.

LOCAL RULE 7.1 STATEMENT

Pursuant to Local Rule 7.1, counsel for defendant Vagnozzi conferred with counsel for the SEC, who indicates that the SEC objects to the requested relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of November 2021, a true and correct copy of the foregoing was served via the Court's CM/ECF System upon all counsel of record.

/s/Brian P Miller
Brian P Miller