

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Case No. 9:20-cv-81205-RAR
Civil Division

SECURITIES & EXCHANGE
COMMISSION,
Plaintiff

v.
COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING,
Defendant

_____ /

**DEFENDANT, MICHAEL C. FURMAN'S MOTION IN LIMINE TO EXCLUDE
UNDERCOVER AGENT TESTIMONY**

The Defendant, MICHAEL C. FURMAN ("FURMAN"), by and through undersigned counsel, pursuant to Local Rules 7.1, respectfully requests that this Court enter an order excluding from trial all testimony, and any related evidence, regarding any interactions between FURMAN and a federal agent posing as an investor, to wit: "Dawn Taylor," and, in support thereof, states as follows:

1. On or about March 5, 2020, the Federal Bureau of Investigation ("FBI") surreptitiously recorded FURMAN conversing with an individual identified as "Dawn Taylor" ("Taylor"). Taylor was subsequently revealed to have been a federal agent operating covertly. See Declaration of JohnF. Murray.
2. The FBI provided the recording to Plaintiff. Id.
3. On August 10, 2020, Plaintiff filed its Amended Complaint for Injunctive and Other Relief ("Amended Complaint") [DE-119] in which Plaintiff alleges that "...Furman is currently soliciting investors to purchase Par Funding Notes...". Amend. Compl. at ¶ 143.

4. Plaintiff cites to FURMAN's interactions with individuals "...posing as investors..." as evidence of said solicitation. Id.
5. The Plaintiff further relies on these interactions as support for multiple counts of fraud against FURMAN in the subject case.

MEMORANDUM

I. The evidence is irrelevant

The Plaintiff must establish that evidence of FURMAN's interactions with Taylor are relevant before the same may be admitted at trial. Fed. R. Civ. P. 401. Whether the interactions, and evidence related thereto, are relevant turn on their propensity to prove solicitation. Id.

Here, FURMAN never solicited Taylor and certainly not in any manner defined by Plaintiff throughout these proceedings. More specifically, FURMAN did not first encounter Taylor through an advertisement he commissioned, a mailing he sent, or a phone call he made. In fact, the recording made by the FBI referenced *supra* was of a phone call initiated by Taylor to FURMAN. On that call, Taylor acknowledges that she was introduced to FURMAN by a third party with whom she had discussed investment "products" to which FURMAN might have access. Furman Call Tr. 3:11-15. Taylor then further queries FURMAN about his investment products. Id.

As the primary inquiry into FURMAN's investment products in this instance was driven by the FBI, through an undercover agent, by way of a third party, the

characterization of the interaction as a solicitation by FURMAN is a tortured one at best and is irrelevant at least.

II. The evidence is more prejudicial than probative

Even if the Court is inclined to assign some probative value to the interactions between FURMAN and Taylor, any value is substantially outweighed by the danger of the evidence to unfairly prejudice FURMAN's case, confuse the issues, and mislead the jury. Fed R. Civ. P. 403.

At most, the recording demonstrates that FURMAN acted in response to inquiries and requests from Taylor. To allow Plaintiff to introduce the evidence under the guise of proving solicitation would be to grant Plaintiff *carte blanche* to conflate FURMAN's reasonable actions with the alleged actions of other Defendants – all under the imprimatur of the FBI no less.

WHEREFORE, the Defendant, MICHAEL C. FURMAN, requests that this Court enter an Order excluding from trial all testimony, and related evidence, regarding Defendant's interactions with a federal agent posing as an investor, to wit: "Dawn Taylor," and for any further relief the Court deems appropriate.

RULE 7.1(a)(3) CERTIFICATION

I HEREBY CERTIFY that on November 10, 2021, counsel for the movant attempted to confer, via email, with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and was unable to do so.

REQUEST FOR HEARING

The defendant, pursuant to Local Rule 7.1(b)(2), respectfully requests a hearing before the Court on the matters herein on the basis that the implications for Defendant are particularly complex and oral argument will aid the Court in reaching a just and proper resolution as to the relief requested.

The Defendant estimates that argument would require no more than 15 minutes.

Respectfully Submitted,

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