

Dyer v Canaccord Genuity LLC
2022 NY Slip Op 34136(U)
December 6, 2022
Supreme Court, New York County
Docket Number: Index No. 653902/2022
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

-----X

ERIC DYER,

Plaintiff,

- v -

CANACCORD GENUITY LLC, CHARLES SCHWAB & CO.

Defendants.

-----X

INDEX NO. 653902/2022

MOTION DATE 11/22/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for DISCOVERY - PRE-ACTION.

Upon the foregoing documents, it is

The following reads on an Order to Show Cause that seeks “an order granting pre – action disclosure pursuant to CPLR 3102(c) ... compelling disclosure by Respondent of documents relevant to identifying the John Doe Defendant(s) who failed to disclose the manipulation of the stock price of Petitioner’s securities through the sale of non – existent ‘ghost’ shares.”

A virtual Microsoft Teams Appearance was held on November 11, 2022, where both sides appeared.

Per the Petition, “Petitioner is a shareholder of Tamboran Resources. A company engaged in natural gas exploration which listed on the Australian Stock Exchange (ASX) on July 2, 2021. Upon information and belief, between September 20, 2021 and November 30, 2021 no less than 756,808 TBNRF shares were sold. Petitioner believes that if ‘ghost’ shares have been purchased or sold through Respondent OTCMG, the price of Petitioner’s share were manipulated as a result of artificial demand created by the John Doe Defendant(s). Petitioner is unaware of

the identity of the unknown John Doe Defendant(s) during the relevant period and is unable to ascertain that information from any source other than Respondents. Petitioner is further unable to determine the exact damages that he has sustained without time and sales data for each date identified in the Bloomberg screens” (see NYSCEF Doc. No. 1 Pars. 4 – 5, 8, 12, 14 – 15).

The Petition does not state any causes of action and Respondent Charles Schwab has answered (see NYSCEF Doc. No. 17) and Canaccord Genuity LLC has not appeared but submits a memorandum of law in opposition to the Order to Show Cause (see NYSCEF Doc. No. 12).

Respondent – Charles Schwab & Co., Inc. submits a memorandum of law. “Pre – action disclosure ‘to aid in bringing an action’ is permitted by court order in narrow circumstances where ‘a petitioner demonstrates that it has a meritorious cause of action and the information sought is material and necessary to the actionable wrong’ (see *GTV Media Grp., Inc. v. Confidential Glob. Investigations*, 205 A.D.3d 539 [1st Dept. 2022]). A petition for pre -action disclosure ‘is not permissible as a fishing expedition’ nor is it available ‘to ascertain whether a cause of action exists.’ (see *Bishop v. Stevenson Commons Assocs., L.P.*, 74 A.D.3d 640, 641 [1st Dept. 2010]). Petitioner seeks to burden Schwab – a third party against which he alleges no wrongdoing – with onerous disclosure demands based on a claim that is utterly nonsensical. Petitioner has, apparently, collected publicly – available data concerning trading in the stock of Tamboran Resources Ltd. on exchanges located in both the U.S. and Australia and, because that data is not identical, has convinced himself that something nefarious is afoot. It is apparent, however, that Petitioner simply does not understand how the trading of foreign ordinary shares (“F shares”) operate on U.S. exchanges. Trade data for F shares on U.S. exchanges may or may not be reflected in the home markets for those shares, and thus, it is entirely unremarkable that the trading of an issuer’s shares may not be reflected in the same volume or quantity on both the

U.S. and local exchanges on the same day. Intentionally oblivious to this fact, Petitioner has contorted his misunderstandings into a purported fraud claim. Beyond the fact that Petitioner stated during a telephone discussion with the undersigned that Petitioner does not purport to suggest any fraud by Schwab, Petitioner also fails to identify who he believes was defrauded or how the fraud took place, and instead relies on the bare and subjective assertion that he ‘believes’ manipulation has occurred” (see NYSCEF Doc. No. 18 Ps. 5 – 6, 9).

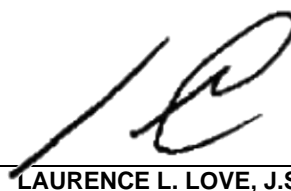
Petitioner’s Reply states, “the publicly available data regarding the TBNRF trades indicates – (1) large suspicious transactions (2) in a penny stock listed on (3) a foreign exchange, (4) where on particular dates such transactions constitute the majority (assuming, for the sake of argument that Respondent Canaccord is right and that it doesn’t constitute all) of the trading volume and (5) where the SEC has no jurisdiction. Sounds just like ‘innocent trading activity’” (see NYSCEF Doc. No. 19 P. 5).

Through all of the arguments presented and exhibits submitted, Petitioner has not shown why pre – action disclosure is warranted. On the most fundamental level Petitioner is not even in a position to state what if any damages are allegedly been sought. His claim centers on an alleged difference between number of shares traded in overseas market vs what he sees documented. The Court notes that Respondents have gone to great lengths to provide back up materials that call into question what if anything Petitioner is even seeking at this juncture. The information presented does not distinguish from “innocent trading activity.”

ORDERED that the Order to Show Cause for pre – action disclosure pursuant to CPLR 3102(c) ... compelling disclosure by Respondent of documents relevant to identifying the John Doe Defendant(s) is DENIED in its entirety.

12/6/2022

DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE