

**Khorassani v Financial Indus. Regulatory Auth.**

2023 NY Slip Op 32009(U)

June 15, 2023

Supreme Court, New York County

Docket Number: Index No. 153819/2023

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

*Justice*

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DAVID KHORASSANI

Petitioner,

- v -

FINANCIAL INDUSTRY REGULATORY AUTHORITY,

Respondent.

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INDEX NO. 153819/2023

MOTION DATE 6/13/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 45, 46

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

**BACKGROUND**

Petitioner commenced this proceeding seeking an order, pursuant to CPLR § 3102(c), compelling pre-action disclosure to ascertain the identities of all brokers who traded Meta Materials, Inc. Series A Preferred Stock in the period leading up to December 14, 2022, referred herein as ticker symbol MMTLP.<sup>1</sup>

For the reasons set forth below, the motion is denied, and the proceeding is dismissed.

**ALLEGED FACTS**

On or about June 28, 2021, Torchlight Energy Resources (“Torchlight Energy”)—a public company that traded under the ticker symbol “TRCH” on NASDAQ—merged with, and became, Meta Materials, Inc. (“Meta Materials” or “MMAT”). After the merger, Meta Materials’

<sup>1</sup> The petition and moving papers set forth various dates for which the information is sought, at some points going back as far as June 2021, however at oral argument Petitioner’s counsel agreed to limit the period to the two weeks prior to December 8, 2022.

common stock began trading on the NASDAQ under the ticker symbol MMAT, and Meta Materials issued a special dividend in the form of a Series A Preferred Share (hereinafter called “MMTLP”) to Torchlight Energy stockholders that held shares before the merger.

In October 2021, MMTLP shares were listed and began trading on the Over-the-Counter (“OTC”) Market. Petitioner asserts that this was not intended, nor authorized, by either the previous board of directors of Torchlight Energy or the current board of directors of Meta Materials.

In July 2022, Meta Materials Board of Directors voted to spin out the assets of Torchlight Energy into a separate company, Next Bridge Hydrocarbons, Inc. (“Next Bridge”). Next Bridge publicly filed an S-1 registration statement, which was approved by the Securities and Exchange Commission (“SEC”) and became effective on November 18, 2022. On November 23, 2022, Meta Materials issued an announcement regarding the Next Bridge / MMTLP corporate action, stating that each holder of its Series A Preferred Shares—MMTLP—as of December 12, 2022, would become entitled to receive one share of the common stock of Next Bridge for every one share of MMTLP held. Meta Materials also stated that the Next Bridge shares would be distributed to MMTLP shareholders on December 14, 2022, at which time all MMTLP shares would be automatically cancelled and MMTLP holders would cease to have any rights with respect to those shares. In addition, the company stated that the Next Bridge shares received in the distribution would not be eligible for electronic transfer through The Depository Trust Company (DTC).

Meta Materials notified FINRA of the Next Bridge / MMTLP corporate action. On December 6 and 8, 2022, FINRA provided public notice of the corporate action on FINRA’s website. FINRA’s corporate action notice stated that the Next Bridge shares would be distributed

to those MMTLP shareholders with settled positions as of December 12, 2022, and further clarified that any purchasers after December 8, 2022, (i.e., those with trades due to settle on or after December 13, 2022) would not be entitled to receive Next Bridge shares in the corporate action distribution. FINRA's corporate action notice also stated that the MMTLP symbol would be deleted effective December 13, 2022.

On December 9, 2022, FINRA halted trading in MMTLP.<sup>2</sup> FINRA asserts it halted trading because only those trades in MMTLP that were executed on or before December 8 typically would have settled in time to establish the purchaser as a new holder of the shares as of December 12. For trades in MMTLP executed after December 8, the seller of MMTLP shares would still have been recorded as the holder eligible to receive Next Bridge shares as part of the corporate action distribution, and the buyer would not be recorded as eligible to receive Next Bridge shares in the distribution.

Petitioner asserts that the shares of MMTLP that were outstanding between November 18, 2022, and December 8, 2022 (the "Relevant Period") should have never been publicly available for purchase or sale in the public market. Petitioner asserts that during the Relevant Period, some form of illegal activity transpired regarding the MMTLP stock that was trading, and that a significant percentage of the trading volume that occurred during this short time were short sales. As a result, the price of MMTLP share dropped from \$8.90 on November 18, 2022, to \$2.895 per share on December 8, 2022, causing harm to Petitioner.

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<sup>2</sup> FINRA is permitted under its rules to impose a quoting and trading halt in an OTC equity security where FINRA determines that an extraordinary event has occurred or is ongoing that has had a material effect on the market for the security or has caused or has the potential to cause major disruption to the marketplace or significant uncertainty in the settlement and clearance process. FINRA made such a determination for MMTLP and halted trading on December 9.

Respondent keeps records known as Electronic Blue Sheets, that contain both trading and account holder information. This includes, but is not limited to, the name and symbol of the security, the date of the transaction, the quantity of the security bought or sold, the name and address of the broker submitting the report, and the broker-dealer that executed the transaction.

On or about December 16, 2022, a Freedom of Information Act request (FOIA Request Number 23-00564-FOIA) was submitted to the SEC, looking for information from MMTLP Trading from December 1, 2022, through December 14, 2022, from FINRA, and information leading up to the FINRA imposed halt.

On March 30, 2023, the SEC responded, disclosing emails between the SEC and FINRA, which reflected that on or about December 5, 2022, FINRA was made aware of the MMTLP matter, as it had “hit [the] fraud team’s radar.” See Exhibit 3 to the Petition [NYSCEF Doc. No. 4]. The email admits to the Blue Sheeting of both MMTLP and MMAT securities and, per this admission, the relevant Blue Sheets exist in Respondent’s possession.

The MMTLP halt ended concurrent with FINRA’s deletion of the MMTLP symbol, which occurred on December 13, 2022, however due to a technical glitch, FINRA’s website was not updated until February 16, 2023, to reflect that the halt had ended. Because the MMTLP shares were cancelled by the issuer on December 14, it has not been possible to trade them since that time, irrespective of the halt status displayed on FINRA’s website.

Respondent asserts there was no illegality in the MMTLP shares publicly quoted and traded. Where a security is or becomes tradeable, a public market for the security may develop—as it did with MMTLP.

FINRA does not approve a company’s issuance of securities or approve or determine when broker-dealers or customers may begin trading those securities. However, once a broker-

dealer executes a transaction in an unlisted security, the firm is required by FINRA rules to report the executed transaction to FINRA. And where a symbol does not yet exist for the security, the broker-dealer must request a symbol from FINRA. Because the issuer obtained a Committee on Uniform Securities Identification Procedures (“CUSIP”) number<sup>3</sup> for the Series A Preferred Shares, FINRA assigned the MMTLP symbol in 2021 upon request by a broker-dealer to facilitate electronic reporting of an executed transaction that occurred in the security.

FINRA asserts it deleted the MMTLP symbol on December 13 because of the imminent cancellation of the shares as announced by the company in connection with the Next Bridge / MMTLP corporate action. Because the MMTLP shares have been cancelled by the issuer, they can no longer be traded, and the symbol can no longer be reinstated.

As described in the Next Bridge prospectus filed with the SEC, Next Bridge anticipated that the distribution process for the Next Bridge shares would take about two weeks and would be effected by its transfer agent, American Stock Transfer & Trust Company LLC. Petitioner asserts that as of the date of this Petition, the MMTLP-Next Bridge share exchange has yet to occur.

## **DISCUSSION**

### ***Petitioner Fails to Allege a Meritorious Cause of Action as Required by CPLR § 3102(c)***

To obtain pre-action disclosure pursuant to CPLR § 3102, a petitioner must demonstrate it has sufficient factual basis to assert “a meritorious cause of action and [that] 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, 539 (1st Dept 2022); *see also Bishop v. Stevenson Commons Assocs., L.P.*, 74 A.D.3d 640, 641 (1st Dept 2022).

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<sup>3</sup> A CUSIP number identifies registered stocks.

“Preaction disclosure is not allowed to determine whether facts supporting a cause of action exist.” *Gleich v. Kissinger*, 111 A.D.2d 130, 131 (1st Dept 1985); *Liberty Imps. v. Bourguet*, 146 A.D.2d 535, 536 (1st Dept 1989); *see also Bishop*, 74 A.D.3d at 641; *Matter of Stewart v. New York City Transit Auth.*, 112 A.D.2d 939, 940 (2d Dept 1985).

This limitation is “designed to prevent the initiation of troublesome and expensive procedures, based upon a mere suspicion, which may annoy and intrude upon an innocent party.” *Stewart*, 112 A.D.2d at 940; *see also Matter of Uddin v. New York City Transit Auth.*, 27 A.D.3d 265, 266 (1st Dept 2006).

In its moving papers, Petitioner asserts that he anticipates bringing claims for damages for stock spoofing, naked shorting, market manipulation, and fraud. While Petitioner claims he is seeking pre-action disclosure to identify prospective defendants, he also acknowledges he is seeking transaction data that he hopes will allow him to identify a basis for liability and will reveal supporting facts to permit him to plead his anticipated claim with specificity. Such a request is contrary to the purpose of CPLR § 3102.

In fact, at oral argument Petitioner’s counsel acknowledged that the identity of the brokers would only be pertinent to the alleged fraud claims and that all the other causes of action required information and data from the blue sheets beyond just identifying potential defendants. Based on this admission, the court need only assess whether Petitioner has asserted a meritorious cause of action for fraud.

To state a claim for fraud under New York law, a petitioner must plead “a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages.” *Eurycleia Partners, LP v. Seward & Kissel*, 12 N.Y.3d

553, 559 (2009); *see also River Ridge Living Ctr., LLC v. ADL Data Sys., Inc.*, 98 A.D.3d 724, 725 (2nd Dept 2012).

Petitioner does not point to any alleged misrepresentation, nor does he allege any justifiable reliance. Further, the Petition does not allege any particularized damages, and Petitioner relies on conclusory and unsupported allegations only, asserting that he suffered financial harm as a result of the “illegal” trading of MMTLP shares.

The failure to plead the elements of an alleged fraud claim is fatal to the Petition. *See Dau v. 16 Sutton Place Apt. Corp.*, 205 A.D.3d 533, 535 (1st Dept 2022).

Courts have also consistently denied pre-action disclosure pursuant to CPLR § 3102(c) when the petition is based on speculation and suspicion. *See, e.g., GTV Media Grp.*, 205 A.D.3d at 539–40; *Bishop*, 74 A.D.3d at 641; *Liberty Imps.*, 146 A.D.2d at 536–37; *Dyer v. Cannacord Genuity LLC*, 2022 NY Slip Op 34136(U)(Sup Ct, New York County Dec. 6, 2022).

Here, the allegations and arguments in the Petition are speculative and conclusory. For example, a drop in stock price is not necessarily caused by illegal activity, but Petitioner believes that the unidentified brokers are responsible in some manner for the precipitous drop of MMTLP’s stock price. The Petition is therefore an improper fishing expedition, and the Petition must be denied.

WHEREFORE it is hereby:

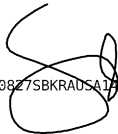
ORDERED that the motion is denied, and the petition is dismissed; and it is further

ORDERED that, within 20 days from entry of this order, respondent shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

  
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6/15/2023  
DATE

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SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: