

**Steamroller, LLC v OTC Mkts. Group, Inc.**

2024 NY Slip Op 32891(U)

August 15, 2024

Supreme Court, New York County

Docket Number: Index No. 160854/2023

Judge: Shahabuddeen Abid Ally

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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. SHAHABUDDEN ABID ALLY**

**PART 16TR**

*Justice*

STEAMROLLER, LLC,

Petitioner,

-against-

OTC MARKETS GROUP, INC.,

Respondent,

For an Order, pursuant to Section 3102(c) of the Civil Practice Law and Rules, to Compel Disclosure of Documents to Identify Prospective Defendant(s) in an Action to be Commenced by Petitioner.

INDEX NO. 160854/2023

MOTION DATE 12/14/2023

MOTION SEQ. NO. 001

**DECISION & ORDER**

The following e-filed documents, listed by NYSCEF document number, were read on this motion (Seq. No. 1) to/for **PRE-ACTION DISCOVERY**: 1-12, 14-32

In this proceeding, petitioner seeks pre-action disclosure from respondent pursuant to CPLR § 3102(c). Specifically, petitioner seeks disclosure of the identities of the individuals who or the entities that submitted a Form 211 to FINRA for the Meta Materials, Inc. Series A Preferred Dividend (“MMTLP”) to be listed for trading on the over-the-counter market. Petitioner is an MMTLP shareholder. Respondent is the parent company and sole member of OTC Link LLC (“OTC Link”), “which operates regulated electronic trading systems that display quotes (prices) from broker-dealers for over 12,000 U.S. and international securities.” (NYSCEF Doc. 18, ¶ 6) All securities traded via OTC Link’s systems are over-the-counter securities not listed on a major stock exchange. (*Id.*, ¶ 8)

This proceeding is resolved by *Khorassani v. FINRA*, No. 153819/2023, 2023 WL 4029701 (N.Y. Sup. Ct. N.Y. Cty. June 15, 2023), *aff’d*, 223 A.D.3d 589 (2024). There, an apparent MMTLP shareholder, represented by the same counsel representing petitioner herein, sought virtually identical relief as petitioner seeks here: the pre-action disclosure of the identities of the brokers who traded in MMTLP shares. Based on similar vague and conclusory allegations of supposed

fraud that constitute the Verified Petition in this proceeding, the Verified Petition in *Khorassani* sought to have FINRA produce the “blue sheets” it maintained that would allegedly reveal the identity of the brokers. The petitioner alleged that FINRA was the only source of this information. The trial court, in a decision dated June 15, 2023, denied the petitioner’s application on the ground that he had failed to allege a meritorious cause of action for fraud, as required under CPLR § 3102(c):

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.

*Khorassani*, 2023 WL 4029701, at \*3. The trial court also held that the petitioner’s allegations were “speculative and conclusory” and thus the petitioner was engaging in an “improper fishing expedition.” *Id.* at \*4. On appeal, the First Department affirmed the trial court’s decision, holding that “petitioner’s conclusory allegations fall far short of the showing necessary to obtain pre-action disclosure.” *Khorassani*, 223 A.D.3d at 590.

The Verified Petition in this proceeding suffers from the same infirmities as the petition in *Khorassani*. 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). Petitioner fails to identify any material misrepresentation by the broker or brokers who listed MMTLP for trading on which petitioner justifiably relied in purchasing shares of the security. Indeed, in the Memorandum of Law in support of the Verified Petition (notably, *not* the Verified Petition itself), petitioner specifically claims that it relied on the public disclosures of Torchlight Energy Resources, Inc. (“Torchlight”), the shareholders of which were to receive MMTLP shares upon Torchlight’s merger with Meta Materials, Inc. (NYSCEF Doc. 10, at 15) That disclosure stated that MMTLP “will not be listed or traded on any exchange” and “[n]o market is expected to develop for [MMTLP] in the foreseeable future and holders of [MMTLP] may not be able to find a buyer and sell their shares if they desired to do so.” (*Id.*) So, based on petitioner’s own allegations, not only did petitioner *not* rely on any misrepresentation by the unidentified brokers, but it could also not have justifiably relied on Torchlight’s public disclosure because it does not state that MMTLP would or could not be traded on an unsolicited basis in the over-the-

counter market. Indeed, by stating that it might be difficult for holders of MMTLP to find buyers for their shares should they desire to sell them, it implicitly recognized that the shares might be bought and sold.

Nor does petitioner allege any particularized damages *resulting from a relevant misrepresentation by the broker or brokers and petitioner's reliance thereon*; instead, petitioner merely alleges that "MMTLP's share price was artificially depressed by rampant naked shorting from \$8.90 to \$2.895 per share, or a loss of \$6.005 per share, between November 18, and December 8, 2022." (NYSCEF Doc. 1, ¶ 22)

Moreover, as the trial court and First Department recognized in *Khorassani*, petitioner's allegations are conclusory and unsupported. For example, nowhere does petitioner identify why, how, or under what law the trading of MMTLP without the issuer's approval made such trades "illegal." Respondent's Deputy General Counsel attests in his affidavit in opposition that, contrary to petitioner's assertions, "OTC Link does not require that a broker-dealer or issuer 'apply,' seek to 'list,' or submit a Form 211 for an over-the-counter security to be traded on OTC Link on an unsolicited basis." (NYSCEF Doc. 18, ¶ 11)

Therefore, based on the above, the Court finds, consistent with the trial court's and the First Department's findings in *Khorassani*, that the Verified Petition is an improper fishing expedition and must be denied.

Accordingly, it is hereby:

**ORDERED and ADJUDGED** that the Verified Petition and Order to Show Cause (Seq. No. 1) are **DENIED**, and this proceeding is **DISMISSED, without prejudice**; and it is further

**ORDERED** that petitioner shall serve a copy of this Decision and Order upon the Clerk of the General Clerk's Office with notice of entry within twenty (20) days thereof; and it is further

**ORDERED** that service upon the Clerk of Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (Revised August 15, 2019);<sup>1</sup> and it is further

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<sup>1</sup> The protocols are available at <https://www.nycourts.gov/LegacyPDFS/courts/1jd/suptctmanh/Efil-protocol.pdf>.

ORDERED that any requested relief not expressly granted herein is denied; and it is further

ORDERED that the Clerk shall mark Motion Sequence 1 decided in all court records; and it is further

ORDERED that the Clerk shall mark this proceeding disposed in all court records.

This constitutes the decision and order of the Court.



August 15, 2024

DATE

SHAHABUDDEN ABID ALLY, A.J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>	STAY CASE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE