UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN M. SKINNER,	:	
	:	
Plaintiff,	:	
	:	
V.	:	CASE NO. 3:01CV974 (RNC)
	:	
PAUL GOLUB, et al.,	:	
	:	
Defendants.	:	

RULING AND ORDER

Plaintiff John M. Skinner brings this action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., and state tort law seeking to recover a large sum of money he invested with the defendants, who allegedly have failed to return or account for the funds. His original complaint having been dismissed without prejudice for failure to allege a RICO enterprise, plaintiff seeks leave to file an amended complaint that would attempt to correct this deficiency by alleging that (1) defendants Carlson and Marker were "directly" associated with each other in a scheme to defraud; (2) they gave defendants Golub and O'Hara at least $10,000 in return for soliciting funds from the plaintiff and other victims; and (3) Carlson paid for Golub and O'Hara to travel to Florida and North Carolina and there asked them to join the scheme to defraud various persons. Defendant Marker opposes the request for leave to amend on the ground that

these allegations are insufficient to allege a valid RICO enterprise. I conclude that the proposed amendment is marginally sufficient in this regard and therefore grant the motion.[1]

II. Discussion

Under Fed. R. Civ. P. 15(a), timely motions seeking leave to amend are freely granted to facilitate the resolution of disputes on the merits. See Foman v. Davis, 371 U.S. 178, 182 (1962). However, leave to amend will be denied if the proposed amended complaint could not withstand a motion to dismiss for failure to state a claim. Lucente v. IBM, 310 F.3d 243, 258 (2d Cir. 2002). The issue presented by plaintiff's request for leave to amend is whether the proposed amended complaint adequately alleges a RICO enterprise in the form of an "association-in-fact."[2] An association-in-fact

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[1] Marker contends that plaintiff's request for leave to amend should be denied on other grounds as well. The ruling and order dismissing the original complaint indicated that the plaintiff would be permitted to file an amended complaint if he could overcome the original complaint's failure to adequately allege a RICO enterprise. Accordingly, Marker's other arguments in opposition to granting leave to amend are not considered at this time.

[2] RICO defines an "enterprise" as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). Plaintiff does not allege that the defendants, as a group, constituted a (continued...)

must have a common purpose and its existence must be proven by "evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." United States v. Turkette, 452 U.S. 576, 583 (1981).

The proposed amended complaint, liberally construed in plaintiff's favor, is at least marginally sufficient to allege an association-in-fact for the following reasons:

- It alleges that the defendants worked together as a group for a common purpose. In particular, it alleges that members of the group communicated with each other about their plans to defraud the plaintiff and others (¶ 60(a)); that Carlson and Marker paid fees to Golub and O'Hara to persuade clients to send money to Carlson and Marker (¶ 60(b),(g),(h)); that Carlson and Marker paid travel expenses for Golub and O'Hara so the group could work together (¶ 60(b),(c),(d)); and that the purpose of these activities was to further the scheme in which Golub and O'Hara's clients would transfer funds to Carlson and Marker's control (¶ 60(e),(f)).

- It alleges an enterprise that extends beyond the fraud against him. Thus, it alleges that "Defendants Golub and

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[2](...continued)
single legal entity, so the issue is whether he adequately alleges that they constituted an "association-in-fact."

O'Hara ... communicated with Damon Carlson and others in order to induce Skinner and others to transfer funds to Carlson and Marker." ¶ 60(a)(emphasis added); and that "Golub and O'Hara did in fact ... receive ... not less than $10,000.00 ... in return for the obtaining [sic.] from Skinner of his inheritance as well as others from their life savings." ¶ 60(h) (emphasis added).

- It alleges an enterprise in the form of an association-in-fact of the defendants as a group. Securitron Magnalock Corp. v. Schnabolk, 65 F.3d 256, 263 (2d Cir. 1995) ("Moreover, the defendants together constitute an enterprise that, while consisting of no more than those three RICO persons, is distinct from each of them."). See also Gerace v. Utica Veal Co., 580 F. Supp. 1465, 1468 (N.D.N.Y. 1984). And,

- It alleges an enterprise that was ongoing, rather than an association formed for a single, short-lived goal. See Beck v. Manufacturers Hanover Trust Co., 820 F.2d 46, 51 (2d Cir. 1987).

No pragmatic considerations weigh strongly against granting the plaintiff's motion. The motion is not untimely, having come shortly after the original complaint was dismissed. There is no reason to believe it is being made in

bad faith. The proposed amended complaint is very similar to the original one. And discovery has been stayed by order of the Magistrate Judge.

III. Conclusion

Accordingly, plaintiff's motion for leave to file the amended complaint is hereby granted.

It is so ordered.

Dated at Hartford, Connecticut, this 4th day of September 2002.

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Robert N. Chatigny
United States District Judge