

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	CIVIL NO. 3:03 CV 1524 (MRK)
	:	
v.	:	
	:	
BLAKE A. PRATER and	:	
WELLSPRING CAPITAL GROUP, INC.	:	
	:	
Defendants.	:	

RULING ON DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

On September 24, 2003, defendant Blake A. Prater filed a *pro se* Petition for Writ of Habeas Corpus [Doc. #17] in which he sought issuance of a writ of habeas corpus on the ground that he is "technically is a prisoner of the Plaintiff Securities and Exchange Commission," by virtue of the SEC having "stripped and deprived [him] of his personal and corporate property [and] his business." Petition at 1. Mr. Prater asked the Court to order the SEC to produce evidence in support of its efforts to enjoin Mr. Prater and his company from violating the securities laws and to order the return of "all possessions in the custody and/or control of the" SEC." *Id.* at 5. The SEC filed an Opposition [Doc. # 21] to the Petition on September 25, 2003, and Mr. Prater filed a reply on October 14, 2003 [Doc. # 27]. For the following reasons, the Petition for Writ of Habeas Corpus is DENIED.

The statutes making habeas corpus relief available in federal court all specify that the petitioner be "in custody." *See* 28 U.S.C. §§2241(c)(1)-(4), §2255. The term "in custody" is

understood to refer to someone whose liberty is impaired by virtue of state or federal criminal proceedings. *See, e.g., Ginsberg v. Abrams*, 702 F.2d 48, 49 (2d Cir. 1983); *see also* 17A WRIGHT, MILLER & COOPER, FEDERAL PRACTICE & PROCEDURE § 4262, at 312 (1988) ("some form of at least potential physical restraint must be present"). Economic duress does not constitute being "in custody" for the purposes of the writ. *See Ginsburg*, 702 F.2d at 49; *Lefkowitz v. Fair*, 816 F.2d 17, 20 (1st Cir. 1987). Thus far in this proceeding, Mr. Prater has been the subject only of court orders enjoining continuing violations of the securities laws and freezing certain assets. As such, Mr. Prater cannot be considered to be "in custody" of the SEC, and the Petition must therefore be denied.

That said, the Court notes that it treated Mr. Prater's Petition as an opposition to the SEC's application for preliminary injunction and that the Court fully considered his arguments before granting the SEC's application [Doc. # 23]. In addition, the Court has made it clear that it will consider any proper motion Mr. Prater may make to modify or vacate the Court's injunction and freeze order and has ordered the SEC to file periodic reports on the progress of its investigation into defendants' activities and the status of frozen assets.

IT IS SO ORDERED.

/s/ Mark R. Kravitz

U.S.D.J.

Dated at New Haven, Connecticut: October 17, 2003