

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

<b>JEFFREY SAYE,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>No. 3:03CV1071 (DJS)</b>
	:	
<b>OLD HILL PARTNERS, INC.,</b>	:	
	:	
<b>Defendant.</b>	:	
	:	

**MEMORANDUM OF DECISION AND ORDER**

Plaintiff, Jeffrey Saye, asserts five claims against defendant, Old Hill Partners, Inc. ("OHP"), seeking a declaration of his rights under certain contracts pertaining to his former employment with OHP and damages for OHP's alleged breach of these contracts. Several motions relating to discovery are pending in the above-captioned matter: (1) OHP's motion to quash the subpoenas served upon Bear Stearns & Co., Inc. and Nomura Securities International, Inc. (dkt. # 106); (2) OHP's motion to quash the subpoena served upon Sarah Howe (dkt. # 108); (3) OHP's motion to quash the subpoena served upon OHP and for a protective order (dkt. # 110); (4) OHP's motion to quash the subpoena served upon BDO Seidman, LLP (dkt. # 114); (5) OHP's motion to extend discovery deadline and deadline for dispositive motions (dkt. # 116); (6) OHP's motion for leave to take additional depositions (dkt. # 117); and (7) OHP's motion to quash the subpoena served upon Commercial Money Center (dkt. # 119).

## I. BACKGROUND

This lawsuit arises from the termination of Saye's employment relationship with OHP. Saye, a citizen of California, has been employed in "the investment and hedge fund industry, and was principally involved in analyzing and selecting bond positions for investment funds." (Compl., ¶ 7). OHP is a corporation organized in Delaware with its principal place of business in Darien, Connecticut. OHP "serves as an unregistered investment advisor, a hedge fund manager, and as the general partner of certain investment funds." (Id., ¶ 6). Saye commenced employment as a fund manager at OHP as of February 1, 2000.

Saye's employment with OHP ended on March 31, 2002. According to Saye, this event triggered certain vested rights Saye held pursuant to the two agreements with OHP. Saye claims that, under the terms of these agreements, OHP must compensate him for a 15% ownership interest in OHP.

OHP asserts counterclaims against Saye. OHP claims that Saye violated the terms of a Confidentiality and Non-Compete Agreement between the parties by, prior to leaving his employment with OHP, using OHP's proprietary information, including information allegedly protected as trade secrets under the Connecticut Uniform Trade Secrets Protection Act, to arrange an investment and employment opportunity for a competitor of OHP for

his own benefit. Further, OHP claims that Saye recorded the value of bonds he purchased as the fund manager at unrealistically high prices in order to artificially enhance his performance. OHP contends that Saye's actions breached his duty of loyalty and fiduciary responsibilities to OHP.

## II. DISCUSSION

Rule 26 of the Federal Rules of Civil Procedure governs the scope of discovery. Specifically, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. . . ." Fed. R. Civ. P. 26(b)(1). As a general proposition, the Federal Rules of Civil Procedure concerning discovery are to be construed broadly. See generally 6 Moore's Federal Practice § 26.41(1) (Matthew Bender 3d ed. 1997) (citing Herbert v. Lando, 441 U.S. 153, 177 (1979)). A valid discovery request need only "encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978); see Hickman v. Taylor, 329 U.S. 495, 501 (1947); Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 756 F.2d 230, 236 (2d Cir. 1985).

"A court can limit discovery if it determines, among other things, that the discovery is: (1) unreasonably cumulative or duplicative; (2) obtainable from another source that is more

convenient, less burdensome, or less expensive; or (3) the burden or expense of the proposed discovery outweighs its likely benefit." Chavez v. DaimlerChrysler Corp., 206 F.R.D. 615, 619 (S.D. Ind. 2002) (citing Fed. R. Civ. P. 26(b)(2)). The party resisting discovery bears the burden of demonstrating that its objections should be sustained, and

pat, generic, non-specific objections, intoning the same boilerplate language, are inconsistent with both the letter and the spirit of the Federal Rules of Civil Procedure. An objection to a document request must clearly set forth the specifics of the objection and how that objection relates to the documents being demanded.

Obiajulu v. City of Rochester, 166 F.R.D. 293, 295 (W.D.N.Y. 1996). The objecting party must do more than "simply intone [the] familiar litany that the interrogatories are burdensome, oppressive or overly broad." Compagnie Francaise D'Assurance Pour Le Commerce Exterieur v. Phillips Petroleum Co., 105 F.R.D. 16, 42 (S.D.N.Y. 1984). Instead, the objecting party must "show specifically how, despite the broad and liberal construction afforded the federal discovery rules, each [request] is not relevant or how each question is overly broad, burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden." Id. (internal citations and quotation marks omitted).

Prior to applying this standard to the motions now pending before the court, the court will address the certification

requirement of Local Rule 37(a)(2), which states, in pertinent part, that

[n]o motion pursuant to Rules 26 through 37, Fed. R. Civ. P., shall be filed unless counsel making the motion has conferred with opposing counsel and discussed the discovery issues between them in detail in a good faith effort to eliminate or reduce the area of controversy, and to arrive at a mutually satisfactory resolution.

D. Conn. L. R. Civ. 37(a)(2). Saye contends that OHP failed to comply with this requirement when it filed motions for relief under Rule 45 without the Local Rule 37 certification and requests that the court deny OHP's non-compliant motions.

The court will not deny OHP's pending motions on this basis because Local Rule 37 does not expressly state that certification must be provided when seeking relief under Rule 45. The court, however, notes that although the letter of the law does not require certification, plaintiff's interpretation is more faithful to the spirit of the rule and the purpose for the rule. As such, all discovery motions filed henceforth in this matter, including motions to quash under Rule 45, must demonstrate compliance with Local Rule 37(a)(2).

1. OHP'S MOTION TO QUASH SUBPOENAS SERVED UPON BEAR STEARNS & CO., INC. AND NOMURA SECURITIES INTERNATIONAL, INC. (DKT. # 106)

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, OHP seeks to quash the subpoenas issued to Bear Stearns & Co., Inc. ("Bear Stearns") and Nomura Securities International, Inc. ("Nomura") on September 15, 2004 and September 16, 2004,

respectively.

The subpoena issued to Bear Stearns seeks "[a]ll monthly or periodic account statements for accounts, and correspondence pertaining to the accounts, maintained with Bear Stearns & Co., Inc., of Footbridge Limited Trust, FLT Opportunity Fund, or any other common investment or hedge fund managed by Old Hill Partners, Inc., during the period from February 1, 2000 through and including March 31, 2002," and "[a]ll monthly or periodic account statements for accounts, and correspondence pertaining to the accounts, maintained with Bear Stearns & Co., Inc., of Old Hill Partners, Inc., during the period from February 1, 2000 through and including March 31, 2002." (Dkt. # 106, Ex. B, Sched. A). OHP argues that this request does not comply with the court's order on the same subject, which required that any subpoena served upon Bear Stearns should be limited to the time period when Saye worked for OHP and to the specific accounts Saye worked on.

OHP's motion is granted with respect to the subpoena served upon Bear Stearns. The court's previous order does not permit a general request for records regarding all accounts OHP maintained with Bear Stearns; the request must be limited to accounts Saye worked on. If Saye is unsure about the specific accounts or terminology used to refer to these accounts, he may obtain this information through means less burdensome to the respondent and

modify his request to Bear Stearns accordingly. Further, OHP's relevance objection to producing any documents from Bear Stearns is overruled.

OHP's motion is denied with respect to the subpoena issued to Nomura, which seeks "[d]ocuments listing the positions held by John Howe within Nomura Securities International, Inc. during the duration of his employment." (Dkt. # 106, Ex. C). Saye has complied with this court's previous order.

2. MOTION TO QUASH THE SUBPOENA ISSUED TO SARAH HOWE (DKT. # 108)

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, OHP seeks to quash the subpoena dated September 9, 2004 served upon Sarah Howe, who is married to the majority owner of OHP and is listed as OHP's vice-president. OHP claims that Sarah Howe can provide no relevant information regarding the subject matter of this lawsuit. OHP's motion is denied, because Sarah Howe has a position within OHP and may therefore be able to provide some information about OHP's value.

3. MOTION TO QUASH SUBPOENA ISSUED TO OHP  
(DKT. # 110)

OHP moves, pursuant to Rule 45 of the Federal Rules of Civil Procedure, to quash the subpoena served upon it dated October 7, 2004. OHP claims that the document request affixed to the subpoena is identical to certain requests for production previously served upon it under Rule 34 of the Federal Rules of Civil Procedure. OHP's motion is granted; if Saye is not

satisfied with the responses provided, he may seek relief pursuant to the procedures set forth in Rules 34 and 37 of the Federal Rules of Civil Procedure and this court's orders. OHP's alternate request for a protective order is denied as moot.

4. MOTION TO QUASH THE SUBPOENA ISSUED TO BDO SEIDMAN, LLP  
(DKT. # 114)

Saye served a subpoena upon BDO Seidman, LLP ("BDO Seidman") on July 15, 2004 generally seeking documents related to BDO Seidman's audits of OHP's business activities for the years of 2001 and 2002 and specifically seeking documents pertaining to Saye's alleged mis-marking of bonds. BDO Seidman's counsel negotiated with Saye's counsel regarding compliance with the request, and, on October 13, 2004, BDO Seidman produced documents in response. The documents produced were reviewed and redacted by OHP because OHP asserts that the documents reveal confidential information that could be used by its competitors, including Saye himself, for commercial advantage. Specifically, OHP claims that the audit documents reveal information about OHP's financing and portfolio management methods, which could reveal trade secrets for which OHP has claimed protection in its counterclaim against Saye. Saye objected to OHP's redactions, and OHP filed this motion to quash the subpoena.

OHP's motion is granted to the extent Saye seeks information beyond that which has been produced. Under the circumstances, OHP's redactions are appropriate. "[W]hen a party asserts that



discovery will cause competitive injury because of the revelation of trade secrets, it cannot generally rely upon conclusory statements, but must present evidence of specific damage likely to result from disclosure.” Culligan v. Yamaha Motor Corp., USA, 110 F.R.D. 122, 125 (S.D.N.Y. 1986). Here, the production of evidence demonstrating the sensitivity of the information set forth in the redacted documents is inextricably bound to OHP’s claim that its portfolio management methods are trade secrets. Further, OHP did not redact information directly relevant to its counterclaim against Saye, and Saye does not argue that he has a particular need for the redacted information. Therefore, it would be unreasonable under these circumstances to require OHP to reveal information that it may later prove is a trade secret in the absence of any indication that the information is particularly relevant.

5. MOTION TO QUASH SUBPOENA SERVED UPON OHP (DKT. # 119)

OHP moves to quash a subpoena served upon it on October 21, 2004 seeking documents related to OHP’s investment in Commercial Money Center and subsequent lawsuits involving this investment. OHP claims that the subpoena does not allow for a reasonable time to comply, that the information sought is not relevant to this lawsuit, and production thereof would therefore be unduly burdensome. Saye claims that the information is relevant to refute allegations OHP has made in its counterclaims that Saye

mismanaged OHP's portfolio and thereby caused OHP's damage because the information sought could show that other members of OHP were in fact responsible for any perceived damage and that these people had a motive to unjustly disparage Saye.

OHP's motion is denied. Saye has demonstrated that the information sought could be relevant, and OHP has not asserted, with the required specificity, how production of this material would be unduly burdensome. Further, the court will modify the subpoena to provide OHP with a reasonable time to comply with the subpoena.

6. OHP'S MOTION TO EXTEND DISCOVERY DEADLINE AND DEADLINE FOR DISPOSITIVE MOTIONS (DKT. # 116) AND OHP'S MOTION FOR LEAVE TO TAKE ADDITIONAL DEPOSITIONS (DKT. # 117)

OHP has requested that the court extend the discovery period, which expired on October 25, 2004, to allow OHP to schedule three depositions. OHP has also requested permission to exceed the ten deposition limit set forth in Rule 30 of the Federal Rules of Civil Procedure. Saye objects to both requests.

OHP's motions are granted. Because the reasonable discovery period allotted by the court has expired, the court has the authority to preclude or limit further discovery. Given the fact that several loose ends, created by the court's resolution of the pending motions, remain, the court will allow the discovery requested by OHP. OHP must complete this limited discovery on or before January 14, 2005. The prospective respondents to the

subpoenas retain all their rights to petition the court for relief as appropriate, and the court expresses no opinion regarding the subpoena issued to KMZR because OHP has not moved to enforce this subpoena.

### III. CONCLUSION

Pursuant to the foregoing, the court orders the following:

1. OHP's motion to quash the subpoenas served upon Bear Stearns & Co., Inc. and Nomura Securities International, Inc. (dkt. # 106) is **GRANTED in part** and **DENIED in part**. Respondent Nomura shall comply with the subpoena on or before **January 7, 2005**. Saye may re-serve a subpoena upon Bear Stearns on or before **December 17, 2004**.

2. OHP's motion to quash the subpoena served upon Sarah Howe (dkt. # 108) is **DENIED**. This deposition must be completed on or before **January 14, 2005**.

3. OHP's motion to quash the subpoena served upon OHP (dkt. # 110) is **GRANTED** and OHP's motion for a protective order (dkt. # 110) is **DENIED**.

4. OHP's motion to quash the subpoena served upon BDO Seidman, LLP (dkt. # 114) is **GRANTED** to the extent Saye seeks information beyond that which has been produced.

5. OHP's motion to extend discovery deadline and deadline for dispositive motions (dkt. # 116) is **GRANTED**. Further discovery is permitted only to the extent that OHP may serve the

subpoenas it requested and the parties may perform the actions specifically authorized herein. Discovery must be completed on or before **January 14, 2005**.

6. OHP's motion for leave to take additional depositions (dkt. # 117) is **GRANTED**.

7. OHP's motion to quash the subpoena served upon OHP regarding Commercial Money Center (dkt. # 119) is **DENIED**. OHP shall comply with the subpoena on or before **January 7, 2005**.

8. The parties shall file any dispositive motions on or before **March 4, 2005**. If a dispositive motion is filed, then the joint trial memorandum shall be filed within thirty days of the court's decision on the dispositive motion. If no dispositive motions are filed, then the parties shall file a joint trial memorandum on or before **March 18, 2005**.

So ordered this 1st day of December, 2004.

/s/DJS

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**DOMINIC J. SQUATRITO**  
**UNITED STATES DISTRICT JUDGE**