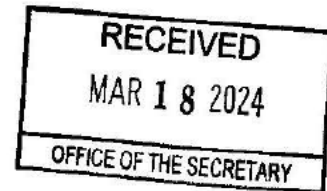


UNITED STATES OF AMERICA
Before The
SECURITIES & Exchange Commission

Investment Advisors Act of 1940
March 3, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-19733



In the Matter of

NICHOLAS J. GENOVESE

Respondent

MOTION FOR DISCOVERY & SANCTIONS

I Nicholas J. Genovese, Pro-Se am making this Motion for Discovery & Sanctions on Alexander Mircea Vasilescu because as of 2/29/2024 I have received literally no Discovery. This is a clear violation 1114.31 Failer to respond to Discovery requests; 180.500 Discovery, and 225.10 standard Discovery practice.

Staff attorney Vasilescu stated in his July 21, 2020 letter that Vasilescu/SEC provided all Non-Prileged documents relevent to my civil case(18-cv-00942) and AP File No. 3-19733.

This is a false statement made by Vasilescu. I never received any Discovery whatsoever other than copies of a court transcript and a TRO.

I never received any Investigative files, notes, emails, letters, subpoenas, affidavits, complaints, recordings, interviews with dates and times.

Surely even a child could understand that when 2 SEC Investrigators visited my office on Liberty STreet in December 2017, that those Investigators were already investigating my company and myself, so they had already received complaint(s), and had Investigative Notes, affidavits, investor statements, etc.

These are all Discovery that I am legally entitled to under "Brady v. Maryland" and under Commission Rules, 180.500, 225.10.

Yet Vasilescu would have you believe that ALL DISCOVERY is Privileged. This is completely false and is a fraud on this commission as well as a clear violation of the 6th Amendment, Due Process, FRCP 26, and Commission Rules 180.500, 225.10.

No victims have been identified, no documents to support the allegations, no complaints by investors or others, no notes, no investigation notes/records etc. Without Discovery my Right to Due Process has been violated intentionally.

Defendant is entitled to DIScovery for purposes of determining identity of accusers is the same in the criminal case and civil case as well as this case before the Commission.

At no time has Vasilescu or the SEC presented any documents, affidavits etc. of the identity of anyone that filed a complaint. The law requires specificity of which Vasilescu/SEC fails to produce Discovery.

It is my legal right (FRCP 26), (180.500), (225.10) to know who, when, where, what and the documents identifying that.

Once again as in my civil case (18-cv-00942) staff attorney Vasilescu is engaged in a scheme to defraud the commission and myself to withhold full DIScovery in the hopes of an easy rigged conviction. I question Vasilescu's professionalism at this point and have filed a complaint with the New York Bar Association regarding his fraudulent statements as well as his intimidation and violent outbursts he perpetrated on 2/29/2024.

I filed eight (8) requests for Discovery in my civil SEC case and Hanson & Vasilescu ignored everyone of them never producing any Discovery whatsoever. Vasilescu & Hanson acted in Bad Faith and is attempting a fraud on this Commission and my right to Due Process under the 6th Amendment. Vasilescu is attempting to use Privilege as the excuse to defraud the Commission and myself and would have us all believe that I am entitled to NO DIScovery whatsoever. The law begs to differ.

"The burden is on the party resisting Discovery to show why a Discovery request should be denied by specifying in detail, as opposed to general & boilerplate objections, why "each request is irrelevant." FTC v. AMG Servs., 291 F.R.D. 544, 553 (D. Nev. 2013), Green v. Baca, 226 F.R.D. 624,653 (C.D. Cal. 2005) (rejecting blanket claims of PRIVILEGE as sufficient to address the applicable standard.

For Vasilescu to claim Privilege he has to follow FRCP 26 (5) (A) (i) (ii) which he has not done so.

Vasilescu has NOT filed a Privilege Log nor have I received one, the Privilege Log must contain Dates, times, and a brief but informative description of the item he is claiming Privilege for and this is for each item he is claiming Privilege for, NOT as a blanket statement with no details whatsoever.

FRCP 26

I. Privilege

a. Legal Standard

Federal Rule of Civil Procedure (2014 U.S. Dist. LEXIS 32., "FRCP" 26 requires that the party asserting Privilege "(i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed- and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim."

Fed. R. Civ. P. 26(b)(5)(A). In addition to these requirements , Local Civil Rule 26.2 mandates that for documents the party asserting privilege provide a description of "(i) the type of document, e.g., letter or memorandum; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) the author of the document, the addressees of the document, and any other recipients, and, where not apparent, the relationship of the author, addressees, and recipients to each." Local Civil Rule 26.2(a)(2)(A).

Federal Rule of Civil Procedure 26(b)(5)(A)(ii) requires a party to "describe the nature of the documents, communications, or tangible things not produced or disclosed- and do so in an manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." To meet this requirement, the PRIVILEGE LOG must at least identify the nature of the withheld document, the identities of all authors and recipients of the document, the date on which the document was written, the location of the document, and the precise reason the document was withheld. See, e.g., Franco-Gonzalez v. Holder, 2013 U.S. Dist. LEXIS 186499, 2013 WL 8116823, at *6(C.D. Cal. May 3, 2013)

If the information sought is confidential but not privileged, FRCP 26 does not limit disclosure of otherwise discoverable information. See Zaccaro v. 50 E. 19th Assocs., L.P., No 96 Civ. 5119 (JSR)(HBP), 1997 U.S. Dist. LEXIS 16382, 1997 WL 6611905 , at *1 (S.D.N.Y. Oct. 23, 1997)

Failure to provide a PRIVILEGE log "can result in a waiver of the Privilege." Hurst v. Woolworth Co., No 95 CIV. 6584 (CSH), 1997 U.S. Dist. LEXIS 1407, 1997 WL 61051.

Rule 37 Discovery Sanctions

"whether exercising its inherent power or acting pursuant to Rule 37, a District Court has wide discretion in sanctioning a party for Discovery abuses", 528 U.S. 1119 120 S. Ct. 940, 1452 Ed. 2d 818 (2000).

I cannot present facts to justify my opposition to the complaint because Plaintiff (SEC) (Vasilescu) has intentionally evaded all requests to the court and to the commission for specific Discovery.

Vasilescu has abused the Discovery process and in doing so has wasted the commissions time and money as well as my limited resources that I can detail in monetary terms if need be.

I am asking the Commission to Sanction Vasilescu for his continuing scheme to evade full disclosure in violation of Commission Rules and to order Vasilescu to immediately provide the Discovery that predates my arrest 2/2/2018 and this includes all statements, investigators notes handwritten or typed, identity of all investors/victims/witnesses as well as copies of all their statements or complaints not limited to financial statements, SBD's or subscription documents clients filled out and bank records, and interviews. All exculpatory and inculpatory evidence needs to be turned over immediately.

In summary I am requesting that the Commission;

1. Compel Vasilescu/SEC to produce Discovery pursuant to Rule 180.500, 225.10.
2. To Sanction Vasilescu for the intentional and willful attempt to deny any Discovery when no Privelege Log has been produced pursuant to FRCP 26.

Nicholas J. Genovese

Date

3/3/2024

CERTIFICATE OF SERVICE

TO

SECURITIES & EXCHANGE COMMISSION

Admin. Proc. File No. 3-19733

Pursuant to S.E.C. Rules of Practice Rule 150 17 C.F.R. 201.150 and Rule of Practice 151(d), 17 C.F.R. 201.151(d) I have mailed the attached documents

Motion for Discovery & Sanctions

Via First Class U.S. Mail Postage Paid from a Federal Prison Camp in Terre Haute, Indiana.

I placed said documents in the mail box on the premises of the Federal Prison Camp on March 3, 2024, to the below;

Alexander Mircea Vasilescu
New York Regional Office
SEC
100 Pearl Street, Suite 20-100
New York, NY 10004-2616

Vanessa A. Countryman/Secretary
SEC
100 F Street, NE
Washington D.C. 20549


Nicholas J. Genovese


3/3/2024
Date