

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

UNITED STATES SECURITIES)	
AND EXCHANGE COMMISSION,)	
)	
Applicant,)	
)	
v.)	Case No: 17-mc-00062
)	
COREY J. SANDBERG, and)	
AFFINITY GOLD CORPORATION,)	Judge
)	
Respondents.)	

**U.S. SECURITIES AND EXCHANGE COMMISSION’S
APPLICATION FOR AN ORDER COMPELLING
COMPLIANCE WITH ADMINISTRATIVE SUBPOENAS**

Applicant, the United States Securities and Exchange Commission (“Commission”), respectfully moves this Court, pursuant to Section 22(b) of the Securities Act of 1933, 15 U.S.C § 77v(b), and Section 21(c) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78u(c), to enter an Order compelling Corey J. Sandberg (“Mr. Sandberg”) to comply with administrative subpoenas issued by the Commission requiring him to produce documents on his own behalf and on behalf of Affinity Gold Corporation (“Affinity Gold” or the “Company”) as the Company’s Chief Executive Officer.

I. INTRODUCTION

This Application seeks to enforce document production subpoenas issued to and served upon Corey J. Sandberg and Affinity Gold pursuant to an Order Directing Private Investigation and Designating Officers to Take Testimony in the investigation captioned

In the Matter of Affinity Gold Corp. (Internal File No. C-08405) (“the Affinity Gold Investigation”). The staff of the Commission (the “Staff”) issued subpoenas to Mr. Sandberg and to Affinity Gold, care of Mr. Sandberg as the Company’s Chief Executive Officer, on March 13, 2017 and July 7, 2017 (collectively, the “Subpoenas”) requesting the production of certain documents. While Mr. Sandberg did produce some documents to the Staff, he has withheld many other documents that are responsive to the Subpoenas and material to the Staff’s investigation. The Staff has contacted Mr. Sandberg repeatedly in attempts to secure these withheld documents. Mr. Sandberg has neither produced the documents nor provided the Staff with a reason why the documents are properly withheld.

The Commission has made no prior application to any court for similar relief and now seeks the aid of this Court by means of a summary proceeding. All attempts to obtain voluntary compliance with the Subpoenas have failed. A summary proceeding is necessary so that the Staff may complete its investigation expeditiously. As set forth below, the Commission has met all of the requirements for judicial enforcement of its Subpoenas and, therefore, respectfully requests the Court to enter an order compelling Mr. Sandberg to produce documents.

II. STATEMENT OF FACTS

A. Corey J. Sandberg

Respondent Corey J. Sandberg is a U.S. citizen who resides in Maple Grove, Minnesota. Mr. Sandberg is the Chief Executive Officer of Affinity Gold. (Javorski Decl. ¶¶ 7-8). According to documents produced to the Commission, Affinity Gold is a

mining company in the business of acquiring and developing mineral mining projects. Affinity Gold purports to conduct such business in Peru and Colombia. (*Id.* at ¶ 8).

B. The Commission’s Investigation

On March 6, 2017, the Commission issued an Order Directing Private Investigation and Designating Officers to Take Testimony in the Affinity Gold Investigation (the “Formal Order”).¹ (Javorski Decl. ¶ 5). The Formal Order authorizes the Staff to investigate whether any persons have engaged, are engaging or will engage in violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder, by various acts and practices reported in the Formal Order or by any act or practice of similar purport or object. (*Id.* at ¶ 6). The Formal Order empowers the Staff to, among other things, subpoena witnesses and require parties to produce documents. (*Id.* at ¶ 6).

C. Mr. Sandberg’s Failure to Provide Documents as Required by the Commission’s Subpoenas

Pursuant to the Formal Order, the Staff issued subpoenas on March 13, 2017 and July 7, 2017 requiring Mr. Sandberg to produce certain documents to the Commission. (Javorski Decl. ¶¶ 10, 17). Mr. Sandberg has yet to fulfill his obligations under these Subpoenas.

¹ The Commission is willing to provide the Court with a copy of the Formal Order, but respectfully requests an *in camera* review because the Commission’s investigation is non-public and ongoing.

On March 13, 2017, the Staff issued two subpoenas for documents relevant to Affinity Gold's business; the first was issued to Mr. Sandberg, the second issued to Affinity Gold care of Mr. Sandberg. (Javorski Decl. ¶ 10). Both subpoenas called for the production of, among other things, communications with investors or potential investors, documents relevant to Affinity Gold's mining projects, and the identity of Affinity Gold's investors and individuals who communicated with those investors on Affinity Gold's behalf. Mr. Sandberg's response to both subpoenas was initially due on March 28, 2017. (*Id.* at ¶ 10). The Staff was able to communicate with Mr. Sandberg on April 13, 2017 and extended the due date to April 28, 2017. (*Id.* at ¶ 12). On this new due date, Mr. Sandberg emailed the Staff claiming that messages he sent the Staff the previous day were undeliverable. (*Id.* at ¶ 13). Mr. Sandberg's April 28, 2017 email attached twenty business emails in PDF form. (*Id.* at ¶ 14). The Staff provided Mr. Sandberg with a link to a file transfer website to facilitate production of the remainder of the documents under subpoena. (*Id.* at ¶ 15). Mr. Sandberg failed to produce any additional documents responsive to the Commission's subpoenas. On May 19, 2017, the Staff notified Mr. Sandberg that his testimony would be required in this matter, and if he failed to produce all responsive documents by May 26, 2017, additional testimony may be necessary. (*Id.* at ¶ 16).

On July 7, 2017, the Staff received a returned, unopened package containing its March 13, 2017 subpoena directed to Affinity Gold care of Mr. Sandberg. On the same day, the Staff issued a new subpoena for the same documents to be produced by July 14,

2017. (Javorski Decl. ¶ 17). Neither Mr. Sandberg nor Affinity Gold has produced any documents responsive to this subpoena.

On July 27, 2017, pursuant to a Commission subpoena, Mr. Sandberg gave sworn testimony. During testimony, Mr. Sandberg admitted that he has not produced all documents responsive to the Subpoenas:

A: ... Because, to be honest, I'm embarrassed but concerned that I haven't provided all the documents to you yet, so –

(Javorski Decl., Exh. 8 at 12:18-20).

Q: ... Have you produced all documents relevant or responsive to these 11 requests?

A: No.

Q: No, you haven't?

A: Not all of them, no.

(*Id.* at 16:6-10).

A: ... I'm not done in this process of searching and finding and producing them for you.

Q: Okay.

A: There are more to produce.

(*Id.* at 17:9-13).

After Mr. Sandberg's sworn testimony, the Staff contacted Mr. Sandberg to remind him to produce the requested documents and to help him with the technical tools to do so. Specifically, on August 2, 2017, the Staff provided Mr. Sandberg step-by-step instructions on how to properly export and produce relevant email files and metadata.

(Javorski Decl. ¶ 21). On August 25, 2017, the Staff forwarded these instructions again to Mr. Sandberg. (*Id.*).

On October 6, 2017, having not received any additional documents from Mr. Sandberg, Staff wrote in a letter to Mr. Sandberg, “[a]s we have repeatedly informed you, and as you acknowledged in your testimony on July 27, 2017, you have not fulfilled your obligation to produce all documents requested in [the Subpoenas].” (Javorski Decl. ¶ 22). In the same letter, the Staff stated, “[w]e must receive all documents responsive to the subpoenas issued to you and Affinity Gold Corporation as soon as possible. If we do not hear from you before October 13, 2017, we will begin preparing a subpoena enforcement action against both you and Affinity Gold Corporation to be filed in federal court.” (*Id.* at ¶ 22).

As of December 11, 2017, Mr. Sandberg has not produced any documents to the Commission other than the documents included in his initial production on April 28, 2017. (Javorski Decl. ¶ 23).

III. ARGUMENT

A. This Court May Resolve This Matter Through a Summary Proceeding.

The Commission may seek an order requiring compliance with a subpoena upon application because subpoena enforcement proceedings are generally summary in nature. *See United States v. McDonnell Douglas Corp.*, 751 F.2d 220, 229 (8th Cir. 1984); *see also EEOC v. Tempel Steel Co.*, 814 F.2d 482, 485 (7th Cir. 1987) (subpoena enforcement proceedings “are designed to be summary in nature”); *SEC v. Sprecher*, 594 F.2d 317, 320 (2d Cir. 1979). “Questions concerning agency subpoenas should be promptly determined so that subpoenas, if valid, may be speedily enforced.” *SEC v. First Security Bank*, 447 F.2d 166, 168 (10th Cir. 1971) (citing *United States v. Davey*, 426

F.2d 842, 845 (2d Cir. 1970).

Furthermore, jurisdiction to resolve this matter properly lies with this Court. Section 22(b) of the Securities Act and Section 21(c) of the Exchange Act authorize the Commission to seek, and any federal court to issue, an order compelling compliance with Commission subpoenas upon application by the Commission. *See* 15 U.S.C. §§ 77v(b), 78u(c). More specifically, Section 21(c) of the Exchange Act provides that “the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring ... the production of books, papers, correspondence, memoranda, and other records.” 15 U.S.C. § 78u(c). Since Mr. Sandberg resides in Minnesota, gave testimony there, and conducts business there, jurisdiction and venue properly lie within the District of Minnesota. *Id.*

B. The Commission Meets the Requirements for Judicial Enforcement of the Subpoenas.

A district court is bound to enforce an administrative subpoena if the information sought “[1] is within the authority of the agency, [2] the demand is not too indefinite and [3] the information sought is reasonably relevant.” *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *see also SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1021 (D.C. Cir. 1978). “An affidavit from a government official is sufficient to establish a prima facie showing that these requirements have been met.” *In re McVane*, 44 F.3d 1127, 1136 (2d Cir. 1995). Here, because the Commission has met these criteria, and Mr. Sandberg cannot show unreasonableness, the Court should enforce the Subpoenas.

Congress has authorized the Commission to conduct investigations in its discretion to determine whether any person has violated, is violating, or is about to violate the provisions of the federal securities laws. *See* 15 U.S.C. §§ 77t(a), 78u(a)(1). In order to carry out this task, Congress endowed the Commission with broad investigatory powers. *See Arthur Young & Co.*, 584 F.2d 1018, 1023 (D.C. Cir. 1978); *see also Commodity Futures Trading Commission v. Tokheim*, 153 F.3d 474, 477 (7th Cir. 1998) (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950)) (stating that the Commission can “investigate merely on suspicion that the law is being violated, or even just because it wants assurance that is not”). Those investigatory powers include the ability to subpoena witnesses and require the production of documents that the Commission deems relevant to its investigation. *See* 15 U.S.C. §§ 77s(c), 78u(b).

Pursuant to the statutes cited above, the Commission issued a Formal Order to conduct the Affinity Gold Investigation. The Formal Order states that the investigation’s purpose is to determine, among other things, whether Affinity Gold and others violated the anti-fraud provisions of the federal securities laws. The Subpoenas served upon Mr. Sandberg were issued pursuant to that Formal Order and, therefore, are consistent with the Commission’s administrative procedures.

The information sought from Mr. Sandberg is relevant and not indefinite. The Commission is only required to make a minimal showing of relevance. As long as the evidence sought is not plainly irrelevant to any lawful purpose, the Subpoenas should be enforced. *Arthur Young & Co.*, 584 F.2d at 1029. It is the burden of the opposing party to establish that the subpoena is unreasonable. *See SEC v. Blackfoot Bituminous, Inc.*, 622

F.2d 512, 515 (10th Cir. 1980); *SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1056 (2d Cir. 1973). That burden, however, is “not easily met” when the Commission’s inquiry is legally authorized and the information is relevant to the inquiry. *Brigadoon Scotch*, 480 F.2d at 1056.

In this case, the documents sought are relevant to the Commission’s investigation. Mr. Sandberg has taken investments based on representations that may have been materially incomplete. The Commission needs the requested documents in order to determine whether the money Mr. Sandberg raised to fund his mining operations was procured as part of a fraudulent scheme or other violation of the federal securities laws. Obtaining Mr. Sandberg’s documents will help the Staff complete its inquiry.

The scope of the Commission’s production request is not overly broad or otherwise unreasonable. Mr. Sandberg has not objected to the Subpoenas. During his testimony, Mr. Sandberg did not provide the Staff with any reasons why he could not produce the documents under subpoena. Mr. Sandberg has now had more than eight months to comply with the document requests. The Staff has repeatedly informed him that, if he did not comply voluntarily, the Staff would have to bring a subpoena enforcement proceeding. It is clear that Mr. Sandberg has chosen not to comply with the Commission’s Subpoenas and, as a result, the Commission has no other remedy than judicial enforcement of the Subpoenas.

WHEREFORE, the United States Securities and Exchange Commission respectfully requests that this Court issue an Order:

- A. Directing Corey J. Sandberg and Affinity Gold Corporation to produce to the Commission Staff all documents responsive to the Commission's Subpoenas;
- B. Granting the Commission such other and further relief as may be necessary and appropriate to achieve compliance with the Subpoenas and with any Order the Court issues in its enforcement thereof; and
- C. Permitting service of all Orders on Mr. Sandberg by overnight express mail or electronic mail.

Dated: December 11, 2017

Respectfully submitted,



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