[Doc. No. 524]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE
HONORABLE ROBERT B. KUGLER

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. EQUITY FINANCIAL GROUP, LLC, et al., Defendants.	Civil No. 04-1512(RBK)

ORDER

Presently before the Court is the renewed motion of two law firms, Menaker & Herrmann, LLP ("Menaker & Herrmann"), and Witman, Stadtmauer, P.A., ("Witman Stadtmauer"), (collectively, "the Firms"), counsel for Defendants Equity Financial Group, LLC, ("Equity") seeking an order permitting the withdrawal of counsel from this action. No opposition to the motion has been filed. For the reasons set forth below and for good cause shown, the motion is denied.

In this case, counsel represents Defendant Equity, a limited liability company. Counsel also previously represented individual Defendants Robert Shimer and Vincent Firth. By order dated March 22, 2005, the Court previously denied counsel's motion to withdraw as counsel for Defendants Equity, Shimer, and Firth, and granted counsel's motion to withdraw as counsel for Defendant Shimer. Subsequently, by Order dated April 22, 2005, the Court granted

counsel's motion to withdraw as counsel for Defendant Firth. Thereafter, counsel continued as counsel to Defendant Equity. On August 3, 2007, counsel filed the motion presently before the Court.

Local Civil Rule 102.1 provides that "[u]nless other counsel is substituted, no attorney may withdraw an appearance except by leave of Court," and that "[a]fter a case has been first set for trial, substitution and withdrawal shall not be permitted except by leave of Court." Moreover, the New Jersey Rules of Professional Conduct[1] provide for withdrawal of counsel for a number of reasons. R.P.C. 1.16(b) provides in relevant part:

> [e]xcept as stated in paragraph (c), a lawyer may withdraw from representing a client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; (3) the client has used the lawyer's services to perpetrate a crime or fraud; (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other good cause for withdrawal exists.

R.P.C. 1.16(b). A lawyer shall continue representation of a client

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1. The Rules of Professional Conduct ("R.P.C.") of the "American Bar Association as revised by the New Jersey Supreme Court shall govern the conduct of the members of the bar admitted to practice in this Court, subject to such modifications as may be required or permitted by Federal statute, regulation, court rule or decision of law." L. CIV. R. 103.1(a).

when required to do so by rule or when ordered to do so by a tribunal, "notwithstanding good cause for terminating the representation." R.P.C. 1.16(c); see also Rusinow v. Kamara, 920 F. Supp. 69, 70 (D.N.J. 1996). When evaluating a motion to withdraw, the Court may consider: 1) the reasons why withdrawal is sought; 2) the prejudice withdrawal may cause to other litigants; 3) the harm withdrawal might cause to the administration of justice; and 4) the degree to which withdrawal will delay the resolution of a case. Id. at 71; see also Haines v. Liggett Group, Inc., 814 F. Supp. 414, 423 (D.N.J. 1993).

The Court notes that this matter is scheduled for trial on August 27, 2007. Counsel filed the present motion on August 3, 2007 seeking an order permitting withdrawal as counsel for Defendant Equity. Specifically, counsel asserts that good cause exists for withdraw under R.P.C. 1.16(b) asserting that there are "irreconcilable disagreement[s]" between Defendant Equity's sole owner and the Firms, which place counsel in "the untenable position of having to represent and appear for a party whose defense arguments they cannot ethically advance." Memorandum in Support of Defendant's Motion to Withdraw [hereinafter "Def.'s Mem."], at 4-5. As an additional ground for withdrawal, counsel asserts that Defendant Equity has failed to pay the Firms' bills for the past three years and that the Firms' appearance at trial would constitute an unreasonable financial hardship. Id. at 6.

By Order dated March 22, 2005, the Court previously found that although counsel had not averred specific information for the Court

to make a finding of good cause as to Defendant's alleged "imprudent" litigation approach, the Court found that counsel's claim as to Defendants' failure to pay legal fees constituted good cause for withdrawal under R.P.C. 1.16(b). Order dated March 22, 2005 at 4-5. With respect to the present motion, counsel has specifically set forth, pursuant to R.P.C. 1.16(b), two grounds for withdrawal: undue financial hardship and irreconcilable differences. Having reviewed the submission, the Court finds good cause for withdrawal under R.P.C. 1.16(b)(6), which provides that an attorney may withdraw from representing a client if "the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client." R.P.C. 1.16(b)(6). Consequently, the Court need not address the Firms' other ground for withdrawal.

Notwithstanding good cause for withdrawal, the Court finds that other equitable considerations weigh against withdrawal. As noted by the Court in the March 22, 2005 Order, Defendant Equity Financial Group, LLC cannot represent itself *pro se* in federal court. Id. at 6. See United States v. Cocivera, 104 F.3d 566, 572 (3d Cir. 1996), cert. denied 520 U.S. 1248 (1997)("the Supreme Court has stated, '[i]t has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel.'") (omission in original) (quoting Rowland v. California Men's Colony, 506 U.S. 194, 201-02 (1993)). See also Simbraw, Inc. v. United States, 367 F.2d 373, 374-75 (3d Cir. 1966) ("'[A] corporation can do no act except through its

agents and . . . such agents representing the corporation in Court must be attorneys at law.'") (quoting MacNeil v. Hearst Corp., 160 F. Supp. 157, 159 (D. Del. 1958)); Poore v. Fox Hollow Enterprises, No. C.A. 93A-09-005, 1994 WL 150872, at *2 (Del. Super. Ct. Mar. 29, 1994) (in deciding whether an LLC more closely resembles a partnership that may represent itself or a corporation requiring representation by counsel, court determined that nature of LLC for liability purposes is more analogous to a corporation and thus held that the "underlying purpose of the rule prohibiting the appearance of a corporation by anyone other than [licensed counsel] also applies to the representation of Limited Liability Companies."). For this reason, the Court previously denied the Firms' prior motion to withdraw. However, in the Firms' renewed motion, counsel asserts that Defendant Equity is "in effect" a sole proprietorship and that therefore if the request is granted, Equity's sole owner, Defendant Firth, would be representing Defendant Equity. Def.'s Mem. at 7. In support of this argument, counsel asserts that "it is well-established in New Jersey and in the federal courts that a sole proprietorship may appear through its owner rather than through counsel." Id. at 7. Counsel further asserts that the rationale for distinguishing a sole proprietorship from corporations and other business entities applies in this case to Equity, which counsel asserts is a single-member limited liability company.

Although a sole proprietorship may appear through its owner in federal court, in this case, the Court notes that Defendant Equity

is a limited liability company and the Court rejects counsel's argument that a single member limited liability company should be accorded the status of a sole proprietorship. As noted by counsel, a limited liability company is distinguishable from a sole proprietorship with respect to an LLC's ability to assert a limitation on liability. For this very reason, at least one court has determined that the nature of a limited liability company is more analogous to a corporation in determining whether to preclude the appearance of anyone other than an attorney from representing the entity. See Poore, 1994 WL 150872, at *2. See also Beale v. Dep't of Justice, No. 06-2186, 2007 WL 327465, at *3 (D.N.J. Jan. 30, 2007) (noting that the rationale permitting corporations to appear in federal courts only through licensed counsel "'applies equally to all artificial entities,'" and dismissing plaintiff limited liability company "due to [its] lack of an appearance through an attorney") (quoting Rowland, 506 U.S. at 202). Consequently, the Court concludes that a limited liability company may not be represented by its members. Therefore, counsel's withdrawal at this time would prejudice Defendant Equity, since no other counsel has been identified as counsel for Equity in this case. Moreover, given the context of the proceedings and the trial date of August 27, 2007, permitting withdrawal absent substitution will delay resolution of the case. Therefore, the Firms' motion is denied.

CONSEQUENTLY,

IT IS on this 21st day of August 2007, hereby,

ORDERED that the motion of Menaker & Herrmann, LLP and Witman, Stadtmauer, P.A., to withdraw as counsel for Defendant Equity Financial Group, LLC, is hereby **DENIED**.

s/ Ann Marie Donio
ANN MARIE DONIO
UNITED STATES MAGISTRATE JUDGE

cc: Hon. Robert B. Kugler