

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

MICHAEL S. PIECIAK IN HIS OFFICIAL
CAPACITY AS COMMISSIONER OF
VERMONT DEPARTMENT OF
FINANCIAL REGULATION AS
LIQUIDATOR OF GLOBAL HAWK
INSURANCE COMPANY RISK
RETENTION GROUP

DOCKET NO. 2:20-CV-00173

Plaintiff,

v.

JASBIR S. THANDI, ET AL. ,

Defendants.

**OPPOSITION OF THE DEFENDANT, JASBIR S. THANDI, TO
PLAINTIFF'S MOTION TO COMPEL DISCOVERY**

NOW COMES the Defendant, Jasbir S. Thandi, and for the reasons set forth herein, hereby opposes the Plaintiff's Motion to Compel Discovery.

Introduction

In this case, the Commissioner of the State of Vermont Department of Financial Regulation ("Plaintiff") alleges that the Defendant, Jasbir S. Thandi ("Thandi"), and the other defendants engaged in a conspiracy to defraud an insurance company, Global Hawk Insurance Company Risk retention group ("Global Hawk") in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, by conducting or participating in the conduct of an enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c)¹.

¹ The Plaintiff also asserts the following state law claims against Thandi: breach of fiduciary duty (Count II); conversion (Count V); and, fraud (Count VII);

See, Complaint, Count I. Among other things, the Plaintiff alleges that the defendants engaged in “at least two acts of mail or wire fraud in violation of 18 U.S.C. § 1341 or 1343.” See, Complaint, Para. 92. A violation of 18 U.S.C. § 1962 would subject Thandi to criminal penalties such as a fine or imprisonment. 18 U.S.C. § 1963(a) (“Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment)”)(emphasis supplied)

The Plaintiff’s extremely specific allegations and assertions of claims are set forth in the 146 numbered paragraphs in the Complaint. In the Complaint, the Plaintiff describes various email communications allegedly sent by Thandi, wire transfers, financial institution account statements allegedly received and reviewed by Thandi, allegedly forged or false account statements or summaries allegedly prepared or reviewed by Thandi and provided to the Captive Manager of Global Hawk.

The Plaintiff served interrogatories demanding that Thandi give sworn testimony about his alleged activities and knowledge and served document requests that would require Thandi to identify, collect and produce documents in his possession, custody or control described in the Complaint allegations. Whether state or federal prosecutors are investigating or might investigate Thandi for the subject matter alleged in the Complaint and may pursue criminal charges against Thandi is unknown to Thandi at this time. However, on advice of criminal counsel, Thandi has asserted his Fifth Amendment privilege in response to the Plaintiff’s interrogatories and document requests.

Case Allegations

The Plaintiff alleges that the defendant insurance broker, Global Century Insurance Brokers, Inc. (“GCIB”)² managed the business of Global Hawk as its managing agent, and that GCIB’s President, Thandi, owned 100% of GCIB’s stock and controlled that company. See, Complaint, Para. 6. The Plaintiff alleges that Quantbridge managed certain assets for Global Hawk pursuant to a contract with Global Hawk. See, Complaint, Para. 7. The Plaintiff alleges that the defendant Padda was the managing member of the defendant Quantbridge and controlled Quantbridge. See, Complaint, Para. 8. The Plaintiff alleges that over several years, “[t]he defendants participated in a scheme to defraud Global Hawk through misappropriation of its assets and misrepresentation of its financial condition so it could continue in business for their benefit.” See, Complaint, Para. 1. The Complaint spells out in detail the various ways that the defendants allegedly carried out that alleged “scheme.”

The Plaintiff alleges that since at least 2016 GCIB and Thandi received monthly account statements from various banks and financial institutions that held Global Hawk assets. See, Complaint, Paras. 18 – 20. The Plaintiff alleges that Thandi and GCIB provided Global Hawk’s Captive Manager with copies of the (or at least some of the) bank statements and monthly investment statements. See, Complaint, Para. 16. The Plaintiff alleges that some of the account statements that Thandi and GCIB provided to the Captive Manager were “forged.” See, Complaint, Para. 20.

² GCIB’s insurance broker license expired on August 31, 2020. See, Complaint, Para. 6. Upon information and belief, GCIB has been out of business since about that time. GCIB is not represented by any attorney in this matter. On February 25, 2021, the Plaintiff’s filed a request for the entry of default against GCIB.

The Plaintiff alleges that Thandi and GCIB received draft financial statements from the Managing Agent, and that Thandi reviewed them, commented on them, and signed off on them under the pains and penalties of perjury. See, Complaint, Para. 17.

The Plaintiff alleges that Thandi—purporting to act on behalf of Global Hawk and GBIC—applied for two loans from a financial institution (Stifel) in Global Hawk’s name but without authorization from Global Hawk, and that he presented a phony Global Hawk corporate resolution in order to obtain that loan. See, Complaint, Paras. 20 - 21. Thereafter, the Plaintiff alleges, Thandi provided to the Captive Manager false Stifel account statements with inflated balances that did not reflect the actual amounts held by Stifel in the Global Hawk accounts. See, Complaint, Paras. 20 - 23. The Plaintiff alleges that on numerous occasions over several years Thandi withdrew or transferred for his own purpose’s funds held in the alleged unauthorized Global Hawk Stifel accounts. See, Complaint, Paras. 24 - 27.

The Plaintiff alleges that over an extended period of time Thandi/GCIB provided to the Captive Manager “false” documents purporting to be deposit records, monthly bank or account statements, checks and transfer records, to evidence capital contributions that the Plaintiff claims were never made, and falsely inflating the account balances. See, Complaint, Paras. 28 – 54. At least with respect to the Stifel accounts, the Plaintiff alleges that Thandi and GCIB were in possession of accurate Stifel account statements reflecting the true balances all along, because the Stifel had sent them to GCIB and GCIB had received them. See, Complaint, Para. 54. The Plaintiff alleges that Padda and Quantbridge prepared false summaries of the Stifel accounts purporting to show falsely inflated balances and sent those false summaries to Thandi/GCIB and that Thandi/GCIB forwarded them to the Captive Manager, knowing that they were false. See, Complaint, Paras. 55 - 62.

Argument

- Ordering Thandi To Substantively Respond To The Plaintiff's Discovery Would Violate His Fifth Amendment Privilege Because The Act Of Producing The Requested Records Is Testimonial.

“No person ... shall be compelled in any criminal case to be a witness against himself.”

U.S. Const. amend. 5.

‘To qualify for the Fifth Amendment privilege, a communication must be testimonial, incriminating, and compelled.’ *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U.S. 177, 189, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004). The Supreme Court has recognized that the privilege ‘has consistently been accorded a liberal construction,’ *Miranda v. Arizona*, 384 U.S. 436, 461, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), and, in accordance with this principle, the Fifth Amendment privilege has been found to extend not only to answers that are directly incriminatory but also to those that, while not themselves inculpatory, ‘would furnish a link in the chain of evidence needed to prosecute the claimant,’ *Ohio v. Reiner*, 532 U.S. 17, 20, 121 S.Ct. 1252, 149 L.Ed.2d 158 (2001) (per curiam) (quoting *Hoffman v. United States*, 341 U.S. 479, 486, 71 S.Ct. 814, 95 L.Ed. 1118 (1951)).

United States v. Greenfield, 831 F.3d 106, 114 (2d Cir. 2016). The right to invoke one’s Fifth Amendment privilege in a civil case is well-established.

There is no question that an individual is entitled to invoke the privilege against self-incrimination during a civil proceeding. And this means that a civil litigant may legitimately use the Fifth Amendment to avoid having to answer inquiries during any phase of the discovery process.

In re Adelphia Commc'ns Corp., 317 B.R. 612, 623–24 (Bankr. S.D.N.Y. 2004).

The privilege is not limited to statements that would be admissible and incriminating in and of themselves. “Compelled testimony that communicates information that may ‘lead to incriminating evidence’ is privileged even if the information itself is not inculpatory.” *Hubbell*, 530 U.S. at 38 (citing *Doe v. United States*, 487 U.S. 201, 208, n. 6 (1988)). See also, *Hoffman v. United States*, 341 U.S. 479, 486 (1951) (“privilege . . . not only extends to answers that would in

themselves support a conviction under a federal criminal statute but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime.”)

The Fifth Amendment privilege also extends to requests or orders to produce documents, under what has been called referred the “act of production” privilege. *In re Grand Jury Subpoena Dated Feb. 2, 2012*, 741 F.3d 339, 343 (2d Cir. 2013); *United States v. Hubbell*, 530 U.S. 27, 43-46 (2000); *Fisher v. United States*, 425 U.S. 391, 410 (1976).

The Fifth Amendment act of production privilege was first articulated in *Fisher v. United States*, 425 U.S. 391, 96 S.Ct. 1569, 48 L.Ed.2d 39 (1976). *Fisher* recognizes that the Fifth Amendment privilege might protect an individual from being required to produce documents, even if the documents’ contents are not protected by the privilege, when the witness’s simple act of producing the documents could be used against the witness—for example, in those cases when the simple fact that the witness possessed the documents would be incriminating.

In re Grand Jury Subpoena Dated Feb. 2, 2012, 741 F.3d at 343.

The act of producing records in response to a subpoena “may have testimonial aspects and an incriminating effect.” *United States v. Doe*, 465 U.S. 605, 612-614 (1984) (privilege against compelled self-incrimination applies to the business records of a sole proprietorship where the act of producing the records would have communicative aspects of its own, such as an admission of both the existence of the requested records and their authenticity.) See also, *Fischer v. United States*, 425 U.S. 391, 410 (1976)(“Compliance with the subpoena tacitly concede[d] the existence of the papers demanded and their possession or control by the taxpayer [as well as] the taxpayer’s belief that the papers [were] those described in the subpoena;”) *Doe v. United States*, 487 U.S. 201, 210 (1988)(communication is testimonial if it--explicitly or implicitly--relates a factual assertion or discloses information.)

In *Hubbell*, the federal government issued a subpoena to the defendant as part of the Whitewater investigation. The government formally granted the defendant immunity for the act of producing documents requested by subpoena but then later indicted him based on the content of the documents he produced. *Id.* at 45. The Court held that the content of the documents could not be used against the defendant because the defendant’s efforts in identifying and producing the records were “testimonial in nature.” *Id.* at 43–46. The Court reasoned that because it was necessary for the defendant “to make extensive use of ‘the contents of his own mind’ in identifying the hundreds of documents responsive to the requests in the subpoena,” the defendant “effectively provided a ‘catalog of existing documents’ that was a ‘link in the chain’ of his prosecution. *Id.* at 42 – 43 (quoting *Curcio v. United States*, 354 U.S. 118, 128 (1957)). The Court rejected the government’s argument that it was a “foregone conclusion” that it had any prior knowledge that the defendant was in possession of the documents:

The Government cannot cure this deficiency through the overbroad argument that a businessman such as respondent will always possess general business and tax records that fall within the broad categories described in this subpoena.

Id. at 44–45. See also, *United States v. Fox*, 721 F.2d 32, 36-38 (2d Cir. 1983) (the Government must know, and not merely infer, that the sought documents exist, that they are under the control of defendant, and that they are authentic.)

In his brief the Plaintiff misses the point when arguing that Thandi has no Fifth Amendment right to the contents of pre-existing records that may be in his possession, custody or control. The fact that the records sought by subpoena or document request pre-existed the document request is immaterial. Thandi’s Fifth Amendment privilege is based on the act of production of records (“The Defendant objects to responding to this document request on the grounds that it may violate his Fifth Amendment privilege...”) The Plaintiff interrogatories and document requests ask Thandi

to potentially incriminate himself by, for instance, admitting that he possess certain documents, identifying and producing those documents, all in aid of the Plaintiff's effort to prove its claims—at least one of which in and of itself carries criminal penalties. In addition, although Thandi adamantly denies having engaged in any criminal activity, the nature of the allegations detailed in the Plaintiff's lengthy Complaint certainly raise the prospect of criminal investigation.

- **The Lack of Criminal Charges Filed Against Thandi Does Not Preclude His Right To Invoke His Fifth Amendment Privilege In The Current Civil Case.**

Whether a criminal proceeding actually is pending or just a possibility in the future does not affect Thandi's ability to invoke the 5th Amendment. In *Andover Data Services v. Statistical Tabulating Corp.*, 876 F.2d 1080, 1082 (2d Cir. 1989), the Second Circuit noted that “[t]he prohibition against compelling testimony of a witness in any setting is predicated upon there being a real danger that the testimony might be used against the witness in later criminal proceedings.” See also, *U.S. v. Okatan*, 728 F.3d 111, 116 (2d Cir. 2013) (“The Fifth Amendment provides that no person ‘shall be compelled in any criminal case to be a witness against himself.’ The privilege ‘permits a person to refuse to answer questions, in formal or informal proceedings, where the answers might be used to incriminate him in future criminal proceedings;’) *U.S. v. Jennings*, 652 F.3d 290, 303 (2d Cir. 2011) (holding the Fifth Amendment “also privileges [a defendant] not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future proceedings.”) Because the sought testimony and document production may incriminate him in a future criminal proceeding, Thandi's assertion of his Fifth Amendment privilege is appropriate in this case.

Conclusion

WHEREFORE, for the reasons set forth above, the Defendant, Jasbir S. Thandi, requests that the Court deny the Plaintiff's Motion to Compel Discovery.

THE DEFENDANT,
JASBIR S. THANDI,

By His Attorneys,

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Certificate of Service

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 30th day of July 2021.

/s/ Brian A. Suslak
