

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

IN RE LSG FINANCIAL, LLC

Case No. 13-137413-CZ
Hon. Wendy Potts

OPINION AND ORDER RE: LSG FINANCIAL, LLC'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS FROM THIRD-PARTY SIGMA FINANCIAL
CORPORATION

At a session of Court
Held in Pontiac, Michigan
On

~~JUL 09 2014~~

The matter is before the Court on LSG Financial, LLC's motion to compel nonparty Sigma Financial Corporation to produce documents responsive to an April 24, 2014 subpoena LSG served on Sigma. The Court has discretion to compel discovery. *Cabrera v Ekema*, 265 Mich App 402, 406; 695 NW2d 78 (2005). "Michigan follows an open, broad discovery policy that permits liberal discovery of any matter, not privileged, that is relevant to the subject matter involved in the pending case." *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 616; 576 NW2d 709 (1998).

LSG Financial provides financial and retirement planning to individuals and businesses. However, neither LSG Financial, nor its majority member Lubin Schwartz & Goldman, Inc., is a registered securities broker or dealer with the Financial Industry Regulatory Authority (FINRA). Thus, to provide certain regulated investment services to its customers, LSG Financial acts through its minority members, Clark Harris and Kevin VandenHaute, who are licensed to sell securities through FINRA and are also registered representatives of Sigma, which is a member of

FINRA. Until January 2013, Sigma paid commissions on the investments arranged through Harris and VandenHaute to a business account maintained by Harris for LSG Financial. However, Sigma claims that it learned in late 2012 that depositing the commissions into an account of an entity that is not a member of FINRA is a violation of FINRA rules. By January 2013, Sigma told LSG Financial that it would pay all commissions earned directly to Harris and VandenHaute. According to LSG Financial, Harris and VandenHaute agreed to receive the commissions from Sigma and transfer the funds to LSG Financial.

In November 2013, Harris and VandenHaute filed this action asking the Court to dissolve LSG Financial. According to LSG Financial, it has been actively negotiating a resolution with Harris and VandenHaute, however, it claims that it needs to verify the commissions Sigma paid. Thus, it served Sigma with a subpoena seeking the names of LSG Financial's customers, documentation of commissions paid directly to Harris and VandenHaute, and communications between Sigma and Harris and VandenHaute regarding LSG Financial's customers and the commissions paid. Sigma responded to the subpoena in May 2014, however, LSG Financial claims that Sigma's responses were inadequate and nonresponsive to many of its requests. Sigma asserts that it is barred federal law and regulations from releasing its customers' nonpublic personal information to LSG Financial because it is not a registered agent or member of FINRA. In particular, Sigma cites the Gramm Leach Billey Act, 15 USC § 6801 et seq and Securities and Exchange Commission regulations implementing the Act's provisions.

LSG Financial contends that federal law Sigma cites has exceptions for disclosing customer information such as a disclosure necessary to comply with a subpoena. Indeed, the statute says that its prohibition against disclosure of nonpublic information does not prohibit disclosure "to comply with a properly authorized civil, criminal, or regulatory investigation or

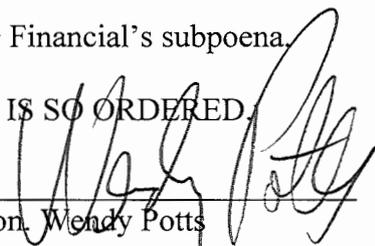
subpoena or summons by Federal, State, or local authorities . . .” See 15 USC § 6802(e)(8). It would thus appear that LSG Financial’s subpoena falls within an exception to the nondisclosure requirements.

However, the Court acknowledges that Sigma is appropriately concerned about complying with regulations regarding confidentiality of its customers’ information and the impact on its business if it fails to comply. Further, LSG Financial raised this argument regarding exceptions for the first time at the hearing on this motion, and the Court should allow Sigma an opportunity to respond. To the extent that Sigma believes that the information sought by LSG Financial does not fall within the exception noted in 15 USC § 6802(e), Sigma may file a supplemental brief explaining its position within 14 days. The Court will issue a supplemental opinion after receiving Sigma’s response. If Sigma does not respond, the Court will issue an order compelling production of the information sought in LSG Financial’s subpoena.

Dated:

JUL 09 2014

IT IS SO ORDERED.



Hon. Wendy Potts