UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80128-CIV-ZLOCH

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

ORDER

CONCORDE AMERICA, INC., ABSOLUTE HEALTH AND FITNESS, INC., HARTLEY LORD, DONALD E. OEHMKE, BRYAN KOS, THOMAS M. HEYSEK, ANDREW M. KLINE, AND PAUL A. SPREADBURY,

Defendants,

and

DASILVA, SA, VANDERLIP HOLDINGS, NV, CHIANG ZE CAPITAL, AVV, RYZCEK INVESTMENTS, GMBH, BARRANQUILLA HOLDINGS, SA,

Relief Defendants.
_____/

THIS MATTER is before the Court upon Plaintiff Securities And Exchange Commission's Motion To Compel Production Of Documents In Compliance With Non-Party Subpoena (DE 130). The Court has carefully reviewed said Motion and the entire Court file and is otherwise fully advised in the premises.

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According to Federal Rule of Civil Procedure, "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). It is the basic purpose of the Federal Rule of Civil Procedure 26 that the parties to a civil action obtain, prior to trial, the disclosure of all relevant information in the possession of any person. See 8 Charles Alan Wright, et al., Federal Practice and Procedure § 2001 (2d ed. 1994). In other words, "the purpose of discovery is to provide a mechanism for making relevant information available to the litigants." Lozano v. Maryland Cas. Co., 850 F.2d 1470, 1473 (11th Cir. 1988) (citation omitted). Moreover, the term "relevant" as it is used in Rule 26 "is to be 'construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that bears on, any issue that is on may be in the case.'" Rossbach v. Rundle, 129 F. Supp. 2d 1348, 1353 (S.D. Fla. 2000) (quoting Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978)).

While discovery is broad, discovery

> shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

Fed R. Civ. P. 26(b)(2). The Court may limit discovery "upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c)." Id.

Plaintiff Securities And Exchange Commission (hereinafter the "Commission") filed the instant Motion (DE 130) seeking to compel a non-party law firm Bush Ross, P.A. to provide the Commission with documents it requested in a subpoena on August 2, 2005. Specifically, the Commission requested "any and all documents relating to the Bush Ross, P.A. Trust Account(s) including, but not limited to, any bank accounts held at SunTrust Bank, in the possession or subject to the control of Bush Ross, P.A. or any subsidiaries, predecessors, affiliate, or agents thereof, made, dated or pertaining" to various entities, including Defendants Concorde America, Inc., Relief Defendants DaSilva, Chiang Ze

Capital and Ryzcek Investments, and non-parties Jeremy Jaynes, Ventana Consultants, BK Ventures, and Corporate Financial Consultants. DE 130, Ex. 2. The Commission states that it is seeking said documents in order to determine what happened to Concorde America, Inc. and Absolute Health and Fitness, Inc. stock trade proceeds the Commission's accountant, Timothy Galdencio, traced to a Bush Ross, P.A. IOTA trust account. DE 130, p. 3. and Ex. 1. In response to the Commission's subpoena, Jeremy P. Ross, Esq. of Bush Ross, P.A. sent a letter (DE 130, Ex. 3) stating that he had consulted with the attorneys of the aforementioned entities and individuals who expressed that the documents sought were covered by the attorney client privilege. Accordingly, Mr. Ross objected to the subpoena and withheld the sought documents. None of the parties for whom Mr. Ross asserts the privilege have responded to the instant Motion (DE 130).

The attorney-client privilege "only protects communications between an attorney and his client made for the purpose of securing legal advice." In re Grand Jury Subpoena (Lipnack), 831 F.2d 225, 227-28 (11th Cir. 1987) (citing In re Grand Jury Subpoena (Bierman), 788 F.2d 1511, 1512 (11th Cir. 1986)). As such, this privilege does not apply to records of attorney actions on behalf

of his client "for receipt or disbursement of money or property to or from third parties" because when acting in such a fashion the attorney "is not acting in a legal capacity." Id. at 228 (citing United States v. Davis, 636 F.2d 1028, 1044 (5th Cir. Unit A Feb.)). Further, when invoking the attorney-client privilege in response to a subpoena, a party may not make a blanket assertion as to the privilege, but should specify in what way "particular documents [fall] within the ambit of the [attorney-client] privilege." Id. at 227 (quoting Davis, 636 F.2d at 1044 n. 20). Moreover, Federal Rule of Civil Procedure 45 requires that "when information subject to a subpoena is withheld on a claim that it is privileged . . ., the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim." Fed. R. Civ. P. 45(d)(2).

The documents sought in the subpoena at issue relate to the Bush Ross, P.A. Trust Account(s) involving specified individuals. The Court finds that these documents, as described in the subpoena, are documents that involve the "receipt or disbursement of money or property to or from third parties" by Bush Ross and accordingly are

not covered by the attorney-client privilege. Further, in invoking the attorney-client privilege on behalf of Relief Defendants DaSilva, Chiang Ze Capital and Ryzcek Investments, and non-parties Jeremy Jaynes, Ventana Consultants, BK Ventures, and Corporate Financial Consultants, Mr. Ross did not address specific documents, but made a blanket assertion of the privilege. The Court finds that such an assertion, based upon the document request set forth in the subpoena, is insufficient to invoke the privilege and avoid production of documents. See In re Grand Jury Subpoena (Lipnack), 831 F.2d at 227 (citing Davis, 636 F.2d at 1044 n. 20) (cautioning litigants when remanding a case in order to permit an attorney to make a specific showing regarding the privilege's applicability to certain documents that "[f]uture litigants who make only blanket assertions of privilege at enforcement proceedings should not expect such grace.")).

Accordingly, after due consideration it is

ORDERED AND ADJUDGED that Plaintiff Securities And Exchange Commission's Motion To Compel Production Of Documents In Compliance With Non-Party Subpoena (DE 130) be and the same is hereby **GRANTED** as follows:

1. On or before Wednesday, April 12, 2006, Bush Ross, P.A.

shall produce documents responsive to the subpoena issued on August 2, 2005 and attached as Exhibit 2 to the instant Motion (DE 130). Upon the failure of Bush Ross, P.A. to comply with the provisions of this Order, the Court will entertain the appropriate Motion For Sanctions, including but not limited to, holding Bush Ross, P.A. in contempt of Court.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 29th day of March, 2006.

WILLIAM J. ZLOCH
Chief United States District Judge

Copies furnished:

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