

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANITA G. MOORE,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 98-4610
	:	
RELIANCE STANDARD LIFE INSURANCE	:	
COMPANY,	:	
Defendant.	:	

MEMORANDUM

R.F. KELLY, J.

MAY , 1999

Presently before this Court is the Motion of Defendant, Reliance Standard Life Insurance Company ("Reliance"), for Partial Judgment on the Pleadings under Federal Rule of Civil Procedure 12(c), with regard to Count II of Plaintiff's Complaint, which seeks damages under The Racketeer Influenced and Corrupt Organizations Act of 1984 ("RICO"). FED. R. CIV. P. 12(c); 18 U.S.C. § 1961 et seq. For the reasons that follow, Defendant's Motion is granted.

I. FACTS.

Plaintiff, Anita Moore ("Moore"), a health care worker at the Immaculate Mary Home, was thirty-four (34) years old in 1993 when she suffered a myocardial infarction followed by triple bypass surgery. Moore collected disability benefits for thirty-six months, from August 19, 1993 through August 27, 1996. Moore then requested total disability benefit payments. Reliance denied Moore's request. Moore appealed this denial, and Reliance

affirmed the denial in a February 27, 1997 letter. Moore instituted suit against Reliance on August 27, 1998.

The Complaint alleges, in Count I, violations of ERISA and in Count II, violations of RICO by use of mail and wire fraud. 29 U.S.C. § 1001 et seq.; 18 U.S.C. § 1961 et seq.; 18 U.S.C. §§ 1341, 1343. Moore alleges that Reliance is a RICO enterprise whose primary function is to provide life, disability and other insurance services on a national and global basis. (Compl. at ¶24.) Reliance moves for Judgment on the Pleadings contending that Moore fails to plead sufficiently specific facts to support her RICO claim.

II. STANDARD.

A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is treated the same as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Regalbuto v. City of Phila., 937 F. Supp. 374, 376-77 (E.D. Pa. 1995)(citations omitted), aff'd., 91 F.3d 125 (3d Cir. 1996), cert. denied, 117 S.Ct. 435 (1996). A motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)(citing Conley,

355 U.S. at 45-46); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a Motion to Dismiss, all allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989)(citations omitted).

III. DISCUSSION.

RICO creates a private cause of action for a person injured in business or property under 18 U.S.C. section 1962. 18 U.S.C. § 1964(c). At issue in this case is whether Reliance engaged in a "pattern of racketeering activity," an element necessary to state a cause of action under RICO. 18 U.S.C. § 1962 (a)-(c). RICO defines a "pattern" as "at least two acts of racketeering activity" occurring within a ten year period. 18 U.S.C. § 1961(5). This definition has been held to "state a minimum necessary condition for the existence" of a "pattern." H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 237 (1989)(citation omitted). The acts alleged in this case as comprising the necessary "pattern" are instances of mail and wire fraud, both of which are within the scope of the racketeering definition in civil RICO. See Tabas v. Tabas, 47 F.3d 1280 (3d Cir. 1995), cert. denied, 515 U.S. 1118 (1995)(common law or garden variety fraud is included in the scope of civil RICO).

A pattern of racketeering activity requires more than

the commission of the requisite number of predicate acts; a plaintiff must show that "the racketeering acts are related, and that they amount to or pose a threat of continued criminal activity." H.J. Inc., 492 U.S. at 239. The Supreme Court has defined the relatedness requirement as acts with "the same or similar purposes, results, participants, victims, or methods of commission, or otherwise . . . interrelated by distinguishing characteristics." Id. at 240 (quoting 18 U.S.C. § 3575(e)).

Moore lists the following acts as evidence of Reliance's pattern of racketeering activity: (1) a letter from Reliance to Moore, dated August 27, 1996, terminating Moore's disability benefits (Compl. at ¶27); (2) a letter from Reliance to Moore dated February 27, 1997, denying Moore's appeal (Compl. at ¶28); (3) other letters to Moore and/or her attorney from Reliance, as well as Reliance's use of the telephone to communicate information (Compl. at ¶28); and (4) three other lawsuits brought against Reliance for long-term disability benefits in which claimants were ultimately paid some or all of their benefits by Reliance.¹ (Compl. at ¶30.)

Moore alleges that the purpose of Reliance's acts

¹Plaintiff also states that, in addition to these three cases, "Plaintiff believes and therefore avers that numerous suits have been brought nationwide by individuals against defendant for long-term disability benefits. Numerous suits of this nature have been brought in the United States District Court for the Eastern District of Pennsylvania." (Compl. at ¶30.)

denying long-term disability benefits is monetary gain. The fact that three other lawsuits were filed against Reliance for denial of benefits supports the "relatedness" requirement.

"Relatedness" is shown despite the fact that those three other lawsuits concluded with payment of some or all benefits, a different result from Moore's case. Because Reliance's alleged purpose in those lawsuits was the same as in Moore's case, the "relatedness" element is met.

The second element needed for a "pattern of racketeering activity" is the "continuity requirement." This requirement refers either to a "closed-ended scheme," consisting of a closed period of repeated conduct, or to an "open-ended scheme," in which past conduct by its nature projects into the future with a threat of repetition. H.J. Inc., 492 U.S. at 241 (citation omitted). The plaintiff must prove a series of related acts lasting a "substantial period of time" in a "closed-ended scheme" or a regular way of doing business in an "open-ended scheme." Hughes v. Consol-Pennsylvania Coal Co., 945 F.2d 594, 610 (3d Cir. 1991)(citing H.J. Inc., 492 U.S. at 250), cert. denied, 504 U.S. 955 (1992). To prove the "continuity requirement," Moore alleges:

31. The pattern of racketeering activity engaged in by Defendant Reliance in Plaintiff's case, the cases previously described, and numerous other cases not specifically stated herein, are related examples of Defendant's policy and unlawful actions to deny eligible claimants long-term disability benefits, carried out from at least 1988 through the present.

(Compl. at ¶31.)² The Third Circuit has consistently held that periods of less than one year are not substantial for purposes of RICO. Tabas, 47 F.3d at 1293 (citations omitted); see also Hughes, 945 F.2d at 609 (holding twelve months is not a substantial period of time under RICO). Taking Plaintiff's factual allegations as true, the scheme commenced at least in 1988, thus Plaintiff has met the continuity requirement under either an "open-ended scheme" or a "closed-ended scheme." In addition to the elements discussed above, each part of section 1962 has additional requirements. All are discussed below.

A. 1962(a)

In order to state a claim under section 1962(a), Moore must allege: (1) that Reliance has received money from a pattern of racketeering activity; (2) that Reliance invested that money in an enterprise; (3) that the enterprise affected interstate commerce; and (4) that Moore sustained an injury caused by the predicate acts themselves. Lightning Lube, Inc. v. Witco, Inc., 4 F.3d 1153, 1188 (3d Cir. 1993)(citations omitted). Moore alleges that:

35. The savings (by not paying benefits to eligible claimants) and therefore income, and the proceeds thereof, which

²Other than this single statement, the Complaint contains no other allegations of conduct by Defendant in furtherance of this scheme to defraud from 1988 through 1993. The earliest disability denial set forth with specificity in the Complaint occurred in 1993 and is one of the three claims in which Reliance paid benefits.

Defendant has received, or which has accrued to it, as a result of the pattern of racketeering activity described herein, was and continues to be used and/or invested, in whole or in part, in the operation of Defendant as an "enterprise."

36. The savings (by not paying benefits to eligible claimants) and therefore income, and the proceeds thereof, which Defendant has received, or which has accrued to it, as a result of the pattern of racketeering activity described herein, was and continues to be used and/or invested, in whole or in part, in the maintenance of Defendant as an "enterprise."

(Compl. at ¶¶35, 36.)(emphasis added) The Third Circuit Court of Appeals has repeatedly held that the "use and investment of racketeering income [which] keeps the defendant alive so that it may continue to injure plaintiff--is insufficient to meet the injury requirement of section 1962(a)." Lightning Lube, 4 F.3d at 1188. It has also been stated that "[i]n such situations, the plaintiff's injuries still stem from the pattern of racketeering, and not the investment of funds by the defendant." Jiffy Lube Int'l, Inc. v. Jiffy Lube of Pa., Inc., 848 F. Supp. 569, 582-583 (E.D. Pa. 1994)(citations omitted). Moore does not meet the injury requirement of section 1962(a).³

³Moore states that this case "presents an issue of first impression before this Court, given the fiduciary relationship of insurer and insured in the insurance context, as to whether or not RICO requires a nexus between Plaintiff's injury and the use/investment of the unlawful gains in the enterprise." (Pl.'s Surreply to Def.'s Reply to Pl.'s Resp. to Mot. for Partial J. on the Pleads. at 5.) Under RICO, violations of fiduciary duty are not considered racketeering activity. Schuylkill Skyport Inn, Inc. v. Rich, No. 95-3128, 1996 WL 502280, *14 (E.D. Pa. Aug. 21, 1996)(citation omitted). The offenses which Plaintiff has alleged, mail and wire fraud, are recognized RICO offenses.

Defendant correctly responds that the law in this Circuit requires an injury independent from that caused by the pattern of

B. 1962(b)

To recover under section 1962(b), Moore must show "injury from the defendant's acquisition or control of an interest in a RICO enterprise, in addition to injury from the predicate acts." Lightning Lube, 4 F.3d at 1190 (citations omitted). Reliance argues that Plaintiff's Complaint alleges only injury from the racketeering activity, not from the use or investment of the alleged income. (Def.'s Mot. Partial J. on Pleads. at 7-8.) The Lightning Lube court stated that a complaint which merely alleges that employees of a defendant are engaged in a pattern of racketeering "is insufficient because it merely parrots the same injury that section 1962(c) is meant to remedy and fails to explain what additional injury resulted from the person's interest or control of the enterprise." 4 F.3d at 1191. Moore has not alleged any additional injury apart from the lost money and attorney's fees she incurred from Reliance's denial of her benefits. As such, she cannot assert a claim for damages under section 1962(b).

C. 1962(c)

Although Moore claims specific relief under sections 1962(a) and (b) in her Complaint, it is unclear whether her claim includes relief under section 1962(c). Assuming that Moore makes

racketeering. (Def.'s Reply to Pl.'s Resp. to Mot. for Partial J. on the Pleads. at 3.)

a section 1962(c) claim, she is required to assert five elements: (1) the existence of an enterprise that affects interstate commerce and is separate and distinct from Reliance; (2) that Reliance was associated with the enterprise; (3) that Reliance conducted or participated in the affairs of the enterprise; (4) that each defendant engaged in a pattern of racketeering activity; and (5) the racketeering was the proximate cause of Moore's injury. City of Rome v. Glanton, 958 F. Supp. 1026, 1043 (E.D. Pa. 1997) (citing Shearin v. E.F. Hutton Group, Inc., 885 F.2d 1162, 1165 (1989)), aff'd., 133 F.3d 909 (3d Cir. 1997).

Moore correctly states that Reliance is an enterprise under RICO. 18 U.S.C. § 1961(4). For purposes of 1962(c), however, the enterprise must be distinct from the defendant. 18 U.S.C. § 1962(c). Reliance is the sole defendant in this case, yet Moore states that Reliance acted "through its agents and employees." (Compl. at ¶¶25, 26, 29.) These allegations are insufficient to sustain a claim under section 1962(c) because "a claim simply against one corporation as both a 'person' and 'enterprise' is not sufficient. Instead, a viable section 1962(c) action requires a claim against defendant 'persons' acting through a distinct 'enterprise.'" Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., 46 F.3d 258, 268 (3d Cir. 1995). No agents or employees are named defendants in this matter. Moore's RICO claim does not, therefore, meet section 1962(c)

requirements.

D. 1962(d)

In the absence of a viable claim under sections 1962(a),(b) or (c), Moore cannot, in Count II, make a RICO conspiracy claim under 18 U.S.C. section 1962(d). 18 U.S.C. § 1962(d); Steco, Inc. v. S & T Mfg., Inc., 772 F. Supp. 1495, 1503 (E.D. Pa. 1991)(citations omitted). Because Moore has not established a claim under sections 1962(a)-(c), she cannot make a section 1962(d) claim.

IV. CONCLUSION

Reliance's Motion for Partial Judgment on the Pleadings is granted and Count II of Plaintiff's Complaint is dismissed.

An Order follows.

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v.	:	NO. 98-4610
	:	
RELIANCE STANDARD LIFE INSURANCE	:	
COMPANY,	:	
Defendant.	:	

ORDER

AND NOW, this day of May, 1999, upon consideration of Defendant's Motion for Partial Judgment on the Pleadings, and all Responses thereto, it is hereby ORDERED that Defendant's Motion is GRANTED and Count II of Plaintiff's Complaint is DISMISSED.

BY THE COURT:

Robert F. Kelly, J.