

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SECURITIES AND EXCHANGE)	CIVIL NO. 22-00349 SOM/KJM
COMMISSION,)	
)	ORDER AFFIRMING MAGISTRATE
Plaintiff,)	JUDGE ORDER DENYING COURT
)	APPOINTED COUNSEL TO
vs.)	DEFENDANT JAMEY DENISE
)	JACKSON
SEMISUB, INC.; CURTISS EDWARD)	
JACKSON; and JAMEY DENISE)	
JACKSON,)	
)	
Defendants.)	
_____)	

**ORDER AFFIRMING MAGISTRATE JUDGE ORDER DENYING
COURT APPOINTED COUNSEL TO DEFENDANT JAMEY DENISE JACKSON**

I. INTRODUCTION.

On August 3, 2022, Plaintiff Securities and Exchange Commission ("SEC") filed the Complaint in this matter. The SEC alleges that Defendants Curtiss Edward Jackson and Jamey Denise Jackson, through Defendant Semisub, Inc., defrauded investors of more than \$1.5 million through an offer and sale of securities in Semisub. See ECF No. 1.

On September 15, 2022, Jamey Jackson sought court-appointed counsel in this civil case.¹ See ECF No. 23. That

¹ The motion also sought to proceed in forma pauperis. See ECF No. 23. Because Jamey Jackson did not submit a financial affidavit accompanying her in forma pauperis request and because she does not establish why that status is necessary, the court does not grant her in forma pauperis status and limits its discussion to her request for appointment of counsel. As a Defendant in this action, she incurred no filing fee, and it is not clear what court-imposed costs she might seek relief from. The court treats the reference to in forma pauperis status as confined to establishing a need for court-appointed counsel. The

motion was denied in a Magistrate Judge's minute order on September 19, 2022. See ECF No. 24. The Magistrate Judge could not have known that Jamey Jackson had submitted to the court an "Amendment to Motion . . . For Appointment of Counsel" less than an hour before the minute order was filed. That amendment was not filed until after the minute order was filed, meaning that, in denying the motion, the Magistrate Judge did not consider the matters raised by the amendment. See ECF No. 26. Upon receipt of the amendment, the Magistrate Judge considered it and issued another minute order that denied the request for appointment of counsel. See ECF No. 27. Jamey Jackson then filed the present objections to that denial. See ECF No. 28.

Jamey Jackson fails to show that the Magistrate Judge's order denying appointment of counsel is clearly erroneous or contrary to law. The court therefore affirms the order.

court is aware that, on December 17, 2021, Jamey Jackson submitted a financial affidavit in connection with a target letter she received. However, that affidavit does not establish her inability to pay fees associated with the defense of this action, whatever they may be. This court cannot tell whether and to what extent her circumstances have changed since December 2021, although she does say that her circumstances have not improved. See ECF No. 23, PageID # 136. Moreover, she did not even answer the question about cash or money in savings or checking accounts. See 21mc00477LEK/RT, ECF No. 2. The court notes that, according to the allegations in the Complaint, Jamey Jackson is married to Defendant Curtiss Edward Jackson. This court cannot tell from the record whether Jamey Jackson receives or holds any money from or with her husband. Under these circumstances, Jamey Jackson fails to establish that she is entitled to in forma pauperis status separate and apart from her request for court-appointed counsel.

II. STANDARD.

Rule 72(a) of the Federal Rules of Civil Procedure allows a party to object to a nondispositive magistrate judge order "within 14 days after being served with a copy" of it. Fed. R. Civ. P. 72(a). It further provides, "The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." *Id.*

Under 28 U.S.C. § 636(b)(1)(A), a district judge may "reconsider" a magistrate judge's nondispositive pretrial order if it is "clearly erroneous or contrary to law." *See also Bhan v. NME Hosp., Inc.*, 929 F.2d 1404, 1414-15 (9th Cir. 1991) (stating that § 636(b)(1) "provides that the magistrate's decision on a nondispositive issue will be reviewed by the district judge under the clearly erroneous standard"). The Ninth Circuit has explained, "Pretrial orders of a magistrate under 636(b)(1)(A) are reviewable under the 'clearly erroneous and contrary to law' standard; they are not subject to de novo determination. The reviewing court may not simply substitute its judgment for that of the deciding court." *Grimes v. City & Cty. of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991) (quotation marks and citations omitted).

The threshold of the "clearly erroneous" test is high. "A finding is 'clearly erroneous' when although there is evidence

to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948); accord *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (stating that, in reviewing for clear error, "a reviewing court must ask whether, on the entire evidence, it is left with the definite and firm conviction that a mistake has been committed" (quotation marks and citation omitted)); *United States v. Hylton*, 30 F.4th 842, 846 (9th Cir. 2022) (reviewing a district court's findings of facts with respect to a denial of a motion to suppress and stating, "Review under the clearly erroneous standard is significantly deferential, requiring for reversal a definite and firm conviction that a mistake has been committed." (quotation marks and citation omitted)); *Balen v. Holland Am. Line Inc.*, 583 F.3d 647, 655 (9th Cir. 2009) ("Review under the clearly erroneous standard is significantly deferential, requiring a definite and firm conviction that a mistake has been committed." (quotation marks and citation omitted)).

"A decision is 'contrary to law' if it applies an incorrect legal standard or fails to consider an element of the applicable standard.'" *Green v. Kanazawa*, 2018 WL 5621953, at *3 (D. Haw. Oct. 30, 2018) (quoting *Na Pali Haweo Cmty. Ass'n v. Grande*, 252 F.R.D. 672, 674 (D. Haw. 2008)).

III. ANALYSIS.

The Magistrate Judge's determination that Jamey Jackson is not entitled to court-appointed counsel is not clearly erroneous or contrary to law.

There is generally no constitutional right to counsel in a civil case. See *Adir Int'l, LLC v. Starr Indem. & Liab. Co.*, 994 F.3d 1032, 1038 (9th Cir. 2021); *United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat Cnty., State of Wash.*, 795 F.2d 796, 801 (9th Cir. 1986); see also *Lassiter v. Dept of Soc. Serv.*, 452 U.S. 18, 25 (1981) ("The pre-eminent generalization that emerges from this Court's precedents on an indigent's right to appointed counsel is that such a right has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation.").

Pursuant to 28 U.S.C. § 1915(e)(1), a district court has discretion to "request an attorney to represent any person unable to afford counsel." "[A] court may under 'exceptional circumstances' appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1). When determining whether 'exceptional circumstances' exist, a court must consider the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved. Neither of these considerations is dispositive and instead must be viewed

together.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (quotation marks and citations omitted). In other words, “exceptional circumstances” exist when a party is unable to articulate likely meritorious claims or defenses on a pro se basis given the complexity of the legal issues involved. See *Byrd v. Maricopa Cnty. Bd. of Supervisors*, 845 F.3d 919, 925 (9th Cir. 2017). Jamey Jackson has not met that standard under the circumstances presented here.

Counts I through III of the Complaint assert a violation of 15 U.S.C. § 77q(a)(1)-(3), which makes it

unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 78c(a)(78) of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly-

(1) to employ any device, scheme, or artifice to defraud[;] or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

15 U.S.C. § 77q (West).

Counts IV, V, and VI assert violations of 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a). Section 78j(b) makes it

unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange-

. . . .

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement¹ any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Under 17 C.F.R. § 240.10b-5(a), it is "unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, (a) To employ any device, scheme, or artifice to defraud."

Jamey Jackson is not named as a Defendant with respect to Counts II and V of the Complaint.

The SEC seeks permanent injunctions preventing Defendants from violating 15 U.S.C. § 77q(a)(1)-(3), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a), disgorgement of ill-gotten gains, and civil penalties. See 15 U.S.C. §§ 78u(d)(1), (3), (5), and (7).

Jamey Jackson's Objection, ECF No. 28, demonstrates that she is able to articulate legal positions. That is, she is

capable of citing legal propositions that are on point and clearly articulated. While she may have received help in drafting her filings, that does not justify appointment of counsel based on exceptional circumstances. This court simply cannot conclude from the present record that Jamey Jackson will be unable to articulate her legal positions later in this case.

Jamey Jackson also fails to demonstrate that the issues in this case are so complex that she will be unable to continue to clearly articulate legal positions on a pro se basis. Her argument essentially amounts to an assertion that all cases involving securities laws are so complex and nuanced that an experienced attorney is necessary. However, that is not necessarily the case with respect to the allegations in the present case, which center around alleged fraudulent activity.

Jamie Jackson's bald assertion that her defenses will be meritorious is insufficient for this court to make any determination as to the likelihood that her defense will or will not succeed.

Similarly, her conclusion that she has made reasonable efforts to find an attorney to represent her on financial terms she can afford is unpersuasive because it lacks the detail necessary for this court to determine the accuracy of that conclusion. The court encourages her to continue to contact attorneys, if she does not wish to process pro se.

Jamey Jackson's assertion that having to litigate this case from her home in Florida is an exceptional circumstance is also unpersuasive. She has demonstrated the ability to have documents filed by sending them to the court electronically. Moreover, many of the court's hearings are conducted via video.

Finally, Jamey Jackson's assertion that pretrial publicity in this case is making it more difficult for her to obtain employment is not persuasive. She does not detail her efforts to obtain employment such that this court can evaluate her claimed difficulties. Nor has she demonstrated an inability to proceed without paying for counsel.

Jamey Jackson's request for appointment of counsel in this civil case is denied. This court does not see in the record before it exceptional circumstances justifying the appointment of counsel.

IV. CONCLUSION.

This court affirms the Magistrate Judge's order denying Jamey Jackson's request for court-appointed counsel in this civil case.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, October 5, 2022



/s/ Susan Oki Mollway
Susan Oki Mollway
United States District Judge

SEC v. Semisub, Inc., et al., Civ. No. 22-00349 SOM/KJM; ORDER AFFIRMING MAGISTRATE
JUDGE ORDER DENYING COURT APPOINTED COUNSEL TO DEFENDANT JAMEY DENISE JACKSON