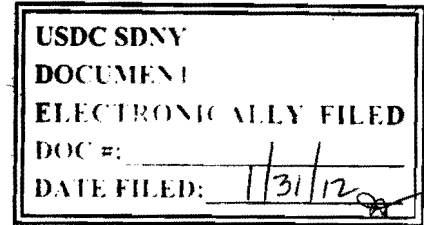


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
JEREMY LEBEWOHL et al.,

Plaintiff,

-v-

HEART ATTACK GRILL, LLC et al.,

Defendants.
-----X

11 Civ. 3153 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court is in receipt of plaintiffs' January 25, 2012 letter requesting sanctions against defendants in this case. The letter, but not its attachments, is enclosed. The Court has not received a letter from defendants in response.

The parties shall appear at an in-person conference on February 15, 2012 at 3:45 p.m. in Courtroom 18C at the U.S. Courthouse, 500 Pearl Street, New York, New York 10007, to discuss the issues raised in plaintiff's letter and the ongoing discovery dispute.

SO ORDERED.

Paul A. Engelmayer
United States District Judge

Dated: January 31, 2012
New York, New York

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January 25, 2012

BY HAND

Hon. Judge Paul A. Engelmayer
U.S. District Judge
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

RE: Lebewohl et al. v. Heart Attack Grill LLC, et al., Case No. 11-cv-3153.

Dear Judge Engelmayer:

My firm represents the Plaintiffs in this case. I write to seek sanctions. HAG has resisted naming the members of Diet Center LLC (DE), forcing the Plaintiffs to file multiple motions to compel, which this Court granted. It has come to our attention that the names of the investors and their respective Percentage Interests have been public since at least October 30, 2011, and that Jon Basso was aware of this. There was no justification for HAG to oppose disclosure of what it knew to be public information, and we would like to recover the costs and attorneys fees spent in pursuing the motions to compel.

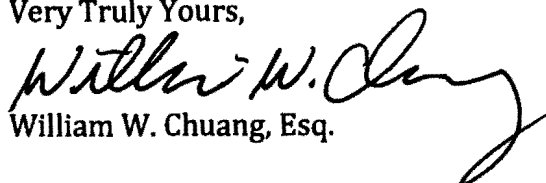
During the meet and confer, HAG said that Plaintiffs were on a fishing expedition, and that the testimony of the members would be irrelevant even if it would show that Mr. Basso lied about the management and control of the Diet Center LLC. That HAG literally believes that the truth does not matter sums up their approach to discovery. In any event, the Court ruled that the information was relevant, and that Plaintiffs could depose Fred Mossler. HAG cannot substitute its own judgment for that of the Court.

Plaintiffs are not on a fishing expedition. The names of the members of the Diet Center LLC (DE) are relevant. The members would know about the management and control of the company, including whether or not this lawsuit was properly authorized. The members would also know about any plans to expand to New York. Furthermore, their testimony about the strength of the HAG Marks or any third party marks that were confusingly similar would be relevant. Most importantly, their testimony would very likely impeach that of Mr. Basso, HAG's primary witness.

HAG has consistently tried to hinder Plaintiffs' efforts at discovery. HAG did not reveal the two Diet Center LLCs until October 5, 2011. It sought to burden Plaintiffs by moving for the right to attend Mr. Basso's deposition by phone while having Plaintiffs fly to Las Vegas. Even as late as January 23, HAG refused to provide the Percentage Interest—even when told that this was public knowledge. It was not until Plaintiffs provided a publicly-available document containing the Percentage Interest that HAG relented.¹ (Plaintiffs asked for a copy of the Operating Agreement with the Percentage Interests because it believed that they may not have been the same as those provided to the liquor board. This was not the case.) This lapse is particularly egregious because HAG acknowledges that Jon Basso and *his counsel* knew this was public knowledge since at least January 12, 2012, the day before Mr. Basso's deposition.² In other words, HAG and its attorneys knew that this information was public, and still refused to disclose even when told that it was public and specifically asked for it. There is no justification for HAG's steadfast refusal to meet its discovery obligations.

HAG's actions have wasted the Court's time and caused the Plaintiffs to incur costs. Time and again, HAG has refused to provide discovery. HAG has to be shown that it cannot get away with stonewalling discovery—that there are consequences beyond simply having to do what it should have done to begin with. Therefore, Plaintiffs request that the Court order HAG to pay the costs incurred in moving to compel the disclosure of the member and Percentage Interest information, as well as to have counsel for HAG personally certify that HAG's discovery responses and productions are accurate, current, and complete.

Very Truly Yours,



William W. Chuang, Esq.

Enclosures (2)

CC: Robert C. Kain, Jr. (by e-mail)
Darren Spielman (by e-mail)

¹ City Of Las Vegas, Agenda Summary Page, City Council Meeting of November 2, 2011.

<http://www5.lasvegasnevada.gov/sirepub/agdocs.aspx?doctype=agenda&itemid=50024> (enclosed).

² During the meet and confer, HAG claimed that Mr. Basso and his counsel did not realize the members' names and Percentage Interests were public until the day before the deposition, which was held on January 13, 2012. However, an October 30, 2010 article in the Las Vegas Review-Journal provided the figures and interviewed Mr. Basso. www.lvrj.com/news/zappos-boss-pals-help-eatery-132873488.html (enclosed).