

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
RICHARD GALLOWAY and) Bankruptcy Case No. 00-31194
PAMELA GALLOWAY,)
)
Debtors.)
-----)
)
DONALD LARKIN,)
)
Plaintiff,)
)
vs.) Adversary Case No. 00-3192
)
RICHARD GALLOWAY and)
PAMELA GALLOWAY,)
)
Defendants.)

OPINION

This matter having come before the Court on a Motion to Partially Quash Subpoena filed by the Custodian of Records, FCI-Greenville, filed on November 2, 2000; the Court, having heard arguments of counsel, having reviewed the written Memoranda of the parties, and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The Plaintiff in these proceedings, Donald Larkin, through counsel, has issued a subpoena to the Custodian of Records at FCI-Greenville. The Custodian of Records at FCI-Greenville, Bureau of Prisons, has moved to partially quash the subpoena asserting a law

enforcement investigatory privilege pursuant to Dellwood Farms, Inc. v. Cargill, Inc., 128 F.3d 1122 (7th Cir. 1997). The Custodian of Records, FCI-Greenville, has submitted a Memorandum in Support of Motion to Partially Quash Subpoena citing the law enforcement investigatory privilege and also arguing that this Court does not have jurisdiction to rule upon the substantive merits of the Motion and to enforce the Plaintiff's federal subpoena. In response to the Motion and the written Memorandum of the Custodian of Records, FCI-Greenville, the Plaintiff has submitted his own Memorandum and a Supplemental Memorandum in Opposition to Motion to Partially Quash Subpoena.

As for the argument that this Court lacks jurisdiction to rule on the substantive merits of the Motion to Partially Quash Subpoena and to enforce the subpoena issued by the Plaintiff, the Court concludes that it does, in fact, have jurisdiction and this conclusion is supported by the authorities cited in the Plaintiff Donald Larkin's Supplemental Memorandum in Opposition to Motion to Partially Quash Subpoena filed on December 4, 2000. In particular, See: Committee for Nuclear Responsibility, Inc. v. Seaborg, 463 F.2d 788, at 793 (D.C. Cir. 1971); NLRB v. Capitol Fish Co., 294 F.2d 868 (5th Cir. 1961); U.S. v. Reynolds, 345 U.S. 1 (1953), and Exxon Shipping Co. v. United States Dept. of Interior, 34 F.3d 774 (9th Cir. 1994).

As for the claim of the law enforcement investigatory privilege, the Court finds that, under the authority of Dellwood, supra, the privilege is qualified and not absolute. In order to justify the

application of the privilege, the government bears the burden of showing that the public interest in non-disclosure outweighs the need of a litigate for access to the privileged information. In balancing these interests, the Court's weigh ten factors, including whether the information sought is available from other sources, and the importance of the information sought to the plaintiff's case. See: Tuite v. Henry, 98 F.3d 1411 (D.C. Cir. 1996). In considering the instant case, the Court finds that the government has failed to meet its burden of showing that the public interest in non-disclosure outweighs the need for the Plaintiff in this case to access the privileged information. Under the facts as presented in both the Motion to Partially Quash Subpoena and the supporting Memoranda, the Court concludes that there is virtually no other way for the Plaintiff in the instant case to obtain necessary information to present his case other than through access to the information at issue. Further, the Court finds that the parties have entered into an agreed Privacy Act/protective order which limits the use of any documentation or information obtained to the instant proceeding, all copies of any documents will be limited to use by counsel, and no copy of any information may be kept in the possession of the Plaintiff, Donald Larkin. The protective order further indicates that neither of the parties nor their counsel may disclose any portion of these documents or their content to any person unless the disclosure is reasonably calculated to aid in the prosecution or defense of this action. Based upon the Plaintiff's need

for the information which is sought and the protective order which has been entered, the Court finds that there is no likelihood of harm to the government nor to the public interest.

ENTERED: December 27, 2000.

/s/ GERALD D. FINES
United States Bankruptcy Judge