UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re REFCO, INC. SECURITIES LITIGATION

---

05 Civ. 8626 (GEL)

ORDER

GERARD E. LYNCH, District Judge:

On April 30, 2007, the Court issued an Opinion and Order ruling on various motions to dismiss in this securities action. Since that time, defendant Philip Silverman has filed a motion for reconsideration (Doc. # 365), as have defendants Ronald L. O'Kelley, Leo R. Breitman and Nathan Gantcher (the "Audit Committee Defendants") (Doc. # 367).

Silverman's motion argues that he was not a beneficiary of the "green shoe" option on which the April 30 Opinion based its conclusion that the Exchange Act claims against him adequately alleged motive. See In re Refco, Inc. Secs. Litig., No. 05 Civ. 8626, 2007 WL 1280649, at *27 (Apr. 30, 2007). It is true that when the First Amended Complaint lists the amounts of money that the officer defendants allegedly received from the "green shoe" option, Silverman's name is not listed along with the other officer defendants. (Compl. ¶ 587.) On the other hand, the Complaint also alleges that the "Officer Defendants" — a term it defines to include Silverman (see Compl. Ex. 2 at vii) — benefitted from the option. (Compl. ¶ 587.)

Even if a close reading of the Complaint could support an inference that Silverman did not benefit from the "green shoe" option, Silverman acknowledges that plaintiffs' Exchange Act claims will survive the motion to dismiss regardless of whether his motion for reconsideration has merit. (Silverman Mem. 1 n.1.) The April 30 Opinion found that scienter had been adequately alleged against Silverman both by allegations of motive and by allegations of recklessness — either of which is sufficient to support an inference of scienter. Rothman v. Gregor, 220 F.3d 81, 90 (2d Cir. 2000). "[A] motion for reconsideration is appropriate only where the movant demonstrates that the Court has overlooked controlling decisions or factual matters that were put before it on the underlying motion . . . and which, had they been considered, might have reasonably altered the result before the Court." JPMorgan Chase Bank v. Cook, 322 F. Supp. 2d 353, 354-355 (S.D.N.Y. 2004) (internal citations and quotation marks omitted). Silverman's concession that his motion would not alter the result is thus fatal to his motion.

The Audit Committee Defendants' motion, like Silverman's, offers only one argument for reconsideration: that the grant of restricted stock units ("RSUs") on which the April 30 Opinion based its finding of motive as to them was not unusual enough to show motive. Their motion contends that the Opinion improperly based its finding of motive "solely on their receipt of equity-based compensation." (Audit Comm. Mem. 2; emphasis in original.) The April 30

Opinion, however, acknowledged that an "unparticularized interest in executive compensation tied to stock price performance is not a sufficient motive for fraud." Refco, 2007 WL 1280649, at *35, quoting Geiger v. Solomon-Page Group, Ltd., 933 F. Supp. 1180, 1190 (S.D.N.Y. 1996). The basis on which the April 30 Opinion found the grant of RSUs unusual was that, according to the Complaint, the Audit Committee Defendants were the only board members who received it. Refco, 2007 WL 1280649, at *35. Defendants' contention that this is an insufficient basis for a finding of scienter was fully considered and rejected in the April 30 Opinion; defendants have pointed to no controlling decisions or factual matters overlooked in that Opinion.

Accordingly, the motions for reconsideration (Docs. ## 365, 367) are hereby DENIED.

SO ORDERED.

Dated: New York, New York
May 31, 2007

GERARD E. LYNCH
United States District Judge