

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA,        )  
  )  
                                  Plaintiff,    )  
  )  
                                  v.            ) NO. 81-575-M  
  )  
NORTH AMERICAN COAL EXCHANGE,    )  
  )  
                                  Defendant.    )

MEMORANDUM OPINION

This matter comes before the court on the Rule 41(e) motions of the defendant, North American Coal Exchange (NACE), and its president, Lawrence D. Morris, for the return of property seized by the government during a recent search. See Fed. R. Crim. P. 41(e). The movants also ask the court to enjoin the government from using the seized property in any future hearing or trial. For the reasons stated below, the court denies the motions of NACE and Morris for return of property and injunctive relief.

On July 23, 1981, United States Postal Inspector Russell L. Siano applied for a warrant to search the Arlington offices of NACE. At that time, Siano submitted an affidavit to the presiding United States Magistrate for the Eastern District of Virginia. The affidavit indicated that NACE was using fraudulent tactics to sell coal contracts to investors. The magistrate held that probable cause existed to believe that NACE's office contained evidence of mail and wire fraud violations under 18 U.S.C. §§ 1341, 1343 (1976). As a consequence, the magistrate issued a warrant to search NACE's headquarters. The warrant authorized the seizure of seven specific categories of evidence relating to mail fraud. On July 23, Siano and several other postal officials executed the warrant. They seized a large portion of the documents found in NACE's office.

On July 31, 1981, NACE moved for a return of property

and for injunctive relief. On August 18, Morris filed an identical motion. Both movants make three allegations: first, that the warrant is invalid under the fourth amendment, because Siano's affidavit is not sufficient to establish probable cause; second, that the warrant is invalid under the fourth amendment, because it is a general warrant; and, third, that the executing officials rendered the search unconstitutional by exceeding the scope of the warrant. None of these contentions are correct.

Siano's affidavit clearly is sufficient to demonstrate probable cause under the Aguilar-Spinelli test. See Spinelli v. United States, 393 U.S. 410 (1969); Aguilar v. Texas, 378 U.S. 108 (1964). On March 18, 1981, Siano obtained a warrant to search the Pittsburgh offices of the American Coal Exchange (ACE), a company wholly owned by movant Morris. The issuing United States Magistrate ruled that Siano's affidavit demonstrated probable cause to believe that ACE was using fraudulent tactics to sell coal contracts by mail. When Siano later applied for the NACE warrant, he attached a copy of the ACE warrant and affidavit to the application. The new material that Siano introduced in the NACE affidavit establishes that NACE was conducting a fraudulent operation similar to that run by ACE. In particular, the pretext calls made by postal officials and the information provided by Morris' former associates show that the operations of NACE and ACE were virtually identical. It was not necessary for Siano to state why he believed that the fraud records were located in the Arlington office, because there is a presumption that a company keeps its business records in its office. See Andresen v. Maryland, 427 U.S. 463, 479 n.9 (1976). Thus, Siano's warrant application does meet the Aguilar-Spinelli test for establishing probable cause.

Morris and NACE next argue that the NACE warrant is so broad that it qualifies as a general warrant. This contention, however, is incorrect, because the warrant adequately

specifies the categories of evidence that Siano could seize. See id. at 479-82. In addition, all of the categories are qualified by the requirement that they relate to the crime of mail fraud. See id. The NACE warrant, therefore, does not constitute a general warrant.

The movants' final allegation is that the postal officials exceeded the scope of the warrant in conducting the search. In order to conduct an effective search of NACE's headquarters, however, it was necessary for the officials to glance at all of the records and other property in the office. See id. at 482. Thus, the fact that they looked at documents beyond the scope of the warrant does not invalidate either the search or the warrant. See id. In addition, the fact that some of the items seized by the postal officials were not specified in the warrant does not invalidate the search. See United States v. Rettig, 589 F.2d 418, 423 (9th Cir. 1978); Brooks v. United States, 416 F.2d 1044, 1050 (5th Cir. 1969), cert. denied sub nom. Nipp v. United States, 400 U.S. 840 (1970). Thus, neither the warrant nor the search violated the fourth amendment.

NACE and Morris have moved under Rule 41(e) for the return of all property that does not fall into one of the seven categories listed in the warrant. If the postal officials had not conducted the search in good faith, the movants could recover such items. See United States v. Tranquillo, 330 F. Supp. 871, 876 (M.D. Fla. 1971). The court, however, rules that Siano and his cohorts exercised good faith under the circumstances. The movants, therefore, can recover only those items unrelated to any crime. See United States v. Rettig, 589 F.2d at 423; Brooks v. United States, 416 F.2d at 1050. If the government fails to return irrelevant materials, Morris and NACE should bring another Rule 41(e) motion specifying which items the government is detaining unlawfully.

The court also holds that injunctive relief is not

proper here, because the government has not attempted to introduce the fruits of the search at any hearing or trial. See Rentex Corp. v. Messinger, 570 F.2d 913, 915 (10th Cir. 1978); In re Vigorito, 499 F.2d 1351 (2d Cir.), cert. denied sub nom. Vigorito v. United States, 419 U.S. 1056 (1974); Hunsucker v. Phinney, 497 F.2d 29, 32 (5th Cir. 1974), cert. denied, 420 U.S. 927 (1975).

\_\_\_\_\_  
United States District Judge

Date: \_\_\_\_\_