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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

U.S. SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff	:
	:
v.	: 1:04-cv-02322 (GEL)
	:
UNIVERSAL EXPRESS, INC., et al.,	:
	:
Defendants.	:

PLAINTIFF'S SECOND SUBMISSION ON ALTOMARE'S CONTEMPT

I. Background

Plaintiff Securities and Exchange Commission submits this report on the current status of Richard Altomare's contempt. On April 18, 2008, the Court found Altomare in contempt for failing to disgorge and pay prejudgment interest on ill-gotten gains derived from violating the federal securities laws. The Court ordered him to surrender to the U.S. Marshal for the Southern District of New York on May 2, 2008 to be incarcerated until such time as he purges himself of

the contempt or he has paid the disgorgement amount in full. Altomare reported to the U.S. Marshal on May 2, 2008. To date, he has not paid the disgorgement amount in full, nor has he submitted documents to the SEC or the Court demonstrating categorically and in detail that it is financially impossible for him to pay any further amount toward satisfaction of the judgment.¹ As a result, Altomare has not met his burden.

Altomare appeared for deposition on June 26, 2008. As a general matter, Altomare has made few affirmative efforts to establish his inability to pay, and has instead responded only if and when confronted with information obtained by the SEC as a result of its review of records obtained from Altomare or other sources. Altomare has not generated any accounting of the funds he obtained from Universal Express and has not completed the financial statement affidavit provided to him by the SEC. Further, Altomare produced some, but not all, of the records requested by Plaintiff prior to his deposition. Altomare has not yet produced bank records for 2008 and has not produced a number of other documents requested by Plaintiff. Some 2006 records were produced to Plaintiff on Friday, June 27, 2008, as a result of which Plaintiff was unable to question Altomare about them during the deposition on June 26, 2008.

During the deposition, the transcript of which is filed with this status report as Attachment A, Altomare testified to a lack of knowledge regarding many financial matters, as discussed below. Altomare referred the SEC to his wife, and to the former controller of Universal Express, Saadia Hardial, as sources for additional information on these matters. Although Altomare plainly has greater access to any information in the possession of his wife than does the SEC, he has not obtained and produced such information. Therefore, Plaintiff believes it is necessary at a minimum to depose the two additional witnesses identified by

¹ Altomare has to date paid \$60,000 toward his disgorgement obligation of \$1,419,025 plus \$283,073 in prejudgment interest.

Altomare before advising the Court concerning its position as to Altomare's ability to pay more toward his disgorgement obligation.

In addition, in response to directions from the Court, Plaintiff, in consultation with counsel for Altomare, has made arrangements to retain a forensic accountant to investigate Altomare's disposition of the many millions of dollars he obtained while at the helm of Universal Express. Plaintiff believes such an investigation is necessary to fully vet Altomare's claim that he does not currently have access to funds to pay all, or any additional portion of, the Court's judgment.

II. Altomare's Failure to Satisfy His Burden

A. Altomare Continues to Hold Substantial Assets

1. Real Estate

Altomare continues to own two homes in Boca Raton, Florida, each of which he values at over \$1 million. He has terminated the real estate listing to sell his Bocaire home, and has not sold the Toscana West condominium. Altomare has failed to produce to the SEC any information which would substantiate his efforts to sell the condominium, if any, over recent months. In deposition, Altomare could not identify the full name of the realtor handling the listing of the condominium. Altomare has not demonstrated any good faith efforts to sell the condominium. Further, although Altomare claims he is behind in his mortgage payments on the two residences, he has not produced any records which would verify that claim. Neither property is in foreclosure at this time. Transcript 79-80.

Altomare bought the condominium in November 2006. He has failed to provide documents showing the source of \$100,000 paid as earnest money to purchase the Toscana West condominium reflected on line 201 of the settlement sheet. [Depo. Exhibit 2] Altomare could

not identify the source of the payment in his deposition and referred the SEC to his wife for more information. Transcript 21-24.

2. Other Liquid Assets

As noted by the Court in its April 14, 2008 order on contempt, Altomare claimed as of March 2007 to own \$6 million in artwork and jewelry. He has not identified the pieces of art or jewelry that he and his wife currently own or identified any steps he has taken to liquidate these assets to satisfy the Court's judgment. Altomare admitted in his deposition that he continues to possess a watch that was purchased for \$12,923.08. Also as noted by the Court, Altomare as of the February 2008 hearing on contempt owned other apparently liquid assets, including high-end audio visual equipment and various expensive furnishings in the condominium. Altomare has taken no steps to identify to the Court or the SEC his current assets and the steps he has taken to liquidate those assets in order to satisfy all or any portion of the Court's judgment.

As noted in the SEC's March 21, 2008 submission to the Court, the Altomares directed a \$10,000 payment to Steinway Piano Gallery on June 18, 2007. In his June 26 deposition, Altomare claimed that this represented merely a deposit on a piano purchase which was lost when he failed to complete the transaction. Transcript 164. Altomare has not provided any records to corroborate his claim.

B. Altomare Has Failed to Resolve Questions Raised By His Bank Records

Altomare failed to identify the source of funds used to pay \$100,000 to Premier Estate Properties, Inc., which funds were returned to him on September 6, 2006. [Depo. Exhibit 1] He could not identify the reason his wife paid \$1,000 to Coldwell Banker in March 2006. [Depo. Exhibit 10] He was not able to identify the properties upon which he and his wife made offers to purchase and paid inspection fees in July and September 2006. [Depo. Exhibits 6 & 7] He could

not identify the name of the third party or account to whom his wife paid \$1,296 in March 2006. [Depo. Exhibit 8] He could not identify the source of an \$8,000 currency deposit into his account in November 2006. [Depo. Exhibit 9].

Altomare's bank records indicate a number of deposits that do not coincide with his regular salary payments from Universal Express. He identified his receipt of checks for \$20,000 and \$70,000 from Universal Express in March and April 2006 as payment of his accrued salary. However, these amounts are not reflected on the payroll records of the company or in corporate minutes. [Depo. Exhibits 9 & 11] He indicated several times that either his wife or the former controller of Universal Express may have information about the sources of his income and the payments made.

In December 2001, Altomare personally agreed to purchase 16,313,118 Universal Express shares for a price of \$1,207,171. [Depo. Exhibit 16] He testified that he gave promissory notes in exchange for these shares, which he then had the general counsel for Universal Express cancel and return to treasury. Although he claims no ownership in these shares, he reported the acquisition on a Form 4 to the SEC. [Depo. Exhibit 17] He has paid premiums to a number of insurance companies although he could not recall specifically what insurance had been provided. These companies include Wexler Insurance Agency [Depo. Exhibit 24], Gueits, Adams Dolfi, Inc. [Depo. Exhibit 25], Chubb [Depo. Exhibit 26], and First Colony Life Ins. Co. (term life insurance) [Depo. Exhibit 27].

During a trip to Italy in August 2006, the Altomares spent over \$62,280 on clothing and jewelry which he could not identify. [Transcript 95-99; Depo. Exhibits 30-34] Altomare could not identify what jewelry his wife purchased for \$4,313 in 2006. Transcript 103-104. Altomare

has not yet produced documents which would identify his interest in the Jackson memorabilia collection, which may have value. Transcript 110-111.

C. Altomare Did Not Disclose Current Business Activities

Altomare did not disclose to the SEC, or to the Court in hearings on contempt, his participation in a business enterprise called Encore Holdings. When confronted with evidence obtained by the SEC through independent means, he acknowledged that it is a business which he is trying to get started. In November 2007, the company leased space in New York under arrangements made by Altomare and Chris Gunderson. [Depo. Exhibit 42]. Altomare's failure to disclose this enterprise raises a clear question as to his candor with respect to his financial condition. Transcript 166-171.

D. Altomare Has Not Explained His Travel to Bank Secrecy Havens

Following his deposition, Altomare produced a copy of his passport to the SEC. It reflects that Altomare has made many one-day trips to countries which have bank secrecy laws, including the Turks and Caicos. Altomare's bank records reflect the purchase of two tickets to Switzerland in 2007. Altomare testified he has no recall as to whether or not he went to Switzerland at any time after 2006. Transcript 76-78. Bank records of Universal Express reflect that the company transferred \$50,000 to Coutts Bank Switzerland Ltd. in 2003. Attachment B. Altomare could not identify the purpose of these transfers. Transcript 182-183.

III. Conclusion

Altomare's deposition and production of information to date reflects a persistent lack of candor. He has failed to submit documents or information to the SEC or to the Court which demonstrate categorically and in detail that it is financially impossible for him to pay any amount toward satisfaction of the judgment. That is his burden. Based upon his answers in the deposition, Plaintiff believes it is necessary to depose both Mrs. Altomare and the former controller of USXP to obtain additional information regarding various matters. Altomare also has access to liquid assets which appear to be a source of funds to satisfy the judgment. Plaintiff is continuing to analyze documents recently produced by Altomare, and believes a forensic accounting is necessary to resolve issues surrounding Altomare's access to funds to pay his disgorgement.

For the reasons discussed above, the Commission respectfully requests that the Court order that Altomare remain incarcerated until he pays the disgorgement and prejudgment interest in full, or proves categorically and in detail that any payment is impossible.

Dated: July 2, 2008

Respectfully submitted,

s/ Julie K. Lutz
Julie K. Lutz
Leslie Hughes
Attorneys for the Plaintiff
Securities and Exchange Commission

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2008, I electronically filed the **PLAINTIFF'S SECOND SUBMISSION ON ALTOMARE'S CONTEMPT** with the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification to the following as indicated to the parties listed below.

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Dated: July 2, 2008

s/ Marla J. Pinkston
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