UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

COOPERATIVA DE AHORRO Y CREDITO TUCOOP Plaintiff, v. 3G GREEN GOLD GROUP LLC Defendants	CIVIL NO: 23-01301(RAM) DECLARATORY JUDGEMENT

OPPOSITION TO MOTION TO DISMISS

TO THE HONORABLE COURT:

COMES NOW plaintiff, Cooperativa de Ahorro y Crédito TuCoop ("TuCoop"), through the undersigned attorneys, and very respectfully Alleges and Prays as follows:

Introduction

On August 4, 2023, 3G Green Gold Group LLC ("3G") requested the dismissal of the Complaint. As per 3G, this Court does not enjoy federal jurisdiction because the case allegedly presents a mere contractual dispute under Puerto Rico law. See, ECF/16, p. 1. Tellingly, however, 3G was unable to cite any allegations by TuCoop involving a contract between the parties. As a matter of fact, there are none because there is no contract in dispute in the instant action. A perusal of the Complaint reflects that TuCoop has asked this Court to declare its right to close 3G's accounts based on its suspicious and/or illegal scheme related to the Marijuana Related Business ("MRB"), in violation of federal law. To make this determination, the Court will have to examine the relevant legal requirements that stem, mainly, from the Bank Secrecy Act ("BSA"), 12 U.S.C §1951 and the Financial Crimes Enforcement Network ("FinCEN") regulations.

For sure, after the instant complaint was filed, 3G initiated action in Puerto Rico to deal with new contractual disputes between the parties. But such disputes-- which are currently being litigated in the corresponding regulatory agency[1]-- have nothing to do with the merits of this case. The Complaint in the case of caption arises from federal law and derives from 3G's suspicious financial transactions, pursuant to federal money laundering statutes and federal financial regulations concerning the MRB. Pursuant to FinCEN's guidance, TuCoop may terminate its relationship with 3G and close its accounts based on its suspicious reportable activities and/or illegal schemes. Because there is a controversy between the parties that arises under federal law, this Court can exercise its authority to entertain the instant action for Declaratory Judgement.

Discussion

When ruling on a motion to dismiss, courts "accept as true all well-pleaded facts alleged in the complaint and draw all reasonable inferences therefrom in the pleader's favor." *Rodríguez-Reyes v. Molina-Rodríguez*, 711 F.3d 49, 52–53 (1st Cir. 2013) (citation and internal quotation marks omitted). 3G alleges that the Court should not entertain the case for two reasons: 1) the controversy presents a contractual dispute under Puerto Rico law; 2) TuCoop has not cited any federal law creating a federal cause of action. 3G's arguments are incorrect.

That the controversy before this Court is not contractual in nature can be easily confirmed by reviewing the allegations in the Complaint. In it, TuCoop does not mention the existence of a contract between the parties nor an alleged breach by 3G. Furthermore, TuCoop has not asked the Court to clarify the contractual rights or obligations of the parties. The Complaint is based strictly on federal law. Specifically, TuCoop has alleged that 3G has engaged in suspicious activity pursuant to federal money laundering statutes. As such, TuCoop is solely asking the Court to

[1] 3G initiated action against TuCoop at PR credit union's regulator COSSEC, complaints number Q-2023-AC-0005, Q-2023-AC-0006, Q-2023-AC-0007, and Q-2023-AC-0008.

declare that it may terminate its relationship with 3G and close its accounts in the institution based on 3G's suspicious and/or illegal scheme related to the MRB. See, ECF/1, ¶¶20, 22, 25. To declare whether TuCoop has such right, the Court will need to rely exclusively on federal laws.

As per the allegations in the Complaint, the Controlled Substances Act ("CSA") makes it illegal under federal law to manufacture, distribute, or dispense marijuana. See, ECF/1, ¶7. Notwithstanding said federal prohibition, many States, including Puerto Rico, have moved to legalize the use of medicinal marijuana. In Puerto Rico, Act 42 of 2017, as amended, 24 PR. Stat. Ann., §2621 *et seq.* authorizes such use. See, ECF/1, ¶9. Even so, Article 18(a) of said law, 24 PR. Stat. Ann., §2626, establishes that "**This Act forbids and seeks to establish controls to eliminate money laundering. It shall be obligatory to comply with the guidelines by the Federal Government that require clear controls for cash transactions to prevent money laundering**". See, ECF/1, ¶12.

The US Department of Treasury oversees compliance with the BSA, as amended. Generally, the BSA imposes reporting and due-diligence requirements on financial institutions to help detect and prevent money laundering and other illegal activities. As a financial institution, TuCoop has to comply with the BSA. See, ECF/1, ¶4. To clarify how the BSA will apply to financial institutions that provide services to MRB's, FinCEN issued guidance through FIN-2014-G0001. See, ECF/1, ¶13; FinCEN's Guidance, Exhibit 1. Such guidance requires financial institutions, like TuCoop, to conduct customer due diligence. Among the various factors to consider, financial institutions are required to conduct "ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance". See, ECF/1, ¶14; Exhibit 1, p. 3.

FinCEN's Guidance includes a list of "red flags" highlighting conduct which may reflect that an MRB is engaging in illegal activity. Among others, FinCEN specifically lists when "Individuals conducting transactions for the business appear to be acting on behalf of other,

undisclosed parties of interest ". Another red flag is when "a customer seeks to conceal or disguise involvement in marijuana-related business activity. For example, the customer may be using a business with a non-descript name (e.g., a "consulting," "holding," or "management" company) that purports to engage in commercial activity unrelated to marijuana, but is depositing cash that smells like marijuana". Yet another flag is when "A marijuana-related business engages in international or interstate activity, including by receiving cash deposits from locations outside the state in which the business operates, making or receiving frequent or large interstate transfers, or otherwise transacting with persons or entities located in different states or countries". See, ECF/1, ¶14; Exhibit 1, p. 6.

As a financial institution, TuCoop is required to report suspicious activities if, consistent with federal laws and regulations, it becomes aware that a transaction "is an attempt to disguise funds derived from illegal activity". See, Exhibit 1, p. 3. Because federal law prohibits the distribution and sale of marijuana, financial transactions involving MRB's are derived from an "illegal activity". As alleged in the Complaint, 3G has disguised the sale of cannabis products at its BWell dispensaries. See, dkts. 2-1. Such sales go through the FedWire, falsely reflecting a withdrawal of funds at a Florida location. Furthermore, 3G makes frequent interstate transfers and/or transactions with persons or entities located in different countries. In the instant case, 3G's scheme involves Puerto Rico, Florida, Colorado, Sweden and Nevis. See, ECF/1, ¶17-18 and ECF/2-2 (translated at ECF/10-1).

As reflected in FinCEN's Guidance, it is up to each financial institution to assess the risk of providing services to an MRB. See, Exhibit 1, p. 2. TuCoop has decided that it cannot assume the risk and liability--including fines, penalties, the loss of its ability to utilize the services of the

FRBNY, and the loss of its charter-- created by 3G's suspicious activity in the MRB.[2] When given an opportunity to explain, 3G's response was to threaten with legal action, announcing that closing of its accounts would amount to "undue interference with interstate commerce and could be considered as monopolistic activity prohibited by law". See, ECF/1, ¶21. It is clear, then, that to resolve the dispute between the parties, the Court will need to evaluate the federal laws at stake.

Declaratory relief is an important option for establishing the parties' rights. Specifically, when acting without clarification of one's rights poses great risk, but a claim for damages may not yet be appropriate, declaratory relief can provide certainty. *N.H. Lottery Comm'n v. Rosen*, 986 F.3d 38, 53 (1st Cir. 2021). The Declaratory Judgment Act, 28 U.S.C. §2201-2202, gives federal courts discretion to entertain a suit for declaratory relief if an actual controversy exists and subject matter jurisdiction exists. *See* Gary Smith & Nu Usaha, *Dusting Off the Declaratory Judgment Act: A Broad Remedy for Classwide Violations of Federal Law*, 32 Clearinghouse Review 112 (July-Aug. 1998). That an actual controversy exists between the parties is evident by 3G's threat of litigation. Federal subject matter jurisdiction exists because the controversy involves solely federal laws.

3G's suggestion that declaratory judgment may only proceed if there is a federal law creating a private cause of action is erroneous. Even if the Declaratory Judgment Act does not create federal jurisdiction by itself, it creates a potential remedy when a claim over which a court has jurisdiction otherwise exists. *Alarm Detection Sys. v. Orland Fire Prot. Dist.* 929 F.3d 865, 871, n. 2 (7th Cir. 2019). Federal courts have jurisdiction if a federal question is present. A federal question is present if a case arises under federal laws. U.S. Const. art. III, §2. The constitutional

[2] As alleged in the Complaint, the Federal Reserve Bank of New York ("FRBNY") serves the Commonwealth of Puerto Rico. All financial institutions in Puerto Rico are prohibited from processing through the Fedwire transactions related to the MRB. See, ECF/1, ¶15. Because 3G is conducting transactions that are going through the FedWire, TuCoop may be found to be in violation to the requirements of the FRBNY.

"arising under" provision extends to all claims in which the federal question is "an ingredient." *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 807 (1986). The Complaint in the instant case only has one ingredient: federal law.

As 3G acknowledged, in order for TuCoop to secure a federal relief, it "will be obliged to establish both the correctness and the applicability to [its] case of a proposition of federal law". See, ECF/16, p. 2. That is exactly what the Complaint does, and exactly for that reason, federal jurisdiction is proper. In this case, TuCoop's right to relief necessarily depends on the resolution of a disputed question of federal law, there is a substantial federal interest and federal jurisdiction will not upset the balance of federal-state authority. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning*, 578 U.S. 374, 383 (2016). Additionally, a federal rule or decision is necessary to protect a uniquely federal interest; specifically, the federal interest to enjoin all financial activity stemming from illegal transactions, such as the distribution and sale of a Schedule I controlled substance.

3G's argument that TuCoop's Complaint "relies on assumptions of illegal actions by 3G, even if there is no federal or state investigation…." is sterile. That 3G is unaware of any federal or state investigation does not mean that such investigations do not exist. But, regardless, TuCoop's obligation under federal law, is to monitor suspicious activity and report it upon detection. As per FinCEN's Guidance, TuCoop has the right to terminate its relationship with 3G to maintain an effective anti-money laundering program, including a structure of robust internal controls, risk mitigation and suspicious activity reporting. Those are the regulatory expectations of TuCoop's federal banking regulator under the BSA. As 3G has engaged in a financial scheme that has raised various "red flags", 3G may not prevent TuCoop from closing its accounts.

All MRB's, including those in Puerto Rico, must comply with federal statutes preventing money laundering. TuCoop's entitlement to terminate 3G's account stems from federal regulation.

As such, this Court enjoys federal jurisdiction over this case. 3G's motion to dismiss should be denied.

WHEREFORE TuCoop requests the Court to deny 3G's motion to dismiss.

In San Juan, Puerto Rico, on this 18th day of August 2023.

S/Osvaldo Carlo-Linares Osvaldo Carlo-Linares USDC P.R. No. 126602 Tel. (787) 300-6483 Fax (787) 726-6456 Email: ocarlo@carlolaw.com	**S/ Lydia M. Ramos Cruz** LYDIA M. RAMOS CRUZ USDC/PR 214104 1509 López Landrón American Airlines Bldg, PH San Juan, Puerto Rico 00911 Tel: (787) 508-2525 E-mail: lramos@ramoscruzlegal.com

Department of the Treasury
Financial Crimes Enforcement Network

FIN-2014-R001
Issued: January 30, 2014
Subject: Application of FinCEN's Regulations to Virtual Currency Mining Operations

---

Dear [ ]:

This responds to your letter of June 1, 2013, seeking an administrative ruling from the Financial Crimes Enforcement Network ("FinCEN") on behalf of [the Company], about [the Company]'s possible status as a money services business ("MSB") under the Bank Secrecy Act ("BSA"). Specifically, you ask whether certain ways of disposing of the Bitcoins mined by [the Company] would make [the Company] a money transmitter under the BSA.

You state that [the Company] mines Bitcoins. You further state that the Bitcoins that [the Company] has mined have not yet been used or transferred, but that [the Company] may decide to use this virtual currency to purchase goods or services, convert the virtual currency into currency of legal tender and use the currency to purchase goods and services, or transfer the virtual currency to the owner of the company. You ask in your letter whether any of these transactions would make [the Company] a money transmitter under the BSA.

On July 21, 2011, FinCEN published a Final Rule amending definitions and other regulations relating to MSBs (the "Rule").[1] The amended regulations define an MSB as "a person wherever located doing business, whether or not on a regular basis or as an organized business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(6) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States."[2]

BSA regulations, as amended, define the term "money transmitter" to include a person that provides money transmission services, or any other person engaged in the transfer of funds. The term "money transmission services" means the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means.[3] The regulations also stipulate that whether a person is a money transmitter is a matter of facts and circumstances, and identifies circumstances under which a person's activities would not make such person a money transmitter.[4]

---

[1] Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Money Services Businesses, 76 FR 43585 (July 21, 2011).
[2] 31 CFR § 1010.100(ff).
[3] 31 CFR § 1010.100(ff)(5)(i)(A) and (B).
[4] 31 CFR § 1010.100(ff)(5)(ii).

On March 18, 2013, FinCEN issued guidance on the application of FinCEN's regulations to transactions in virtual currencies (the "guidance").[5] FinCEN's regulations define currency (also referred to as "real" currency) as "the coin and paper money of the United States or of any other country that [i] is designated as legal tender and that [ii] circulates and [iii] is customarily used and accepted as a medium of exchange in the country of issuance."[6] In contrast to real currency, "virtual" currency is a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction. The guidance addresses "convertible" virtual currency. This type of virtual currency either has an equivalent value in real currency, or acts as a substitute for real currency.

For purposes of the guidance, FinCEN refers to the participants in generic virtual currency arrangements, using the terms "exchanger," "administrator," and "user." An *exchanger* is a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency. An *administrator* is a person engaged as a business in issuing (putting into circulation) a virtual currency, and who has the authority to redeem (to withdraw from circulation) such virtual currency. A *user* is a person that obtains virtual currency to purchase goods or services on the user's own behalf.

The guidance makes clear that an administrator or exchanger of convertible virtual currencies that (1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency in exchange for currency of legal tender or another convertible virtual currency for any reason (including when intermediating between a user and a seller of goods or services the user is purchasing on the user's behalf) is a money transmitter under FinCEN's regulations, unless a limitation to or exemption from the definition applies to the person.[7] The guidance also makes clear that "a user who obtains convertible virtual currency and uses it to purchase real or virtual goods or services is **not** an MSB under FinCEN's regulations." FinCEN understands your letter to amount to a request to elaborate on this last statement in the specific context of a user that obtains the convertible virtual currency Bitcoin by mining.

How a user obtains a virtual currency may be described using any number of other terms, such as "earning," "harvesting," "mining," "creating," "auto-generating," "manufacturing," or "purchasing," depending on the details of the specific virtual currency model involved. The label applied to a particular process of obtaining a virtual currency is not material to the legal characterization under the BSA of the process or of the person engaging in the process to send that virtual currency or its equivalent value to any other person or place. What is material to the conclusion that a person is not an MSB is not the mechanism by which a person obtains the convertible virtual currency, but what the person uses the convertible virtual currency for, and for whose benefit.

---

[5] FIN-2013-G001, "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," March 18, 2013.
[6] 31 CFR § 1010.100(m).
[7] The definition of "money transmitter" in FinCEN's regulations defines six sets of circumstances – variously referred to as limitations or exemptions – under which a person is not a money transmitter, despite accepting and transmitting currency, funds, or value that substitutes for currency. 31 CFR § 1010.100(ff)(5)(ii)(A)-(F).

FinCEN understands that Bitcoin mining imposes no obligations on a Bitcoin user to send mined Bitcoin to any other person or place for the benefit of another. Instead, the user is free to use the mined virtual currency or its equivalent for the user's own purposes, such as to purchase real or virtual goods and services for the user's own use. To the extent that a user mines Bitcoin and uses the Bitcoin solely for the user's own purposes and not for the benefit of another, the user is ***not*** an MSB under FinCEN's regulations, because these activities involve neither "acceptance" nor "transmission" of the convertible virtual currency and are not the transmission of funds within the meaning of the Rule. This is the case whether the user mining and using the Bitcoin is an individual or a corporation, and whether the user is purchasing goods or services for the user's own use, paying debts previously incurred in the ordinary course of business, or (in the case of a corporate user) making distributions to shareholders. Activities that, in and of themselves, do not constitute accepting and transmitting currency, funds or the value of funds, are activities that do not fit within the definition of "money transmission services" and therefore are not subject to FinCEN's registration, reporting, and recordkeeping regulations for MSBs.[8]

From time to time, as your letter has indicated, it may be necessary for a user to convert Bitcoin that it has mined into a real currency or another convertible virtual currency, either because the seller of the goods or services the user wishes to purchase will not accept Bitcoin, or because the user wishes to diversify currency holdings in anticipation of future needs or for the user's own investment purposes. In undertaking such a conversion transaction, the user is not acting as an exchanger, notwithstanding the fact that the user is accepting a real currency or another convertible virtual currency and transmitting Bitcoin, so long as the user is undertaking the transaction solely for the user's own purposes and not as a business service performed for the benefit of another. A user's conversion of Bitcoin into a real currency or another convertible virtual currency, therefore, does not in and of itself make the user a money transmitter.[9]

FinCEN therefore concludes that, under the facts you have provided, [the Company] would be a user of Bitcoin, and not an MSB, to the extent that it uses Bitcoin it has mined: (a) to pay for the purchase of goods or services, pay debts it has previously incurred (including debts to its owner(s)), or make distributions to owners; or (b) to purchase real currency or another convertible virtual currency, so long as the real currency or other convertible virtual currency is used solely in order to make payments (as set forth above) or for [the Company]'s own investment purposes. Any transfers to third parties at the behest of sellers, creditors, owners, or counterparties involved in these transactions should be closely scrutinized, as they may constitute money transmission. (See footnotes 8 and 9 above.) And of course, should [the

---

[8] However, a user wishing to purchase goods or services with Bitcoin it has mined, which pays the Bitcoin to a third party at the direction of a seller or creditor, may be engaged in money transmission. A number of older FinCEN administrative rulings, although not directly on point because they interpret an older version of the regulatory definition of MSBs, discuss situations involving persons that would have been exempted from MSB status, but for their payments to third parties not involved in the original transaction. *See* FIN-2008-R004 (Whether a Foreign Exchange Consultant is a Currency Dealer or Exchanger or Money Transmitter - 05/09/2008); FIN-2008-R003 (Whether a Person That is Engaged in the Business of Foreign Exchange Risk Management is a Currency Dealer or Exchanger or Money Transmitter - 05/09/2008); FIN-2008-R002 (Whether a Foreign Exchange Dealer is a Currency Dealer or Exchanger or Money Transmitter - 05/09/2008).

[9] As noted in footnote 8 above, however, a user engaging in such a transaction, which pays the Bitcoin to a third party at the direction of the counterparty, may be engaged in money transmission.

Company] engage in any other activity constituting acceptance and transmission of either currency of legal tender or virtual currency, it may be engaged in money transmission activities that would be subject to the requirements of the BSA.

This ruling is provided in accordance with the procedures set forth at 31 CFR Part1010 Subpart G. In arriving at the conclusions in this administrative ruling, we have relied upon the accuracy and completeness of the representations you made in your communications with us. Nothing precludes FinCEN from arriving at a different conclusion or from taking other action should circumstances change or should any of the information you have provided prove inaccurate or incomplete. We reserve the right, after redacting your name and address, and similar identifying information for your clients, to publish this letter as guidance to financial institutions in accordance with our regulations.[10] You have fourteen days from the date of this letter to identify any other information you believe should be redacted and the legal basis for redaction.

If you have questions about this ruling, please contact FinCEN's regulatory helpline at (703) 905-3591.

Sincerely,

//signed//

Jamal El-Hindi
Associate Director
Policy Division

[10] 31 CFR §§ 1010.711-717.