IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAMINE SANOU, et al.	:	CIVIL ACTION
	:	
v.	:	NO. 05-3871
	:	
MIKE ETEMAD	:	

MEMORANDUM AND ORDER

Juan R. Sánchez, J. **October 3, 2005**

Six Philadelphia taxi cab drivers complain Mike Etemad failed to deliver the medallions, mortgages and insurance for which they paid. Because the cab drivers have failed to state a federal cause of action, this Court will grant Etemad's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

The *pro se* complaint appears to allege the drivers gave Etemad money for insurance, medallions and mortgages that Etemad never turned over to the banks and insurance companies to which they were owed. The cab drivers style their complaint[1] a class action suit and allege a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962, and violations of the Sherman Antitrust Act, 15 U.S.C. § 1.

DISCUSSION

Etemad's motion to dismiss tests the legal sufficiency of the complaint. In considering a motion under Fed.R.Civ.P. 12(b)(6) this Court must accept as true all well-pled factual allegations. *Santiago v. GMAC Mortg. Group, Inc.*, 417 F.3d 384, 386 (3d Cir. 2005). This Court will grant

[1]A seventh person filed what is termed an Amended Complaint on her own behalf against Etemad. Her claims are less intelligible than those made by the cab drivers.

Etemad's motion to dismiss only if it appears the drivers could prove no set of facts that would entitle them to relief. *Smith v. Mensinger*, 293 F.3d 641, 647 (3d Cir. 2002). *Pro se* complaints are held to a "less stringent standard[] than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (internal citations omitted); *see also Alston v. Parker*, 363 F.3d 229, 234 (3d Cir. 2004) (holding "[c]ourts are to construe complaints so as to do substantial justice"). A complaint alleges sufficient facts "if it adequately put[s] the defendant on notice of the essential elements of the plaintiff's cause of action." *Langford v. City of Atlantic City*, 235 F.3d 845, 847 (3d Cir. 2000).

District courts are courts of limited jurisdiction and may hear actions only where authorized to do so by Congress. U.S. Const. Art. III, § 1; *Lawrence Tp. Bd. of Educ. v. New Jersey*, 417 F.3d 368, 371 (3d Cir. 2005). Because the parties in this case are not diverse,[2] this Court's jurisdiction depends on the existence of a federal question. 28 U.S.C. §§ 1331; *U.S. Express Lines Ltd. v. Higgins*, 281 F.3d 383, 388 (3d Cir. 2002). Congress has granted federal courts jurisdiction to hear both RICO and Sherman Antitrust suits. 18 U.S.C. § 1964(c); 15 U.S.C. § 4.

The question, thus, becomes whether the drivers's complaint, when taken as true, states a claim upon which relief may be granted under RICO or the Sherman Act. Regarding the Sherman Act violations, the Complaint alleges "Mike Etemad monopolized the taxi transportation system in Philadelphia," an impossibility. This Court must only accept as true all well-pled allegations. *Santiago*, 417 F.3d at 386. Even with the deference due *pro se* plaintiffs, this Court finds no well-

[2]All of the cab drivers and Etemad are Pennsylvania residents.

pled violation of the Sherman Act in the incoherent rant in the complaint.

A careful reading of the drivers' complaint reveals allegations of fraud but not of RICO.[3] A pattern of racketeering is the heart of a RICO complaint. *Agency Holding Corp. v. Malley-Duff & Assoc., Inc.*, 483 U.S. 143, 154, (1987). Racketeering is "any act which is indictable under . . . title 18 . . . section 1341 (relating to mail fraud) [or] section 1343 (relating to wire fraud)." 18 U.S.C. § 1961(1)(B). A pattern of racketeering activity "requires at least two acts of racketeering activity," i.e. two acts of mail or wire fraud, within ten years. 18 U.S.C. § 1961(5). Proof of a pattern requires both "a relationship" among the predicate acts and a showing that the acts "amount to or pose a

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[3] **18 U.S.C. § 1962. Prohibited activities**

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

threat of continued criminal activity." *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 237 (1989). The "relatedness" prong requires predicate acts to "have the same or similar purposes, results, participants, victims, or methods of commission." *Tabas v. Tabas*, 47 F.3d 1280, 1292 (3d Cir. 1995). The "continuity" prong is "both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition." *Tabas*, 47 F.3d at 1292 (quoting *H.J. Inc.*, 492 U.S. at 241).

The drivers have not made even the most minimal statement of the elements of RICO. They have not alleged Etemad perpetrated his fraud either by mail or by wire, as required. 18 U.S.C. § 1961(1)(B). Although the drivers make a creditable claim they were defrauded, they have not alleged a "pattern of racketeering activity." 18 U.S.C. § 1962(a). The complaint contains no allegations as to enterprise, relatedness, or continuity. *H.J. Inc.*, 492 U.S. at 237.

In some cases it might be useful to dismiss provisionally, demanding a RICO Case Statement. *See Lorenz v. CSX Corp.*, 1 F.3d 1406, 1413 (3d Cir. 1993). This Court would grant leave to amend if the complaint were merely deficient. *Shane v. Fauver*, 213 F.3d 113, 116-17 (3d Cir.2000). There is no reason to grant leave to amend if the action would be futile. *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997). "Futility means that the complaint, as amended, would fail to state a claim upon which relief could be granted." *Id.* at 1434. This Court assesses futility by the same standard as a Rule 12(b)(6) motion. *Id.* 6 Charles Alan Wright & Arthur R. Miller Federal Practice and Procedure § 1487 (200)). If amendment would not cure the deficiency, there is no reason to entertain leave to amend. *Shane v. Fauver* 213 F.3d 113, 115 (3d Cir. 2000). In this case, the drivers have not alleged any facts by which a case of fraud may be transformed into a RICO case;

amendment would be futile. *Burlington*, 114 F.3d at 1434.[4] The drivers may well have a claim cognizable under state law but they have failed to plead facts which would confer federal jurisdiction

Accordingly, I enter the following:

[4]Etemad's legal difficulties will not end with the dismissal of this case. *See United States v. Etemad*. No. 05-cr-03.

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ORDER

And now this 3rd day of October, 2005, Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b) (document 4) is GRANTED and the above-captioned case is DISMISSED with prejudice.

BY THE COURT:

\s\ Juan R.Sánchez
Juan R. Sánchez, J.