

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE AMC ENTERTAINMENT)
HOLDINGS, INC. STOCKHOLDER) Consol. C.A. No. 2023-0215-MTZ
LITIGATION)

**REPORT AND RECOMMENDATION OF SPECIAL MASTER
REGARDING JORDAN AFFHOLTER'S MOTION FOR ENLARGEMENT
OF TIME AND OBJECTION TO THE DISCOVERY PROCESS**

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Special Master

Dated: May 25, 2023

PRELIMINARY STATEMENT

Jordan Affholter (“Affholter”) first wrote to the Court on April 8, 2023, in a letter docketed on April 17, 2023, raising concerns with the proposed settlement of this action.¹ Since then Affholter has moved to intervene, sought access to discovery and made other requests of the Court.² I recommended that the Court deny some of those requests.³

On May 19, 2023, I recommended that objectors to the proposed settlement be permitted access to the existing discovery record, conditioned on providing proof of AMC Entertainment Holdings, Inc. (“AMC”) stock ownership and execution of a confidentiality agreement.⁴ The Court adopted that recommendation.⁵ Defendants have since made the discovery record available to potential objectors subject to compliance with proof of ownership and confidentiality requirements.⁶

Affholter has not satisfied the preconditions to access the existing discovery record, and it is not clear whether Affholter ever will. For example, on May 22, Affholter filed a Motion for Enlargement of Time and Objection to Discovery

¹ Trans. ID 69835190.

² Trans. IDs 69875639, 69990687, 69958472, 69941676.

³ Trans. IDs 70033944, 70051660.

⁴ Trans. ID 70051000.

⁵ Trans. IDs 70053696, 70073710.

⁶ Defendants’ Opposition to Jordan Affholter’s Request to Extend the Deadline to Submit Objections ¶ 4 (Trans. ID 70078952) (“Defendants’ Opposition”).

Process (the “Motion to Enlarge”),⁷ in which Affholter describes the confidentiality restrictions as “unnecessarily restrictive and constitutionally offensive.”⁸ Because Affholter refused to execute Exhibit B to the confidentiality order, Affholter does not have access to the existing discovery record.⁹

In the Motion to Enlarge, Affholter seeks additional time to object to the settlement, citing, in part, concerns regarding the length of time it could take to review the discovery record before the objection deadline passes.¹⁰ Affholter also seeks additional time to submit the In-Person Settlement Objector Interest Form¹¹ that an objector must complete in order to speak at the settlement hearing.¹²

⁷ Trans. ID 70062036. Affholter did not paginate his filing. The substance of the correspondence begins on page 3 of the .PDF, which I consider page 1.

⁸ Motion to Enlarge at 8. Affholter also requested “equitable” revisions to defendants’ proposed form of confidentiality order, modifications to the stock ownership verification process to place the burden to verify ownership on AMC rather than individual stockholders, and that the Court vacate paragraph 8 of the confidentiality order. *See id.* The Court denied those requests on May 24, 2023. Trans. ID 70073710.

⁹ *See* Plaintiffs’ Opposition to Jordan Affholter’s Motion to Modify the Scheduling Order ¶ 12 n.4 (Trans. ID 70081610) (“Plaintiffs’ Opposition”).

¹⁰ Motion to Enlarge at 5.

¹¹ *Id.* at 9.

¹² The Court appointed me as a Special Master in this action. *See* Order Appointing Special Master ¶ 1 (Trans. ID 69885808); Letter to Counsel & Interested Parties from Vice Chancellor Zurn, dated May 2, 2023, Regarding Special Master’s Authority (Trans. ID 69935078). A recommendation concerning these requests falls within the scope of my authority.

For the reasons set forth below, I recommend that the Court deny Affholter’s request to enlarge the time period for submitting objections because Affholter has not demonstrated good cause for the request. I further recommend that the Court grant Affholter’s request that the Court accept in-person attendance objection forms postmarked up to and including the date of the objection deadline, currently May 31, 2023.

ANALYSIS AND RECOMMENDATION

A. Recommendation to Deny Request to Amend Objection Deadline

According to the Scheduling Order with Respect to Notice and Settlement Hearing (“Scheduling Order”), objections to the settlement are due no later than May 31, 2023.¹³ Affholter seeks to extend this deadline for three reasons. First, Affholter cites a technical issue that certain stockholders received an “email bounce notification” from the email domain that plaintiffs’ counsel set up to receive objections.¹⁴ Second, Affholter notes that the exhibits cited in plaintiffs’ settlement brief were initially filed confidentially pursuant to Court of Chancery Rule 5.1.¹⁵ Third, Affholter raises concerns about the time needed to review the discovery

¹³ Scheduling Order ¶ 18 (Trans. ID 69929995).

¹⁴ Motion to Enlarge at 3.

¹⁵ *Id.* at 4-5.

record, including his belief that the digital platform was not accessible at the time ordered by the Court.¹⁶

The Scheduling Order permits extensions of deadlines for good cause shown.¹⁷ Good cause may be found where “the moving party has been generally diligent, the need for more time [is] neither foreseeable nor its fault, and refusing to grant the continuance would create a substantial risk of unfairness to that party.”¹⁸

Affholter’s first concern—the email bounce notification—does not provide a basis to enlarge the time period for objections. This technical issue was promptly resolved and did not affect plaintiffs’ counsel’s receipt of any emails.¹⁹ It did not cause any delay or prejudice to any potential objector, much less any delay that would provide good cause to permit additional time for Affholter, or any other stockholder, to submit an objection.

¹⁶ *Id.* at 6-7. Defendants have represented that the digital platform was operational by the time ordered by the Court. Defendants’ Opposition ¶ 4.

¹⁷ Scheduling Order ¶¶ 18, 25. Court of Chancery Rule 6(b) likewise requires good cause to modify an existing deadline.

¹⁸ *Coleman v. PricewaterhouseCoopers, LLC*, 902 A.2d 1102, 1107 (Del. 2006).

¹⁹ Trans. ID 70044521. The Court has ordered that only a stockholder’s first objection will be considered. *See* May 3, 2023 Corrected Settlement Procedure Letter at 2 (Trans. ID 69944998) (the “Settlement Procedure Letter”). Because plaintiffs’ counsel received all objections, any affected stockholders need not submit a further objection.

Affholter's second concern—the exhibits to plaintiffs' settlement brief—also does not satisfy the good cause standard. Plaintiffs filed the settlement brief publicly and summarized the exhibits in that brief.²⁰ The 37 exhibits were also available on AMC's website as of May 20, 2023.²¹ There is sufficient time for class members to review the documents before the May 31, 2023 objection deadline.²²

Affholter's third concern—the time needed to review the discovery record—does not support his request to move the objection deadline. Affholter has decided not to access the discovery record by not complying with all of the prerequisites for access. In the Motion to Enlarge, Affholter sought revisions to the confidentiality order.²³ After the Court denied that request on May 24,²⁴ Affholter filed a letter noting an intention to seek re-argument on the issue by Friday, May 26.²⁵ Affholter may decide whether or not to accept the restrictions that come with accessing the discovery record. But in light of Affholter's chosen path, Affholter cannot complain there is inadequate time to review the record.

²⁰ Trans. ID 69958454.

²¹ Plaintiffs' Opposition ¶ 10.

²² Affholter's use of the settlement brief exhibits in the Motion to Enlarge demonstrates the ability to timely review and make use of those exhibits. *See* Motion to Enlarge at 5.

²³ Motion to Enlarge at 8.

²⁴ Trans. ID 70073710.

²⁵ Trans. ID 70076166.

Standing requires that a party has suffered an injury.²⁶ Affholter has not accessed, or demonstrated an intention to access, the discovery record regardless of how much time is available to review it. Accordingly, Affholter seeks a premature recommendation because the concern is hypothetical as to Affholter.²⁷ While Affholter seeks to bring the Motion to Enlarge on behalf of “putative class members,”²⁸ Affholter is not a class representative and cannot obtain relief on behalf of others, especially given the decision not to access the discovery record.²⁹ I, therefore, recommend that the Court deny Affholter’s request to enlarge the time period for the submission of objections to the settlement.

²⁶ *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016); *Dover Hist. Soc’y v. City of Dover Planning Com’n*, 838 A.2d 1103, 1110 (Del. 2003).

²⁷ *Bebchuk v. CA, Inc.*, 902 A.2d 737, 740 (Del. Ch. 2006) (explaining Delaware courts do not decide issues, “unless they are ‘ripe for judicial determination,’ consistent with a well established reluctance to issue advisory or hypothetical opinions”) (citation omitted).

²⁸ Motion to Enlarge at 9.

²⁹ To date, only one objector has sought access to the discovery record. Plaintiffs’ Opposition ¶ 12 n.4. That others may have, or could in the future, assert an argument like Affholter does not confer standing on Affholter to make it now. *See Dover Hist. Soc’y*, 838 A.2d at 1116 (“[I]n order to achieve standing, the plaintiff’s interest in the controversy must be distinguished from the interest shared by other members of a class or the public in general.”) (citation omitted); *Cartanza v. Del. Dept. of Natural Res. and Env’tl. Control*, 2008 WL 4682653, at *4 (Del. Ch. Oct. 10, 2008) (finding that a plaintiff lacked standing where an action did not actually impact the party); *Gittman-Crowther v. Kent Soc’y for the Prevention of Cruelty to Animals*, 2013 WL 3866676, at *4 (Del. Ch. July 25, 2013) (holding “a generalized grievance shared by the population at large” does not confer standing) (citation omitted).

B. Recommendation to Accept In-Person Hearing Forms Postmarked On or Before May 31, 2023

In the Settlement Procedure Letter, the Court instructed that, to orally present an objection at the June 29-30, 2023 settlement hearing, an objector must provide a completed form to the Court by May 31, 2023.³⁰ Affholter seeks to have the date enlarged so that an in-person appearance form could be accepted if postmarked by May 31, 2023, rather than delivered to the Court by May 31, 2023.³¹ That minor amendment to the schedule appears reasonable in light of the May 31, 2023 objection deadline. For example, it is possible that a stockholder may not decide to object until May 31, 2023, thereby precluding the timely submission of an in-person appearance form.

CONCLUSION

I recommend that the Court deny Affholter's request to enlarge the time for the submission of written objections and grant Affholter's request that the Court accept in-person appearance forms postmarked on or before May 31, 2023, even if not received until after May 31, 2023.

³⁰ Settlement Procedure Letter at 4.

³¹ Motion to Enlarge at 4.

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/s/ Corinne Elise Amato

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Special Master

CERTIFICATE OF SERVICE

I, Corinne Elise Amato, certify on this 25th day of May, 2023, that I caused a copy of the foregoing *Report and Recommendation of Special Master Regarding Jordan Affholter's Motion for Enlargement of Time and Objection to the Discovery Process* to be served via File & ServeXpress on the following counsel of record:

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I further certify that, on May 25, 2023, I caused a true and correct copy of the *Report and Recommendation of Special Master Regarding Jordan Affholter's Motion for Enlargement of Time and Objection to the Discovery Process* to be served via email upon the following Pro Se party:

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/s/ Corinne Elise Amato
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