

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFREY M. CAMARDA AND
KIMBERLY K. CAMARDA, individuals,
4371 U.S. Highway 17, Suite 201,
Fleming Island, FL 32003

Plaintiffs,

v.

Civil Case No. 13-00871 (RJL)

CERTIFIED FINANCIAL PLANNER
BOARD OF STANDARDS, INC, a
Corporation organized and existing
under the laws of the State of Colorado,
1425 K Street, NW, Suite 500,
Washington, DC 20005,

Defendant.

**PLAINTIFFS' MOTION AND SPECIFIC POINTS OF LAW AND AUTHORITY
FOR LEAVE TO FILE AN AMENDED COMPLAINT**

Plaintiffs, Jeffrey M. and Kimberly K. Camarda (collectively, "Plaintiffs"), by and through counsel, and pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, hereby move for leave to amend their complaint. In support of this Motion, Plaintiffs state:

1. On June 10, 2013, Plaintiffs filed the Complaint in this case. [Dkt. #1] Plaintiffs' current Complaint seeks declaratory and permanent injunctive relief against Defendant. *Id.*
2. On July 2, 2013, Defendant filed its Answer. [Dkt. #6]
3. Three weeks ago, on September 5, 2013, pursuant to a proposed Scheduling Order filed by the parties with their Joint Meet and Confer Statement on August 29, 2013, the Court entered a Minute Scheduling Order providing, among other deadlines, that September 27, 2013 was the deadline for the parties to submit amendments to pleadings. [Dkt. #9, 10]

4. By this Motion, Plaintiffs seek leave of this Court to file an amended complaint. In addition to the injunctive relief sought in the initial Complaint, Plaintiffs seek to add additional claims for breach of contract, unfair competition, violation of due process, and antitrust violations. Plaintiffs' new claims are supported by the same operative set of facts and circumstances as alleged in the initial Complaint, namely Defendant's proceedings against Plaintiffs for purported violations of Defendant's rules, its flawed, unfair, arbitrary, and capricious rules, procedures, and decisions related to the same, and its threatened disciplinary action against Plaintiffs that is at issue and challenged in this lawsuit. A copy of the Amended Complaint Plaintiffs seek to file is attached hereto as Exhibit A, as provided by Local Civil rules 15.1 and 5.4(i).

ARGUMENT

5. Rule 15(a) provides that leave to amend shall be freely given when justice requires. "Leave to amend a complaint should be freely given in the absence of undue delay, bad faith, undue prejudice to the opposing party, repeated failure to cure deficiencies, or futility." *Richardson v. United States*, 193 F.3d 545, 548-49 (D.C. Cir. 1999); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (declaring that "this mandate is to be heeded."). Moreover, the burden is on the opposing party to show that there is reason to deny leave. *In re Vitamins Antitrust Litigation*, 217 F.R.D. 30, 32 (D.D.C. 2003)

6. In light of this liberal standard favoring amendments, the law is equally well-settled that leave to amend a pleading should be denied only where there is undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice, or futility of amendment. *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir.

1996). The grant or denial or leave to amend is committed to the sound discretion of the district court. *Anderson v. USAA Cas. Ins. Co.*, 218 F.R.D. 307, 310 (D.D.C. 2003).

7. None of the factors referenced above is present here. Plaintiffs have not delayed in bringing this Motion. Indeed, it is brought within the timeframe contemplated by the parties and ordered by the Court pursuant to the current Minute Scheduling Order. [Dkt. #9, 10] For the same reasons, Defendant will not be prejudiced by the requested amendment. This case was only filed June 10, 2013, the Answer has only been on file since July 2, 2013, and the Court's scheduling deadlines were only entered on September 5, 2013. Moreover, Defendant has served no discovery to date and the parties have not yet begun to discuss discovery events, such as depositions, and the like. Finally, there is and can be no showing that Plaintiffs' requested amendments would be "futile." A district court may deny a motion to amend a complaint only under rare circumstances not present here where, notwithstanding all reasonable inferences in favor of the amending plaintiff, a proposed claim facially would not survive a motion to dismiss. *See generally, Hettinga v. United States*, 677 F.3d 471, 480 (D.C. Cir. 2012); *Schuler v. United States*, 617 F.2d 605, 608.

8. Thus, the Court should allow Plaintiffs leave to file their amended complaint because there is and has not been undue delay, defendants would not be prejudiced, and the amendments sought would not be futile.

9. Pursuant to Local Civil Rule 7(m), counsel for Plaintiffs made a good faith effort, by telephone, to resolve this non-dispositive motion with opposing counsel. Defendant opposes this motion.

WHEREFORE, for the foregoing reasons, Plaintiffs Jeffrey M. Camarda and Kimberly K. Camarda respectfully request that this Court grant their Motion for Leave to File the attached Amended Complaint.¹

Dated: September 27, 2013

**JEFFREY M. CAMARDA
AND KIMBERLY K. CAMARDA**

By counsel

/s/ Phillip C. Chang

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¹ Plaintiffs' counsel consulted with Defendant's counsel regarding this motion and Defendant expressed an intention to file an opposition. *See* Loc. Civ. R. 5.4(m).

² Suspended for non-payment of dues. Reinstatement of admission is currently being sought.

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CERTIFICATE OF SERVICE

I certify that on September 27, 2013, a copy of this pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to the following counsel of record by operation of the court's CM/ECF system:

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