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Judge tosses NXIVM hacking lawsuit

Missed filing deadline sinks case against journalists, critics

By Brendan J. Lyons Updated 2:21 pm, Friday, September 18, 2015

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Clare Bronfman

Albany

A federal judge on Thursday threw out a lawsuit filed by the NXIVM corporation that accused five people, including two journalists of hacking into its computers to obtain confidential information, including clients lists and other non-public materials.

U.S. District Senior Judge Lawrence E. Kahn ruled that NXIVM failed to file its federal lawsuit within a two-year statute of limitations that began after the corporation discovered suspected unauthorized intrusions into its computer servers in "late 2011.

The lawsuit was filed in October 2013 against journalists James M. Odat, a former Times Union reporter, and Suzanna Andrews, freelance journalist who wrote about NXIVM for Vanity Fair magazine.

The other defendants were Joseph O'Hara, a former NXIVM legal adviser who became an outspoken critic of NXIVM; John Tighe, an imprisoned blogger from Saratoga County who wrote critically of NXIVM; and Toni Foley, a former NXIVM associate and girlfriend of NXIVM founder Keith Raniere.

Kahn said a NXIVM official, Seagrams heiress Clare W. Bronfman, a member of NXIVM's executive board, acknowledged during

testimony in an unrelated bankruptcy case more than two years before the lawsuit was filed that NXIVM suspected intrusions of its computer servers, including by Tighe.

"Bronfman also testified that she was aware that Tighe had access to information from the password-protected portions of plaintiff's website," Kahn wrote. "Bronfman stated that Tighe obtained the client list from 'somebody who had access' and admitted that the client list he published came from plaintiff's intranet. This testimony establishes that Bronfman, an executive board member, as well as plaintiff's counsel, were aware of unauthorized access to its website by two of the defendants in the present action on September 21, 2011, which is more than two years before the case was commenced on October 23, 2013."

The motions seeking dismissal of the lawsuit based on the statute of limitations were filed by attorneys for Odatto and Andrews, and by O'Hara.

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Still, the judge threw out the lawsuit against all the defendants.

Both Odatto and Andrews wrote extensively about NXIVM, which was described by one expert in a 2012 Times Union article as an "extreme cult."

NXIVM's founder, Keith Raniere, of Clifton Park, has adamantly denied that NXIVM, which says it is an executive training program, is a cult.

NXIVM's lawyer, Stephen R. Coffey of Albany, could not be reached for comment.

The computer trespassing allegations triggered a criminal investigation by the State Police in March 2012 that led to the indictment of four people, including Tighe, O'Hara and Foley, on felony charges.

Barbara Bouchey, a former NXIVM board member who was a financial adviser to sisters Clare and Sara Bronfman, also was indicted.

Earlier this year, Tighe pleaded guilty to a computer trespassing charge, admitting that in November 2010 he intentionally accessed the computer network of NXIVM, which was housed on the seventh floor of 80 State St. in Albany. Tighe said he utilized the user name and password of Mary Jane Pino, a former NXIVM coach, without her permission to access the list of NXIVM participants and clients, including their contact information.

NXIVM's federal lawsuit alleged the unauthorized access took place on hundreds of occasions dating to 2006.

Michael Grygiel, an Albany attorney for Andrews, declined comment on Thursday. He previously said the allegations against his client were baseless and that the claims against Andrews "arise from her protected newsgathering activity and lack any merit whatsoever." Andrews wrote an investigative story on NXIVM's ties to the Seagram heiresses Sara and Clare Bronfman — "The Heiresses and the Cult" — for Vanity Fair in November 2010.

"This lawsuit represents nothing more than an attempt to retaliate against Ms. Andrews for the exercise of her First Amendment rights as an investigative correspondent for Vanity Fair," Grygiel said.

Odatto wrote dozens of stories on NXIVM for the Times Union, including an award-winning 2012 series that examined the corporation's operations and the mysterious habits of Raniere, who is known to NXIVM's adherents as "Vanguard."

The 2012 series, "Secrets of NXIVM," was a more-than-yearlong investigation by Odatto and Times Union writer Jennifer Gish, which won first-place from the New York State Associated Press Association for depth reporting.

David A. Schulz, a Manhattan attorney who represents Odatto in the case, had also argued in his motion to dismiss the case that NXIVM failed to state any claim and listed no damages as a result of any alleged computer trespass.

"NXIVM's complaint seeks to assert a number of claims against a disparate group of defendants who have each exposed its cult-like and legally suspect practices in some way," the motion stated. "Odatto's 2012 series also documents NXIVM's history as a 'litigation machine' that pursues largely meritless lawsuits to punish and silence those who speak ill of the group's leader -- litigating with a level of intensity that judges have described as entirely 'disproportionate' and 'deplorable.'"

In the federal lawsuit, NXIVM's attorneys outlined numerous instances in which they claim they were able to trace the Internet addresses of computers they allege were used by Tighe, O'Hara, Andrews, Foley, Odatto and others to gain access to their private servers. They also matched the dates and times of those alleged computer trespassing incidents to telephone and email records that they said showed that there were related telephone calls and email correspondence around the times the records were being accessed.

The criminal cases remain pending in Albany County Court against O'Hara, Foley and Bouchey.

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