

S.2d at 721, 451 N.E.2d at 468 (citations omitted) (emphasis added).

[10] Stratford has alleged intentional and malicious action by Bam, but it has not alleged facts showing that Bam's sole motivation was "disinterested malevolence." *Id.* Specific facts to support the claim of malice must be asserted. See, e.g., *Reale v. IBM Corp.*, 34 A.D.2d 936, 937, 311 N.Y.S.2d 767, 768-69 (1st Dep't.1970) ("Plaintiff was bound to present proofs tending to exclude any motive other than a desire on the part of defendants to cause harm to plaintiff. The plaintiff's conclusory allegations of malice are not sufficient to establish that he has a case.") See also *Chin v. AT&T*, 96 Misc.2d 1070, 410 N.Y.S.2d 737 (Sup.Ct.N.Y.Co.1978), *aff'd mem.*, 70 A.D.2d 791, 416 N.Y.S.2d 160 (1st Dep't. 1979).

Conclusion

For the foregoing reasons, the motion of defendants Interstate and Bam is granted in part and denied in part. The first cause of action is dismissed insofar as it alleges breach of fiduciary duty. The third and fourth causes of action are dismissed, and the clerk is directed to enter judgment in favor of defendant Bam on those causes of action.

Discovery on the remaining claims of breach of contract and negligent or fraudulent misrepresentation, as well as all discovery in the Interstate action, must be completed by September 10, 1984. The parties are directed to file a proposed joint pretrial order on September 17, 1984 and to attend a final pretrial conference at 4:30 p.m. on that date. The case will be placed on the ready trial calendar at that time.

IT IS SO ORDERED.



UNITED STATES of America, Plaintiff,

v.

TWO HUNDRED THOUSAND DOLLARS (\$200,000) IN UNITED STATES CURRENCY, Defendant.

No. 83-1296-Civ-SMA.

United States District Court,
S. D. Florida,
Miami Division.

July 10, 1984.

Government brought suit seeking forfeiture of \$200,000 that was seized by United States Customs Department from claimant at international airport. On claimant's motion to dismiss, the District Court, Aro-novitz, J., held that Currency Reporting Form, which Government contended that claimant failed to fill out, was void and invalid with respect to claimant.

Motion granted without prejudice.

1. Administrative Law and Procedure ⊕382

"Rule" or "regulation" is product of administrative legislation. 5 U.S.C.A. 551.

See publication Words and Phrases for other judicial constructions and definitions.

2. Administrative Law and Procedure ⊕382

For agency statement or requirement to be considered a valid "rule," three conditions must be satisfied: "rule" must be within agency's granted power, it must be issued pursuant to proper administrative procedures and it must be reasonable as matter of due process. 5 U.S.C.A. 551; U.S.C.A. Const.Amend. 5.

3. United States ⊕34

Currency Reporting Form, as a "rule" under Administrative Procedure Act, should have been published in Federal Register and should have been subject to APA notice and comment procedures, and since Form was not constructively published suf-

ficiently to satisfy APA procedural requirements, Form was a nullity with respect to claimant, from whom United States Customs Department seized \$200,000 at international airport. Currency and Foreign Transactions Reporting Act, §§ 202 et seq., 204, 206, 231(a)(1)(B), 232, as amended, 31 U.S.C.A. §§ 1051 et seq., 1053, 1055, 1101(a)(1)(B), 1102; 31 U.S.C.A. §§ 321(b)(1), 5316(a), 5318; 5 U.S.C.A. §§ 551(4), 552(a)(1)(C), 553(b, d).

4. Administrative Law and Procedure
 ⇨408

"Interpretative rule," within exemption from publication requirements of Administrative Procedure Act, is statement as to what administrative officer thinks statute or regulation means. 5 U.S.C.A. § 553.

See publication Words and Phrases for other judicial constructions and definitions.

5. Administrative Law and Procedure
 ⇨417

Substantive rules are issued by agency pursuant to statutory authority which have force and effect of law.

6. Administrative Law and Procedure
 ⇨394

Generally, when proposed regulation of general applicability has substantial impact on regulated industry, or important class of members or products of that industry, notice and opportunity for comment should first be provided. 5 U.S.C.A. § 553.

7. Administrative Law and Procedure
 ⇨395

Where rule has substantial impact on class of persons to whom it is directed, agency must provide adequate statement of basis and purpose of rule, and must respond in reasoned manner to comments received. 5 U.S.C.A. § 553.

8. Administrative Law and Procedure
 ⇨395

Notice required by Administrative Procedure Act must be sufficient to fairly apprise interested parties of issues involved, and such notice must afford interested par-

ties reasonable opportunity to participate in rule-making process. 5 U.S.C.A. § 553.

9. Administrative Law and Procedure
 ⇨409

Requirement of publication of rule in Federal Register is not satisfied by merely filing rule with Office of Federal Register. 5 U.S.C.A. § 553(d).

10. Administrative Law and Procedure
 ⇨416

Invalid form is not void indefinitely, but may be saved and held valid after publication and passage of 30-day notice. 5 U.S.C.A. § 553(d).

11. United States ⇨34

Customs declaration form asking question whether traveler is carrying more than \$5,000 and advising traveler that, if so, he or she was required to complete Currency Reporting Form, was not a "rule" under Administrative Procedure Act, and even if it was so considered, published regulations and information in Federal Register adequately apprised travelers of their obligation to answer currency-reporting questions, which itself appeared in Federal Register. 5 U.S.C.A. § 552(a)(1)(C).

Richard S. Friedland, Alan I. Mishael, Miami, Fla., for plaintiff.

Joseph Beeler, and Holly Skolnick, Miami, Fla., for defendant.

Robert I. Targ, Miami, Fla., for claimants.

ORDER GRANTING CLAIMANT PALZER'S MOTION TO DISMISS, WITHOUT PREJUDICE

ARONOVITZ, District Judge.

THIS CAUSE came before the Court upon the Motion to Dismiss Amended Complaint filed by Claimant LEWIS PALZER ("PALZER") in the above-styled action. The Court held a hearing on this Motion on Wednesday, March 7, 1984, and requested both parties to submit supplemental memoranda, which have been filed and accepted pursuant to extensions of time granted by the Court.

ADAMGE COUNTE

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ORANGE COUNTY