

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM**

*Justice*

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THE PEOPLE OF THE STATE OF NEW YORK, BY  
LETITIA JAMES, ATTORNEY GENERAL OF THE STATE  
OF NEW YORK,

Petitioner,

**INDEX NO.** 451685/2020

**MOTION DATE** 09/23/2020,  
08/24/2020

**MOTION SEQ. NO.** 001, 002

- v -

THE TRUMP ORGANIZATION, INC., DJT HOLDINGS LLC,  
DJT HOLDINGS MANAGING MEMBER LLC, SEVEN  
SPRINGS LLC, ERIC TRUMP, CHARLES MARTABANO,  
MORGAN, LEWIS & BOCKIUS LLP, SHERI DILLON,

Respondents.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 182, 191, 198, 200, 212, 213, 214, 218, 220, 222, 226, 227, 230, 231, 249, 250, 251, 252

were read on this motion to SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 9, 10, 11, 12, 183, 192, 199, 215, 216, 217, 219, 223, 224, 225, 232, 233, 234, 235, 236, 237, 239, 240, 241, 244, 245, 246, 247, 253

were read on this motion TO COMPEL DISCLOSURE.

Upon the foregoing documents, and following oral argument heard before this Court on September 23, 2020, it is hereby ordered that petitioner’s motion to seal is granted, and petitioner’s motion to compel disclosure is granted in part as set forth herein.

In this special proceeding, petitioner, the People of the State of New York, by Letitia James, Attorney General of the State of New York, seeks to compel the production of documents and testimony allegedly relevant to its ongoing investigation into potential fraud or illegality by respondent the Trump Organization and related entities. Specifically, petitioner is investigating whether the Trump Organization improperly inflated the value of certain of its assets on various financial statements to obtain tax and other financial benefits.

Preliminarily, none of the opposition papers that the multiple respondents filed contains an affidavit from anyone with personal knowledge of the factual matters at issue. Accordingly, the opposition papers that respondents submitted are not in admissible form. Zuckerman v City of New York, 49 NY2d 557, 560 (1980). That fact alone arguably justifies granting the petition in its entirety.

Petitioner has met its burden of demonstrating the need to submit the Second Affirmation of Matthew Colangelo *in camera* so as not to prejudice its ongoing investigation. Moreover, petitioner and respondents have demonstrated good cause for the sealing of these proceedings pursuant to Rule 216.1(a) of the Uniform Rules for New York State Trial Courts. Mosallem v Berenson, 76 AD3d 345, 348 (1st Dep't 2010). Accordingly, the Clerk is hereby directed to seal those documents that the parties have designated for sealing.

Respondent Eric Trump was first served on May 26, 2020 with a subpoena for his testimony. After initially agreeing to be deposed on July 22, 2020, Mr. Trump subsequently withdrew his commitment to appear. Mr. Trump now waives any objection to petitioner's deposing him, but he seeks to delay his deposition until after Election Day, November 3, 2020. This Court finds that application unpersuasive; Mr. Trump cites no authority in support of his request, and, in any event, neither petitioner nor this Court is bound by the timelines of the national election. Accordingly, this Court hereby orders Eric Trump to appear to be deposed no later than October 7, 2020.

As petitioner has properly demonstrated, the Trump Organization, although the privilege holder of any attorney-client privilege at issue here, is not permitted to attend any depositions that petitioner conducts in this matter. Petitioner has already permitted the individual attorney for deponent to be present. However, to the extent that these depositions will require rulings on privilege, this Court will maintain jurisdiction over this special proceeding, and any of the parties may contact the Court in real time to obtain any necessary rulings as the depositions proceed.

Accordingly, the depositions, or continued depositions, of Sheri Dillion, Charles Martabano, and Alan Weisselberg (to the extent that petitioner still seeks them) are ordered to be conducted no later than October 23, 2020.

Finally, with respect to petitioner's motion to compel document production, this Court finds as follows. (1) The Trump Organization has expressly waived privilege as to all documents responsive to subpoenas that Cushman & Wakefield possesses. Accordingly, all such documents that Cushman & Wakefield possesses are to be produced to petitioner by October 2, 2020. (2) Respondent Charles Martabano has waived privilege by failing to produce, despite repeated opportunities and attempts, an adequate privilege log. See Anonymous v High Sch. For Envtl. Studies, 32 AD3d 353, 359 (1st Dep't 2006) (defendants' failure to supply privilege log amounts to waiver of any claim of privilege for documents sought). That Martabano is a solo practitioner is irrelevant to the rule. Accordingly, Charles Martabano is hereby ordered to produce, by October 2, 2020, all documents that he possesses that are responsive to petitioner's subpoena. (3) This Court orders respondent Morgan Lewis & Bockius to turn over, by October 2, 2020, all documents that they have identified as "settlement privileged." This Court rejects the applicability of any "settlement privilege" in this proceeding, but, in any event, petitioner has easily demonstrated that the documents sought are material and necessary to its investigation. (4) This Court orders Morgan Lewis & Bockius to produce to petitioner, by October 2, 2020, all documents related to the "preliminary valuations" of the Seven Springs Easement, as documents relating to a preliminary valuation are of a business, and not legal, nature. (5) This Court orders all respondents to turn over, by October 2, 2020, any emails on which Donald Bender is copied, as disclosure to a third-party waives any privilege. (6) Any documents sought in the subpoenas

not already discussed herein are hereby ordered to be produced to the Court by October 2, 2020 for an *in camera* inspection. All documents submitted to the Court should be bate-stamped with a detailed privilege log that includes a place for the Court to mark its individual rulings.

<u>9/23/2020</u>		<u>ARTHUR F. ENGORON, J.S.C.</u>
<b>DATE</b>		
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE