

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA EARTHQUAKE
AUTHORITY,

Plaintiff,

v.

METROPOLITIAN WEST
SECURITIES, LLC., et al.,

Defendants.

No. 2:10-cv-00291-MCE-GGH

ORDER

Through this action, Plaintiff California Earthquake Authority (“CEA”) seeks recovery of the majority of Defendant Metropolitan West Securities, LLC’s (“MetWest”) investment of approximately \$62 million of CEA funds into Mainsail, a structured investment vehicle holding residential mortgage-backed securities. On September 11, 2012, MetWest served a third-party subpoena on the California State Treasurer’s Office (“STO”) (ECF No. 118 at 3). STO was a member of CEA’s Governing Board, which approved CEA’s investment guidelines and oversaw its investment practices, procedures and financial performance. (Id. at 2.) MetWest requested “all documents and correspondence arising from STO’s role in CEA’s investment activity.” (Id. at 3.) STO claimed it produced all documents in its possession responsive to the subpoena that did not fall under a privilege claim. (Id.)

1 On October 21, 2012, MetWest filed a motion to compel. STO responded that it
2 withheld thirteen documents under the deliberative process privilege. (Id.) The
3 deliberative process privilege protects the materials and mental processes government
4 agencies use in making decisions. Regents of Univ. of Cal. v. Superior Court,
5 20 Cal. 4th 509, 540-41 (1999) (Brown, J., concurring). “The key question in every case
6 is ‘whether the disclosure of materials would expose an agency’s decisionmaking
7 process in such a way as to discourage candid discussion within the agency and thereby
8 undermine the agency’s ability to perform its functions.’” Times Mirror Co. v. Superior
9 Court, 53 Cal. 3d 1325, 1342 (1991) (quoting Dudman Commc’ns v. Dept. of Air Force,
10 815 F.2d 1565, 1568 (D.C. Cir. 1987)).

11 On December 20, 2012, Magistrate Judge Hollows granted MetWest’s motion to
12 compel, finding the deliberative process privilege did not apply to the documents at
13 issue. Judge Hollows concluded that the CEA Board, not the Treasurer himself, was the
14 decision-maker. Since the documents did not implicate STO’s decision-making process,
15 STO could not assert the privilege. Furthermore, Judge Hollows found the decision-
16 maker, the CEA Board, was not a state agency. Since the CEA Board was not a
17 government agency, it could not assert the privilege either, Judge Hollows concluded.
18 (Id. at 6-7.) Judge Hollows ordered STO to produce the documents in question not
19 subject to the attorney-client privilege. (Id. at 8.)

20 In reviewing a Magistrate Judge’s determination, the assigned Judge shall apply
21 the “clearly erroneous or contrary to law” standard of review set forth in Local Rule
22 303(f), as specifically authorized by Federal Rule of Civil Procedure 72(a) and 28 U.S.C.
23 § 636(b)(1)(A). Under this standard, the Court must accept the Magistrate Judge’s
24 decision unless it has a “definite and firm conviction that a mistake has been committed.”
25 Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.,
26 508 U.S. 602, 622 (1993).

27 ///

28 ///

1 If the Court believes the conclusions reached by the Magistrate Judge were at least
2 plausible, after considering the record in its entirety, the Court will not reverse even if
3 convinced that it would have weighed the evidence differently. Phoenix Eng. & Supply
4 Inc. v. Universal Elec. Co., Inc., 104 F.3d 1137, 1141 (9th Cir. 1997).

5 While CEA makes a colorable argument that the deliberative privilege should
6 protect the documents at issue, this Court finds that the Magistrate Judge's ruling was
7 not clearly erroneous or contrary to law. Judge Hollows's December 20, 2012, Order
8 therefore is affirmed.

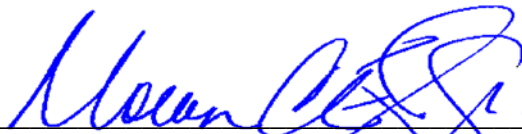
9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The Request for Reconsideration (ECF No. 122) is DENIED; and
- 11 2. The Magistrate Judge's Order (ECF No. 118) is AFFIRMED.

12 IT IS SO ORDERED.

13 Dated: February 8, 2013

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT JUDGE