Warshaw v Steven Mendelow, Konigsberg, Wolf & Co.
2012 NY Slip Op 33759(U)
November 9, 2012
Sup Ct, New York County
Docket Number: 652173/2010
Judge: Barbara Jaffe

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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LARRY WARSHAW AND CAROL WARSHAW AS TRUSTEES FOR CAROL ANN ENTERPRISES, INC. PENSION PLAN, and SAJUST, LLC,

Plaintiffs,

-against-

STEVEN MENDELOW, KONIGSBERG, WOLF & CO. and PAUL KONIGSBERG,

Defendants.

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Index No. 652173/2010

Argued: 6/13/12
Motion Seq. 005

DECISION AND ORDER

BARBARA JAFFE, J.:

For plaintiffs:
Russell L. Bogart, Esq.
Hoffman, Polland, *et al.*
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New York, NY 10017
212-338-0700

For defendant Mendelow:
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New York, NY 10022

For non-party FGLS Equity:
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Stroock & Stroock, *et al.*
180 Maiden Lane
New York, NY 10038

In this securities fraud action, defendant Steven Mendelow and non-party FGLS Equity LLC (FGLS) (collectively, movants), move pursuant to CPLR 2304 for an order quashing plaintiffs' subpoena *duces tecum* served on FGLS on February 3, 2012. Alternatively, movants seek a protective order, pursuant to CPLR 3103, relieving FGLS from responding to the subpoenas *duces tecum*.

For the reasons set forth below, the motion to quash is granted in part, and denied in part.

I. BACKGROUND

Plaintiffs are trustees for Carol Ann Enterprises, Inc. Pension Plan, a pension plan for a business owned by plaintiff Larry Warshaw (Warshaw) and his family, and Sajust, LLC (collectively, plaintiffs). Plaintiffs seek damages for losses incurred as a result of their

investment of approximately $2.7 million in FGLS Equity, LLC (FGLS), a hedge fund offered and managed by Mendelow. The complaint, filed on December 3, 2010, charges defendants with professional malpractice, breach of fiduciary duty, fraud and conspiracy to defraud, negligent misrepresentation, and aiding and abetting fraud. Mendelow and defendant Paul Konigsberg are principals of defendant Konigsberg Wolf & Co (Konigsberg Wolf), an accounting firm, located in New York City.

Defendants allegedly participated in a scheme to defraud investors by soliciting victims to invest in Bernard L. Madoff Securities, LLC (BLMS), with promises of high rates of return and low risk. BLMS was controlled and managed by Bernard Madoff, the subsequently convicted perpetrator of the famous Ponzi scheme. On January 4, 2012, the justice formerly assigned to this case stayed discovery against Mendelow given the pendency of a motion he had filed pursuant to CPLR 3214(b) for an order dismissing the complaint against him.

Mendelow and FGLS are also named as defendants in two parallel lawsuits filed by BLMS trustee Irving Picard, now pending in the United States Bankruptcy Court for the Southern District of New York, to recover fraudulent conveyances and preferences (*see Picard v Mendelow*, Adv. Pro. No. 10-04823 [Bankr SD NY 2010] [Mendelow Proceeding] and *Picard v FGLS Equity LLC*, Adv. Pro. No. 10-05191 [Bankr SD NY 2010] [FGLS Proceeding]). In addition, Mark Weinberg, another member of FGLS, sued the same defendants for fraud in Supreme Court, New York County (*Weinberg v Mendelow*, Index No. 652222/2011 [Weinberg Action]).

On March 13, 2012, Picard and Weinberg entered into a stipulation so-ordered by the Bankruptcy Court for the Southern District of New York and a proposed order (Lifland Order).

Pursuant to that order, the Warshaw plaintiffs "voluntarily agree to stay prosecution of their claims asserted against Mendelow" and

> the Trustee will not object to the Warshaw Plaintiffs and/or Weinberg taking discovery as to Mendelow with respect to the continuing actions against other defendants in the separate Warshaw Action and the Weinberg Action, provided such discovery does not adversely impact the Trustee and/or Mendelow Proceeding, and/or the FGLS Proceeding in the Trustee's reasonable discretion.

(Affidavit of Russell L. Bogart, Exh. C, Lifland Order, at 3, 4). Consequently, on April 19, 2012, the previously assigned justice issued an order which removed from his oral argument calendar Mendelow's motion to dismiss the complaint, and provided instructions on how to restore it to the calendar once the stay imposed by the Bankruptcy Court was lifted.

Meanwhile, on February 3, 2012, plaintiffs served on FGLS a subpoena *duces tecum*, requiring it to produce on March 5, 2012 at the offices of a Manhattan law firm, documents described in an attached 10-page schedule listing 68 separate sets of documents. (Affirmation of Michelle A. Rice,, Esq., Exh. A, Schedule A). Among the documents sought are: (1) FGLS's organizational documents (by-laws, operating agreement, and articles of incorporation); (2) financial documents and documentation related to Madoff and Mendelow; (3) a copy of the engagement letter or retainer agreement between FGLS and Konigsberg Wolf; (4) documents related to any articles or newsletters regarding Madoff; and "all of FGLS' internal and external communications and correspondence concerning Madoff and managing members . . . of FGLS"; (5) documents related to investigations of Madoff by any government agency or official; (6) FGLS's corporate tax returns; and (7) all communications between FGLS and plaintiffs. No time periods are specified.

In their motion to quash, movants assert that: (1) the subpoena is over broad and does not

sufficiently identify the materials sought; (2) the materials sought are privileged; (3) the discovery sought imposes an undue burden on FGLS; and (4) the subpoena attempts to circumvent the Lifland Order and the two orders issued by the previously assigned justice prohibiting plaintiffs from seeking discovery from him. In the alternative, Mendelow requests a protective order pursuant to CPLR 3103, on the ground that compelling production of the documents would violate his fifth amendment right against self-incrimination.

Plaintiffs challenge Mendelow's standing to bring the motion to quash the subpoena served on FGLS, and deny movants' assertions, arguing that FGLS's documents are at the heart of plaintiffs' claims against the Konigsberg defendants.

II. DISCUSSION

A. Standing to move to quash a subpoena served on a non-party

"A motion to quash may be made on behalf of a non-party witness by the witness or the witness' lawyer, or by one of the parties or a party's lawyer." (*McDaid v Semegran, M.D.*, 16 Misc 3d 1102[A], 2007 NY Slip Op 51227[U], *2 [Sup Ct, Nassau County 2007], *quoting Matter of MacLeman*, 9 Misc 3d 1119[A], 2005 NY Slip Op 51675[U], *4 [Sur Ct, Westchester County 2005]). "As to motions for a protective order, CPLR 3103(a) not only permits a non-party witness to seek such an order in his/her own right, but also permits any party opposing the disclosure to make the motion on behalf of the non-party." (*Matter of MacLeman*, 9 Misc 3d at *4, citing Siegel, NY Prac § 353, at 577 [4th ed]; *see also Velez v Hunts Point Multi–Serv. Ctr., Inc.*, 29 AD3d 104, 111 [1st Dept 2006]). Thus, Mendelow, as a party here, has standing to challenge the subpoena.

B. Merits

1. Governing law

The scope of discovery in New York is broad, and discovery from a non-party should be directed when the party seeking discovery demonstrates that the disclosure sought is "material and necessary." (CPLR 3101 [a][4]). The term "material and necessary" permits discovery of information that will "assist preparation for trial by sharpening the issues and reducing delay . . . . The test is one of usefulness and reason." (*Allen v Cromwell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]; *see also Spectrum Sys. Intl. Corp. v Chemical Bank*, 78 NY2d 371, 376 [1991]; *Osowski v AMEC Constr. Mgt., Inc.*, 69 AD3d 99, 106 [1st Dept 2009]). Thus, a motion to quash should be granted only when the documents sought are "utterly irrelevant" to any proper inquiry. (*See Ledonne v Orsid Realty Corp.*, 83 AD3d 598, 599 [1st Dept 2011]; *Velez*, 29 AD3d at 112). In sum, a court must consider "such factors as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed." (*See Concord Boat Corp. v Brunswick Corp.*, 169 FRD 44, 49 [SD NY 1996]; *United States v Intl. Bus. Mach. Corp.*, 83 FRD 97, 104 [SD NY 1979]). Moreover, discovery may also be permitted when it is "reasonably calculated to lead to the discovery of information bearing on the claims. (*Foster v Herbert Slepoy Corp.*, 74 AD3d 1139, 1140 [2d Dept 2010]; *Crazytown Furniture Inc. v Brooklyn Union Gas Co.*, 150 AD2d 420, 421 [2d Dept 1989]).

For disclosure purposes, a party is distinguished from a nonparty and where disclosure is sought against a nonparty more stringent requirements are imposed on the party seeking disclosure" (*Velez*, 29 AD3d at 108), and the requesting party need not demonstrate "special

circumstances." (*BAII Banking Corp. v Northville Industries Corp.*, 204 AD2d 223, 224-225 [1st Dept 1994]). And yet, more recently, the First Department has required a showing of special circumstances or that the information sought is relevant, and cannot be obtained from other sources. (*see Reich v Reich*, 36 AD3d 506, 507 [1st Dept 2007]; *Tannenbaum v City of New York*, 30 AD3d 357, 358-359 [1st Dept 2006]).

In any event, it is well settled that a subpoena *duces tecum* "may not be used for the purpose of discovery, or to ascertain the existence of evidence." (*People v Gissendanner*, 48 NY2d 543, 551 [1979]; *Matter of Murray v Hudson*, 43 AD3d 936, 937 [2d Dept 2007]). Instead, "its purpose is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding." (*See Matter of Terry D.*, 81 NY2d 1042, 1044 [1993]). The burden of showing that disclosure is improper is on the party asserting it. (*Roman Catholic Church of Good Shepherd v Tempco Sys.*, 202 AD2d 257, 258 [1st Dept 1994]). Moreover, a court has broad authority to limit disclosure and issue a protective order "to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts." (CPLR 3103 [a]; *see also Accent Collections, Inc. v Cappelli Enters., Inc.*, 84 AD3d 1283, 1283 [2d Dept 2011]).

2. Contentions

Movants argue that the following 44 requests are neither required nor relevant to the claims and allegations in this litigation: 1-11, 12, 15-20, 23, 24, 27-29, 31, 33, 35, 36, 39-41, 43, 44, 48-51, 57, 62, and 64-68. These requests encompass materials relating to the formation, organization, and structure of FGLS, including the Articles of Incorporation By-Laws, Partnership Agreements and Operating Agreements; any and all documents identifying capital

contributions made by the partners, members, and stockholders of FGLS in any investment held by a third party that invested with Madoff; any and all documents concerning any business relationships, arrangements, understandings, contracts and agreements between FGLS and Konigsberg Wolf; any and all documents concerning scheduled appointments or business meetings between FGLS and Madoff; any and all documents related to any articles or newsletters concerning Madoff; a copy of all communications between FGLS and Konigsberg Wolf; a copy of the engagement letter/retainer agreement between FGLS and Konigsberg Wolf; all documents concerning payments made from FGLS to Mendelow for legal representation; a copy of any subpoena served on FGLS by any governmental entity or other party, as well as a copy of FGLS's response to the subpoena; all documents, transcripts and correspondence related to Mendelow invoking his fifth amendment right against self-incrimination; all documents sufficient to establish the steps taken to preserve electronic data and documents after learning of Madoff's arrest in December 2008; and all documents related to why FGLS has two accounts with BLMS.

Plaintiffs contend that FGLS's Operating Agreement provides them with the right to audit and inspect the records at issue here. Movants claim that several of the requests contain "catchall" provisions that improperly request all documents not previously requested or responsive to another request.

3. Analysis

Whether plaintiffs' discovery requests are relevant turns on whether they are reasonably calculated to lead to the discovery of information bearing on the claims. Here, the basis of the complaint is that the Konigsberg defendants and Mendelow were directly involved in the Madoff scheme to defraud investors, including plaintiffs. Nonetheless, the only remaining defendants are

the Konigsberg defendants. As they are FGLS's accountants, their knowledge of Mendelow and Madoff's activities with FGLS funds is material and necessary to plaintiffs' claims. That they are material and necessary, however, does not mean that they are not overly broad in terms of time and subject matter.

Because it requires the production of virtually every document that happens to mention Madoff, whether relevant or not, these requests are overly broad, especially as not all communications related to Madoff are necessarily relevant. Many may have no relation to the events giving rise to this action. Moreover, the absence of a specific or limited time period reflects the overbreadth of the subpoena. Consequently, it must be limited to the time frame set forth in plaintiffs' complaint.

The subpoena is also overly broad in seeking the private financial records and information of non-parties. For example, it seeks information related to the capital contributions of other FGLS customers/members (Reqs. 5, 11) and all correspondence and communications between any employees or members of C & P Associates in either electronic format or hard copy (Req. 26). Disclosure pursuant to these requests would result in the conveying of personal information concerning other FGLS customers/members not necessary to the case against the Konigsberg defendants. Absent any indicia of fraud related to those accounts, the requested information has not been shown to have the nexus needed to establish some minimal ground for finding them relevant.

The subpoena also seeks information that is not in FGLS's possession or control, such as documents, transcripts and correspondence related to Mendelow invoking his fifth amendment right against self-incrimination, and "any and all documents pertaining to investigations of

Madoff (and Paul Konigsberg, Mendelow and/or Konigsberg Wolf) by any government agency or official, including . . . the Securities Exchange Commission, the Financial Industry Regulation Authority, the National Association of Securities Dealers and the New York State Office of Attorney General." (Doc. Reqs. 40, 41). This kind of information is not kept in the ordinary course of business by FGLS, and plaintiffs have not exhausted all possible alternative means of discovering the information sought.

With few exceptions, plaintiffs' requests do not identify with any particularity the documents that they seek. As such, FGLS, which is currently not operational, will be obliged to undertake significant efforts to both locate requested documents and determine whether they are responsive to the subpoena. And many of the requests appear duplicative.

Accordingly, the document requests are limited as follows: (1) FGLS's corporate organizational documents (Req. 1); (2) a copy of the engagement letter or retainer agreement between FGLS and Konigsberg Wolf (Req. 48); (3) the financial books, audit reports and accounting records of FGLS for the time period found in the complaint; and (4) documents that relate to the business relationship, contracts and agreements between FGLS and Konigsberg Wolf.

The remaining requests for FGLS's financial records, advanced in the hope that they may lead to evidence, are overly broad. (*see White Plains Coat & Apron Co. v Lehmann*, 87 AD2d 629, 630 [2d Dept 1982]).

Requests 13, 21, 30, 32, 42, 45-46, 59 and 63 also are overly broad. Request 13 seeks "[a]ny and all documents concerning the funding or financing of any business transactions (including any lending or indebtedness in connection therewith) entered into by FGLS in which

Madoff holds or held an interest or concerning the accounts identified in paragraph 12 . . . including but not limited to loan documents, term sheets, security agreements, guaranty agreements, collateral account control agreements, and any amendments . . . , and all communications concerning any loan . . . between Madoff and FGLS. . . ." Request 21 seeks "[a]ny and all documents concerning any business relationships, arrangements, understandings, contracts and agreements between FGLS and Madoff, including documents concerning investment accounts identified in paragraph 12. . . ." Request 30 seeks "[a]ny and all documents relating to Madoff prepared by or for the benefit of FGLS." Request 32 seeks "[a]ny and all documents relating to Madoff prepared by any third party, including FGLS' accountants, auditors, accounting firms or auditing firms." Request 45 seeks "[a]ll of FGLS' internal and external communications and correspondence concerning Madoff, including but not limited to communications of any and all managing members, officers, employees and members of FGLS." Request 46 seeks "[a]ll of FGLS' internal and external communications and correspondence concerning any of the accounts identified in paragraph 12 . . . or any of the guarantees of loans or other obligations referred to in paragraph 13 . . . including, but not limited to . . . communications of any and all managing members, officers, employees, and members of FGLS." Request 59 seeks "[a]ll communications between FGLS and any actual, former or prospective Member of FGLS relating to Madoff, FGLS and or investments in Madoff, either directly or indirectly." Request 63 seeks "[t]o the extent not responsive to the above requested items, all documents relating to Madoff."

Initially, plaintiffs have not shown that the accounting documents they seek are unavailable from the Konigsberg defendants, or that they attempted to obtain the documents from

them. (*See Matter of Terry D.*, 81 NY2d at 1044). Although use of a phrase such as "any and all" does not necessarily render a request for documents improper, its use is "some indication of a lack of the requisite specificity . . ." (*Stevens v Metropolitan Suburban Bus Auth.*, 117 AD2d 733, 734 [2d Dept 1986]; *see also Matter of Bird*, 100 AD2d 784, 784 [1st Dept 1984]). And using the phrases "concerning" or "relating to Madoff" does not render a request any more specific. Rather, as CPLR 3120 (2) requires the seeking party to identify the desired items "by individual item or by category" and to "describe each item and category with reasonable particularity," and although exact specificity is not required, the wholesale production of documents that may turn out not to contain material evidence is unjustified.

Next, Requests 34, 37, 38 and 61 are unclear. For example, Request 37 calls for "[a]ny and all documents concerning the legality of Madoff's operation," and Request 38 seeks the production of "[a]ny and all documents concerning the feasibility of Madoff's returns."

Movants also maintain that Requests 47, 53, 55, and 56 seek privileged communications between FGLS's former counsel, Mark Bogatin and FGLS, and that this information is protected by either the attorney-client or attorney work product privilege. Plaintiffs seek all agreements or contracts between Bogatin and FGLS, all communications between Bogatin and FGLS, including those with Mendelow, all documents concerning payments made to Bogatin from FGLS, and tax returns prepared for FGLS. Plaintiffs assert that they are entitled to the allegedly privileged documents under the fiduciary exception to the attorney-client privilege.

The attorney-client privilege applies to any communication (1) between a client and counsel that (2) was intended to be, and was, in fact, kept confidential, and (3) was made for the purpose of facilitating the rendition of legal advice or services, in the course of a professional

relationship. (*Rossi v Blue Cross & Blue Shield of Greater N.Y.*, 73 NY2d 588, 593 [1989]; *see also Spectrum Sys. Intl. Corp.*, 78 NY2d at 377).

Ordinarily, whether an attorney was consulted, attorney fee arrangements, and the identity of the lawyer or client are not considered confidential. (*Matter of Nassau County Grand Jury Subpoena Duces Tecum Dated June 24, 2003,* 4 NY3d 665, 670 [2005] [affirming denial of motion to quash subpoena that sought "documentation of monies paid and received, check registers, check stubs, cancelled checks, and bank statements" from law firm]; *Matter of Priest v Hennessy,* 51 NY2d 62, 69 [1980] ["A communication concerning the fee to be paid ... is a collateral matter . . . which . . . is not privileged"]). Consequently, documents evidencing the payment of legal fees or billing or time records, if devoid of any information regarding legal advice provided by Bogatin, are not protected by the attorney-client privilege.

Additionally, the constitutional privilege against compelled self-incrimination is a personal one and "cannot be utilized by or on behalf of any organization, such as a corporation." (*United States v White*, 322 US 694, 699 [1944]). The privilege "protects the individual from any disclosure, in the form of oral testimony, documents or chattels, sought by legal process against him as a witness." (*Id.*; *see also* US Const Amend V; NY Const, art I, § 6). And, "the papers and effects which the privilege protects must be the private property of the person claiming the privilege, or at least in his possession in a purely personal capacity." (*Bellis v United States*, 417 US 85, 90 [1974], *quoting White*, 322 US at 699).

Based on these principles, Mendelow, as an individual partner of a firm served with a subpoena *duces tecum* seeking the production of firm records, cannot rely on the constitutional privilege against compelled self-incrimination "to avoid producing the records of a collective

entity which are in his possession in a representative capacity, even if these records might incriminate him personally." (*Bellis*, 417 US at 88; *see also Matter of Nassau County Grand Jury Subpoena Duces Tecum,* 4 NY3d at 676-677).

Movants have likewise failed to meet their burden in establishing that the communications between Bogatin and Mendelow are protected by the attorney-client privilege absent submission to the court of a privilege log which would facilitate a determination of the nature and substance of the requested documents, and without which the court must guess at what might turn up, what information might be found, and what disclosure issues might arise. As the present record is insufficiently developed, there is an insufficient basis upon which to hold that the alleged communications are privileged. Upon an *in camera* review and after balancing the needs of the parties, if the information sought is found to be not privileged, the issue of whether the information is relevant will be addressed.

Plaintiffs maintain that they are entitled to disclosure of the corporate tax returns and any underlying accounting records, because allegations of fraud, divided loyalty and self-dealing constitute special circumstances which allow for such discovery. (*See* CPLR 3101 [a]; *see also Dore v Allstate Indem. Co.,* 264 AD2d 804, 804 [2d Dept 1999]; *Statewide Med. Acupuncture Servs., P.C. v Travelers Ins. Co.*, 13 Misc3d 134[A], 2006 NY Slip Op 52013[U] [App Term, 1st Dept 2006], *revg* 9 Misc3d 1124[A], 2005 NY Slip Op 51773[U] [Civ Ct, Bronx County 2005]). In particular, plaintiffs seek to discover any irregularities and "ascertain the details of the particular defendant's assets and liabilities."

Although tax returns are not privileged, courts are reluctant to order their disclosure given their nature as private communications between a taxpayer and the government. (*See United*

States v Bonanno Organized Crime Family of the Cosa Nostra, 119 FRD 625, 627 [ED NY 1988]). To order disclosure, the court must find: (1) that the returns are relevant to the issues in the case, and (2) that the information contained in them is not readily obtainable from other sources. (*See e.g. DG & A Mgmt. Servs., LLC v Sec. Indus. Assn. Compliance and Legal Div.*, 78 AD3d 1316, 1319 [3d Dept 2010]).

Here, as the tax returns would reveal information germane to plaintiffs' fraud claim, there exists a basis for compelling the production of FGLS's corporate tax returns. However, the plaintiffs have failed to even allege that the information sought cannot be obtained through other means, i.e., from the Konigsberg defendants. Alternatively, if the tax records are not in the control or custody of the Konigsberg defendants, then plaintiffs may seek FGLS's corporate tax returns from FGLS, and the request must be narrowly tailored to the specific time period set forth in the complaint to avoid any undue burden on FGLS.

Mendelow also contends that the following requests improperly seek to avoid the stay imposed on January 4, 2012: Requests 22, 25, 26, 52, 54, 58 and 60. Plaintiffs, however, assert that Mendelow's reading of this order is mooted by the Lifland Order and the Supreme Court order dated April 19, 2012. By removing Mendelow's motion from the oral argument calendar, plaintiffs claim that the April 19, 2012 order effectively lifted the discovery stay imposed pursuant to CPLR 3214. In addition, plaintiffs claim that the Lifland Order permits them to seek discovery from Mendelow, and only stays plaintiffs' prosecution of their claim against Mendelow in state court.

CPLR 3214 (b) provides that disclosure is automatically stayed pending the determination of a motion made pursuant to CPLR 3211 unless the court orders otherwise. (*See Battaglia v*

Town of Bethlehem, 21 Misc3d 1117[A], 2006 NY Slip Op 52650[U], *1 [Sup Ct, Albany County 2006), *affd* 46 AD3d 1151 [3d Dept 2007]). Consequently, the court may direct discovery if there is a legitimate need for it. (*See Reilly v Oakwood Heights Community Church*, 269 AD2d 582, 582 [2d Dept 2000] [although stay of disclosure is automatic under CPLR 3212, court can direct otherwise]; *see also John Eric Jacoby, M.D., P.C. v Loper Assocs.*, 249 AD2d 277, 279 [2d Dept 1998]). As the court may order discovery, notwithstanding the automatic stay imposed by CPLR 3214 (b), the court must determine whether there is a legitimate need for these documents. In that respect, Request 54, seeking "[a]ll agreements or contracts between FGLS and Mendelow" is discoverable. The other six requests are either overly broad or readily obtainable from other sources.

III. CONCLUSION

Absent a sufficient basis for discovery demanded in plaintiffs' 68 document requests, movants' motion is granted except to the extent indicated below. And, to the extent responsive documents seek privileged materials, a privilege log is to be submitted to the court within 30 days of the date of this order.

Accordingly, it is hereby

ORDERED, that defendant Steven Mendelow's (Mendelow), and non-party FGLS Equity LLC's (FGLS) (movants) motion, pursuant to CPLR 2304, to quash the subpoena issued by plaintiffs to FGLS is granted in part, and denied in part; it is further

ORDERED, that the motion to quash is denied to the extent that Requests 1, 48 and 54 are granted, it is further

ORDERED, that as to Requests 47, 53, 55 and 56, FGLS must submit a privilege log to the

court within 30 days, and decision on those requested documents will be held in abeyance pending the production and review of the privilege log; it is further

ORDERED, that the remaining document requests, with the exception of those narrowed per this decision, are quashed in their entirety; and it is further

ORDERED, that within 30 days of service of a copy of this order with notice of entry, FGLS shall comply with the subpoena, dated February 3, 2012, by producing all documents responsive to the previously mentioned document requests, and any application for cost-shifting may be submitted after such documents have been provided.

This constitutes the decision and order of the court.

Barbara Jaffe, JSC

BARBARA JAFFE
J.S.C.

DATED: November 9, 2012
New York, New York

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