

Matter of Moroccanoil, Inc. v Cohen
2015 NY Slip Op 32370(U)
December 14, 2015
Supreme Court, New York County
Docket Number: 160836/15
Judge: Kelly A. O'Neill Levy
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 19

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In the Matter of the Application of
MOROCCANOIL, INC., OFER TAL,
CARMEN TAL, and RABBI TAL ABITBOL,

Index No. 160836/15

Motion Seq. # 001 and 002

Petitioners,

To Enforce a Subpoena for the Production of
Documents from and for the Testimony of
YOSI COHEN,

DECISION & ORDER

Respondent.

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HON. KELLY O'NEILL LEVY, J.:

Petitioners move by Order to Show Cause (Mot. Seq. 001) for an order compelling Respondent Yosi Cohen to produce all documents in his possession, custody, or control responsive to the subpoena issued in connection with the action pending in the Superior Court of the State of California, County of Los Angeles, Northwest District, captioned *Moroccanoil, Inc., et al. v. Greenwald, et al.* Case No. LC097953 ("California Action") and compelling Mr. Cohen to appear for deposition and to answer questions propounded to him. No opposition was filed.

Respondent Yosi Cohen, a non-party to the California Action, subsequently moved by Order to Show Cause (Mot. Seq. 002) for an Order disqualifying Conkle, Kremer & Engel, P.L.C. ("the Conkle firm" or "Conkle"), Petitioners' California-based counsel, and any law firm with which it is affiliated in the California Action, or for a protective order; and striking the October 21, 2015 deposition testimony of Mr. Cohen which had been taken by counsel from the Conkle firm.

As the two motions are interrelated, the court consolidates them for disposition.

Petitioners' motion to compel is granted. Yosi Cohen is to produce all documents in his possession, custody, or control responsive to the subpoena issued in connection with the

California Action. Said documents are to be produced to Petitioners' counsel on or before December 21, 2015. Mr. Cohen is to appear for continued deposition, such deposition to be concluded on or before January 12, 2016. All questions shall be answered unless an exception under 22 NYCRR 221.2 applies. *See Yoshida v. Chin*, 111 A.D.3d 704, 706 (2d Dep't 2013).

The court next turns to Respondent's motion. Respondent argues that the Conkle firm should be disqualified because two of its attorneys solicited his business at the Cosmoprof cosmetics trade show in Bologna, Italy in March 2015 knowing that the firm had identified Mr. Cohen as a non-party witness in the California Action nearly a year earlier. Cohen further argues that Conkle breached its ethical obligations by failing to disclose that it served as Plaintiffs' counsel in the California Action. Cohen also seeks an order striking the October 21, 2015 deposition testimony elicited by Conkle attorney, Eric Engel.

The court declines to disqualify the Conkle firm or issue a protective order. Affidavits by Mr. Kremer and Ms. Sim indicate that Conkle sponsored a pavilion at the 2015 Cosmoprof show in Bologna and that firm personnel have attended numerous such shows in different locales. It is undisputed that at the Bologna trade show, two Conkle attorneys, Mr. Kremer and Ms. Sim, visited a number of exhibitor booths in an effort to cultivate business.

Mr. Cohen and the two Conkle attorneys, Mr. Kremer and Ms. Sim, met and spoke about the firm potentially assisting Mr. Cohen with registering products and product names related to Mr. Cohen's business, Natasha Denona Makeup LLC. The attorneys further attest that after they returned to California and ran a conflicts check, they discovered a conflict with Mr. Cohen at which point Mr. Kremer emailed Mr. Cohen to inform him that the firm could not represent him. Beyond a short email communication between Mr. Kremer and Mr. Cohen about the firm's

inability to represent him, there is no indication that the firm received any communication from Mr. Cohen.

When the Conkle attorneys met Mr. Cohen, they disclosed that Morrocanoil was one of their clients and Mr. Cohen was aware at the time that there was a lawsuit pending between Morrocanoil and Moshe Greenwald. There is no evidence here that the conduct of the Conkle attorneys or content of their communication with Mr. Cohen rose to a level warranting disqualification. *See O'Donnell, Fox & Gartner v. R-2000 Corp.*, 198 A.D.2d 154, 154-55 (1st Dep't 1993). Further, beyond speculation, there is nothing before the court showing that the attorneys specifically sought out Mr. Cohen knowing that he knew their client Ofer Tal or Mr. Greenwald, or that Mr. Cohen shared any confidential information with the Conkle firm. *See Mayers v. Stone Castle Partners, LLC*, 126 A.D.3d 1, 6 (1st Dep't 2015)(citing to Rule 1.6 (a) of the Rules of Professional Conduct)¹, *Matter of Nomura Sec. Int'l v. Hu*, 240 A.D.2d 249, 251 (1st Dep't 1997). In fact, when Mr. Cohen was asked during his deposition whether he found it strange that the law firm had approached him when he knew the California Action was pending, Mr. Cohen responded, "Not at all, totally unrelated." (Tr. of deposition of Yosi Cohen at 325).

Accordingly, it is hereby

ORDERED that Petitioners' motion (Mot. Seq. 001) is granted and Yosi Cohen is to produce all documents in his possession, custody, or control responsive to the subpoena issued in connection with the California Action. Said documents are to be produced to Petitioners' counsel so as to be received on or before December 22, 2015; and it is further

¹ Rule 1.6 (22 NYCRR 1200.0) defines "confidential information" as "information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential."

ORDERED that Yosi Cohen is to appear for continued deposition, such deposition to be concluded on or before January 12, 2016; and it is further

ORDERED that Respondent's motion (Mot. Seq. 002) is denied.

This constitutes the decision and order of the court.

ENTER:

Dated: December 14, 2015
New York, New York



Kelly O'Neill Levy, A.J.S.C.

HON. KELLY O'NEILL LEVY