Turin Hous. Dev. Fund Co., Inc. v Suarez
2016 NY Slip Op 30264(U)
February 18, 2016
Civil Court of the City of New York, New York County
Docket Number: 82366/2012
Judge: Jack Stoller
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART C
---------- X
TURIN HOUSING DEVELOPMENT FUND COMPANY, INC.,

Petitioner/Landlord, Index No. 82366/2012

- against -

DECISION/ORDER

ALFREDO SUAREZ, et al.,

Respondents/Tenants.
---------- X
Present: Hon. Jack Stoller
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion.

Papers	**Numbered**
Notice of Motion (Seq. #5) and Supplemental Affidavit and Affirmation Annexed.....	1, 2, 3
Affirmation In Opposition (Seq. #5)	4
Order to Show Cause (Seq. #6) and Supplemental Affirmation Annexed	5, 6
Affirmation In Opposition (Seq. #6) of Petitioner	7
Affirmation In Opposition (Seq. #6) of Petitioner's counsel	8
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Notice of Cross-Motion (Seq. #7) and Supplemental Affirmation Annexed	10, 11
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Affidavit in Opposition (Seq. #8)	15
Order To Show Cause (Seq. #9) and Supplemental Affirmation Annexed	16, 17
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Notice of Motion (Seq. #11) and Supplemental Affirmation Annexed	19, 20
Affirmation In Opposition (Seq. #11) of Petitioner	21
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Notice of Motion (Seq. #12) and Supplemental Affirmation Annexed	23, 24
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Affirmation In Support (Seq. #13) of Petitioner's former agent	28
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Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

Turin Housing Development Fund Company, the petitioner in this proceeding ("Petitioner"), commenced this summary proceeding against Alfred Sanchez ("Respondent's late husband"), seeking a money judgment and possession of 609 Columbus Avenue, Apt. 6L, New York, New York ("the subject premises") on the basis of nonpayment of maintenance. Petitioner obtained a judgment based upon a failure to answer. A warrant of eviction issued and was executed. Cruz Sanchez ("Respondent") moved to be restored to possession. The parties entered into a stipulation dated July 9, 2013 ("the Stipulation") vacating the judgment and warrant and restoring Respondent to possession. The Court then entered into an order dated August 1, 2013 ("the Order") finding that Petitioner's conduct in this proceeding warranted a hearing to determine if sanctions should be imposed and, if so, how much. The proceeding was then marked off calendar. Now various movants move for various kinds of relief. The Court consolidates these motions for resolution herein.[1]

As noted above, the Stipulation vacated the judgment and warrant, restored Respondent

[1] On this motion, the Court determines motion sequence number 5, brought by Petitioner seeking to quash subpoenas that Respondent and Petitioner's former counsel ("Petitioner's counsel") served upon it; motion sequence numbers 6 and 9, brought by Respondent seeking to quash subpoenas served upon her; motion sequence number 7, brought by Respondent seeking sanctions; motion sequence number 8, brought by Respondent seeking contempt; motion sequence number 10, seeking restoration of this matter to the Housing Court calendar; motion sequence number 11, brought by Respondent seeking to quash subpoenas, for sanctions, and for contempt; motion sequence numbers 12 and 13, brought by Petitioner and Petitioner's counsel seeking to vacate the Stipulation and the Order; and motion sequence number 14, brought by Respondent seeking sanctions.

to possession of the subject premises, and adjourned so much of the motion as sought a judgment sounding in attorneys' fees to July 31, 2013. The Court reserved decision that day and entered into the Order on the following day.

The Order found that the subject premises is located in a residential cooperative building subject to a subsidy pursuant to 12 U.S.C. §1715z-1, known colloquially as "Section 236"; that Respondent's late husband was a proprietary lessee of the subject premises; and that Respondent's late husband died in September of 2007. The record shows that the rent demand pursuant to RPAPL §711(2) and the notice of petition and petition, dated more than four years after Respondent's late husband died, only named Respondent's late husband and no other party. The record also shows that Petitioner only purported to serve Respondent's late husband and no other party with the rent demand and the petition, again years after Respondent's late husband died. The Order found that the then-managing agent for Petitioner ("the managing agent") entered into an affidavit pursuant to 50 U.S.C. §3931 swearing that she had spoken with Respondent's late husband to investigate whether he was in the military on a date after he had, in fact, died; that the managing agent admitted that she executed the affidavit without reading it and that that was her standard practice; that the managing agent swore in another affidavit in support of a default judgment that she did not know of any reason why Respondent's late husband would not be able to answer the petition even though Petitioner's records indicated that, had Respondent's late husband been alive at that time, he would have been ninety years old; and that Petitioner had written knowledge of Respondent's tenancy at the subject premises — which extended back to 1979, thirty-three years before the commencement of this proceeding — and

still proceeded to evict her without ever naming or serving her. The Order found that Petitioner's eviction of Respondent "is clearly an action without any merit in law."

The Order further found that Petitioner was made aware of Respondent's unlawful eviction claim in May of 2013, but that Petitioner did not restore Respondent to possession of the subject premises until two months later, after she had retained counsel.

The Court noted that Petitioner's counsel signed the petition pursuant to 22 N.Y.C.R.R. §130-1.1. The Court granted Respondent's motion for sanctions"to the extent of setting the matter down for a hearing to provide Petitioner, its agents and counsel with a reasonable opportunity to be heard prior to a final determination on whether Petitioner and its attorneys engaged in frivolous conduct ..., whether cost and/or sanctions ... should be imposed on Petitioner and/or [Petitioner's] attorney[], and if so the appropriate amount of said costs and/or sanctions." The Court made this determination, it noted, despite Petitioner's assertion in opposition to Respondent's motion that Respondent committed some type of fraud by not living in the subject premises and evading HUD requirements for annual re-certification. The file shows that Respondent served Petitioner with a copy of the order with notice of entry pursuant to CPLR §5513(a) on August 6, 2013.

No party objects to a restoration of this matter to the Court's calendar. Respondent sued Petitioner in a plenary action in Supreme Court, and there had been some question as to removal of this proceeding as such, but the Court resolved this question in the negative. The Court therefore grants Respondent's motion to restore this proceeding to the Court's calendar herein.[2]

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[2] The Court disposes of motion sequences number 10 this way.

The motions of Petitioner and Petitioner's counsel[3] to vacate the Stipulation and the Order raise a threshold issue. Accordingly, the Court addresses the motions to vacate the Stipulation and Order before reaching the other motions.

Petitioner and Petitioner's counsel argue that Respondent has not been residing in the subject premises as her primary residence, thus perpetuating a fraud upon Petitioner and the Court and warranting vacatur of the judgment and warrant. As evidence of Respondent's failure to primarily reside in the subject premises, Petitioner and Petitioner's counsel show unrebutted documentation of another summary proceeding that another owner of subsidized housing ("the other landlord") commenced against Respondent in a different part of the New York County Housing Court. An order of that Court part found that Respondent lives at this other address ("the other apartment"). Petitioner and Petitioner's counsel argue that Respondent's failure to maintain the subject premises as her primary residence renders ineffective her claim that she was harmed by an illegal eviction, and furthermore that Respondent should not have been restored to the subject premises in the first instance. See 24 C.F.R. §236.710(a) (if an occupant of Section 236 housing is a shareholder in a cooperative, the benefits therein are only available to cooperative members who occupy the dwelling units).[4]

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[3] As the Court granted the motion to the extent of a setting the motion down for hearing to determine what, if any, sanctions were appropriate to levy against Petitioner's counsel as well as Petitioner, Petitioner's counsel has since ceased to appear on Petitioner's behalf in this proceeding, Petitioner has retained a new attorney, and Petitioner's counsel appears on its own behalf in defense of the sanctions motion against it.

[4] This section of the Code of Federal Regulations applies to housing subsidized according to 12 U.S.C. §1701 *et seq*. 24 C.F.R. §236.1(a).

Even though the Order was not obtained on default, the Court may consider a motion to vacate a judgment based upon newly-discovered evidence and fraud, both of which Petitioner and Petitioner's counsel allege here. See, e.g., Prote Contr. Co. v. Board of Educ., 230 A.D.3d 32 (1st Dept. 1997). Be that as it may, even assuming *arguendo* that Respondent made a misrepresentation to Petitioner and to the Court, not every misrepresentation or omission rises to the level of fraud. Gaidon v. Guardian Life Ins. Co. of Am., 94 N.Y.2d 330, 350 (1999). Compare Held v. Kaufman, 91 N.Y.2d 425, 431 (1998) (a misrepresentation must be material in order for a party to have a cause of action sounding in fraud), Small v. Lorillard Tobacco Co., 94 N.Y.2d 43, 57 (1999) (an act of deception, entirely independent or separate from any injury, is not sufficient to state a cause of action under a theory of fraudulent concealment). Assuming *arguendo* that Respondent maintains her primary residence somewhere other than the subject premises, and further assuming *arguendo* that Respondent misrepresented her primary residence in the prior motion practice, Petitioner and Petitioner's counsel lose sight of the fact that this is a proceeding sounding in nonpayment of maintenance. Neither Petitioner not Petitioner's counsel allege that Respondent owed arrears in maintenance at the time she was evicted. To the extent that a vacatur of the Order and the Stipulation would reinstate the judgment and warrant against Respondent, it would do so with complete disregard of the merits of this proceeding.

Nor do Petitioner or Petitioner's counsel raise any issue that Respondent's late husband died long before commencement of this proceeding in his name. Even if, assuming *arguendo* that Respondent was not living at the subject premises, and even if, assuming *arguendo* that whomever was responsible for paying maintenance for the subject premises owed arrears,

RPAPL §711(2) contains specific requirements for maintaining a nonpayment summary proceeding against a deceased tenant, which Petitioner did not comply with, notably joinder of a survivor of Respondent's late husband. Again, to the extent that Petitioner and Petitioner's counsel seek to reinstate the judgment and warrant in this nonpayment proceeding via a vacatur of the Order and the Stipulation, they fail to show that any purported misrepresentation or fraud had any bearing on Petitioner's ostensible cause of action against Respondent's late husband for nonpayment of maintenance. Accordingly, assuming *arguendo* that Respondent engaged in fraud or misrepresentation about her primary residence, such misrepresentation was not material to a nonpayment proceeding.

Given that the Order determined that Petitioner and Petitioner's counsel could be subject to sanctions, it seems that the true gravamen of their motions is to vacate that part of the Order exposing them to sanctions. Petitioner and Petitioner's counsel argue that Respondent could not have suffered the damages she alleges if she was not actually rendered homeless by the execution of a warrant of eviction procured, in part, by an undeniably false affidavit of the managing agent. Petitioner's and Petitioner's counsel's argument could theoretically bear some relevance to, say, a cause of action of Respondent sounding in damages pursuant to RPAPL §853. But the Order and the hearing the Order contemplates do not sound in such damages. Rather, the Order finds that a hearing is appropriate to determine sanctions against Petitioner and Petitioner's counsel.

A purpose of sanctions is to advance the public interest, Tag 380, LLC v. Estate of Howard P. Ronson, 69 A.D.3d 471, 475 (1st Dept. 2010), in part to prevent malicious litigation tactics. Levy v. Carol Mgmt. Corp., 260 A.D.2d 27, 34 (1st Dept. 1999), Kernisan v. Taylor, 171

A.D.2d 869, 870 (2nd Dept. 1991). Neither Petitioner nor Petitioner's counsel dispute that the managing agent committed an act of fraud on the Court by executing a false non-military affidavit nor that Petitioner should have commenced a summary eviction proceeding only against a party who had been dead for four years. Even assuming *arguendo* that the person evicted as a result of such actions was a fraudfeasor of the first order, the Court has an independent interest in discouraging such violations of law and Court procedures as Petitioner has engaged in. Petitioner argues that it terminated the employment of the managing agent who executed a false affidavit in support of the warrant of eviction, and that such termination satisfies the Court's policy concerns. However, not only is the point of the hearing the Court has already ordered to determine whether this is the case as a factual matter, but the Court's finding that the managing agent's execution of such affidavits without reading them was a standard procedure raises a question about how isolated her own actions, in fact, were.

Moreover, a failure of a tenant to occupy an apartment as a primary residence is a ground for eviction in many types of regulated housing. Landlords commencing such holdover proceedings predicated upon this ground must often satisfy specific requirements concerning predicate notices and pleading. See, e.g., 9 N.Y.C.R.R. §2524.2(c)(2). If the nonprimary residence of a tenant constituted an excuse to evict him or her without naming or serving him or her in a nonpayment proceeding, which is essentially what Petitioner and Petitioner's counsel argue, landlords would have a ready-made avenue to avoid predicate notice requirements to evict such tenants. No discernible authority supports such a course of action. Accordingly, the Court denies the motions of both Petitioner and Petitioner's counsel's motions to vacate the Stipulation

and the Order, without prejudice to Petitioner's and Petitioner's counsel's positions regarding Respondent's primary residence in the context of other litigation between these parties.[5]

Similar reasoning informs the Court regarding the subpoenas *duces tecum* Respondent seeks to quash, served both on Respondent, the other landlord, and Respondent's nephew, among other people. Petitioner is explicit in the subpoenas it serves that the purpose of the subpoenas is to ascertain Respondent's primary residence. Respondent's residence, primary or not, at the subject premises or not, is emphatically no excuse to commit perjury in a non-military affidavit, and is similarly no excuse for the commencement of a summary proceeding without naming or serving a party known to a petitioner as a proprietary lessee and a member of the household.

An application to quash a subpoena *duces tecum* should be granted where the futility of the process to uncover anything legitimate is inevitable or obvious or where the information sought is utterly irrelevant to any proper inquiry. Anheuser-Busch, Inc. v. Abrams, 71 N.Y.2d 327, 331-332 (1988), People v. Marcus Garvey Nursing Home, Inc., 57 A.D.3d 201, 202 (1st Dept. 2008), Ayubo v. Eastman Kodak Co., 158 A.D.2d 641, 642 (2nd Dept. 1990). While this is a high hurdle to clear, Respondent clears it in this case. Respondent's residency at the subject premises has no tendency — utterly no tendency — to make it more or less likely that Petitioner should countenance the execution of false non-military affidavits. Nor does the primary residence of Respondent have any tendency to make it more or less likely that Petitioner should have commenced an eviction proceeding against her without naming or serving her. Damages that Respondent may or may not have suffered are not the issue. The Court has a separate

[5] The Court disposes of motion sequence numbers 12 and 13 this way.

interest in penalizing the conduct Petitioner engaged in independent of the conduct of Respondent.

Be that as it may, Petitioner's entire motion to vacate the judgment pursuant to CPLR §5015 is predicated upon the proposition that Petitioner did not know the extent of Respondent's nonprimary residence at the subject premises until after the Order. The Order otherwise held, and so it is law of the case, that Petitioner knew of Respondent's proprietary tenancy at the subject premises and her presence on the household composition of the subject premises. Assuming *arguendo* that Petitioner turned out to have been mistaken about Respondent's primary residency, Petitioner cannot travel back in time and retroactively justify a failure to name and serve her. Accordingly, as the subpoenas *duces tecum* Petitioner served on Respondent, the other landlord, and other parties seek production at the hearing of documentation of Respondent's primary residence, the Court grants Respondent's motion to quash all of the subpoenas *duces tecum*.

Petitioner also subpoenaed Respondent's counsel, seeking documentation that Respondent's counsel actually represents Respondent. In general, an attorney is presumed to have authority to represent his or her client. Carpenter v. New York Trust Co., 174 A.D. 378, 383 (1st Dept. 1916), *aff'd sub nom.*, Rock Island Butter Co. v. Rowland, 221 N.Y. 720 (1917), In re Estate of Bogom, 181 A.D.2d 989 (4th Dept. 1992), Will of Locke, 21 A.D.2d 248, 252 (3rd Dept.), *leave to appeal denied sub nom.* In re Locke, 15 N.Y.2d 482 (1964), Silvaria v. Intrepid Museum Found., 2003 N.Y. Misc. LEXIS 2031 (S. Ct. N.Y. Co. 2003). Accordingly, as loath as the Court is to encourage yet more motion practice on this matter, the proper means by which to

challenge the authority of a party's attorney is by motion practice prior to the trial (or hearing), Weinstock v. Long, 29 Misc.2d 795 (S. Ct. Westchester Co. 1961), *citing* O.G. Orr. & Co. v. Fireman's Fund Ins. Co., 141 Misc. 330, 333 (S. Ct. Greene Co. 1931), *rev'd on other grounds*, 235 A.D. 1 (3rd Dept. 1932), not to spring it on a party at a hearing itself. Accordingly, the Court grants Respondent's motion to quash the subpoena *duces tecum* on Respondent's counsel.

However, the right to issue a subpoena *ad testificandum* is absolute. Evercore Partners Inc. v. Lazard Freres & Co., LLC, 2011 N.Y. Misc. LEXIS 5243, 3-4 (S. Ct. N.Y. Co. 2011), *citing* Hirshfield v. Craig, 239 N.Y. 98, 117 (1924). See Also Beach v. Shanley, 62 N.Y.2d 241, 248 (1984), New York State Com. on Government Integrity v. Congel, 156 A.D.2d 274, 280 (1st Dept. 1989) (even an assertion of a privilege is not sufficient to quash a subpoena in advance of the witness' testimony). Accordingly, the Court denies so much of Respondent's motion as seeks to quash all of the subpoenas *ad testificandum* that Petitioner served, without prejudice to any evidentiary objections Respondent may have to any testimony any party adverse to Respondent seeks from any subpoenaed witness, and without prejudice to any offers of proof Respondent may request of the Court and other evidentiary rulings the hearing Court may render in its sound discretion.[6]

Respondent moves for sanctions against Petitioner and Petitioner's counsel for service of the subpoenas *duces tecum* and for their CPLR §5015 motion to vacate the judgment. Respondent does not dispute that she has been essentially harboring tenancies in two federally-subsidized apartments at the same time. Even though Respondent's conduct as such is not before

[6] The Court disposes of motion sequence numbers 6 and part of 11 of the matter this way.

the Court, and the Court does not now make any findings preclusive on the rights of any parties in future litigation, for the limited purposes of Respondent's instant sanctions motion, Respondent's occupancy of two federally-subsidized apartments deprives subsidized housing to people who need it and who may be waiting for it and exacerbates the very shortage of affordable housing that subsidized housing was designed to ameliorate in the first place. In light of such inequitable conduct by Respondent, the Court does not find that Petitioner's and Petitioner's counsel's motion to vacate the Stipulation and the Order, nor their service of the subpoenas the Court has quashed, were so out of line as to warrant a finding of frivolity sufficient to justify sanctions. Compare Pawar v. The Stumble Inn, 2012 N.Y. Misc. LEXIS 5056 (S. Ct. N.Y. Co. 2012). Accordingly, the Court denies Respondent's motion for sanctions (aside from the sanctions already the subject of a hearing to be held pursuant to the Order).[7]

Respondent also moves to hold Petitioner in contempt for service of a subpoena during the pendency of a stay against the subpoena. The order that Respondent accuses Petitioner of disobeying, in effect during the pendency of a prior motion to quash, stated, "let the subpoena be stayed pending the hearing and determination of the motion." After that, the motion was not determined, as the parties engaged in motion practice before Supreme Court over the issue of whether this proceeding would be removed and joined with that action.

Given the history of the motion practice, the Court finds that a reasonable interpretation of the injunction "let the subpoena be stayed pending the hearing …" operates to relieve the party

[7] The Court disposes of motion sequence numbers 7, part of 11, and 14 of the this matter this way.

subpoenaed from an obligation to comply with the subpoena. This interpretation would not render contemptuous service of another subpoena as Petitioner has done herein. As contempt is a drastic remedy which the Court shall not grant without a clear right to the relief, Benson Park Assoc. LLC v. Herman, 93 A.D.3d 609 (1st Dept. 2012), Respondent must prove that Petitioner disobeyed an unequivocal mandate of the Court in order to prove contemptuous conduct. McCain v. Dinkins, 84 N.Y.2d 216, 226 (1994). Pursuant to this law, Petitioner's subpoenas would only be contemptuous if they violated an unequivocal mandate of the Court prohibiting Petitioner from issuing additional subpoenas. As the extant order of the Court is not so "unequivocal," the Court denies Respondent's motion to hold Petitioner in contempt.[8]

Prior to this matter being stayed for the parties to litigate the issue of whether Supreme Court should remove this proceeding, Petitioner moved to quash subpoenas served by Petitioner's counsel and Respondent. Now that the proceeding is being restored to this Court for a hearing, the Court addresses this motion.

Petitioner's counsel subpoenaed board members of Petitioner[9] seeking production at trial of "[a]ny and all correspondence" mentioning "in any way" Respondent, Respondent's late husband, or a number of other individuals connected with the subject premises and "[a]ny and all correspondence" concerning litigation relating to the subject premises.

The purpose of a subpoena *duces tecum* is to compel the production of specific documents at a hearing. Matter of Terry D., 81 N.Y.2d 1042, 1044 (1993). Accordingly,

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[8] The Court disposes of part of motion sequence number 11 this way.

[9] Petitioner is a residential cooperative corporation.

overbreadth is a ground upon which to quash a subpoena. Bour v. 259 Bleecker LLC, 104 A.D.3d 454, 455 (1st Dept. 2013). A subpoena that seeks "any and all" communications about the subject premises is only of use at a hearing if Petitioner produces such documents and then Petitioner's counsel pages through them, looking for something useful, the very picture of a fishing expedition, a ground upon which a subpoena *duces tecum* is subject to quashing. Mestel & Co. v. Smythe Masterson & Judd, 215 A.D.2d 329, 329-330 (1st Dept. 1995). The Court therefore grants Petitioner's motion to quash all of the subpoenas *duces tecum* that Petitioner's counsel served on every member of Petitioner's board, except for the subpoena served on Luis Rosario, an employee of Petitioner. As noted above, as the right to issue a subpoena *ad testificandum* is absolute, Beach, supra, 62 N.Y.2d at 248, the Court denies so much of Petitioner's motion as seeks to quash all of the subpoenas *ad testificandum* that Petitioner served, without prejudice to any evidentiary objections Petitioner may have to any testimony any party adverse to Petitioner seeks from any subpoenaed witness.

The subpoena that Petitioner served on Luis Rosario, while also impermissibly seeking "any and all" communications, is specific about seeking records of repair requests and maintenance records for the subject premises from January 1, 2000 to the present. A subpoena that seeks "all" records, but qualifies that request with specifics is permissible. In re Nassau County Grand Jury (Doe Law Firm), 4 N.Y.3d 665, 670 (2005), Soho Generation v. Tri-City Ins. Brokers, 236 A.D.2d 276, 277 (1st Dept. 1997). The Court does not find Petitioner's argument that Petitioner's counsel may not serve a subpoena in its own right to be unpersuasive and difficult to reconcile with basic notions of due process. The Court directed a hearing for

sanctions against Petitioner's counsel in addition to and as distinct from Petitioner, so Petitioner's counsel has a direct interest in the outcome of the hearing in its own right, distinct from that of Petitioner. Accordingly, the Court denies Petitioner's motion to quash the subpoena *duces tecum* on Luis Rosario.

Respondent subpoenaed Petitioner's former counsel seeking essentially confirmation of communications between Respondent and Petitioner's former counsel. As the subpoena specifically disavowed an interest in privileged communications, and as the communications bear potential relevance to a sanctions hearing — i.e., the notice that Petitioner and/or Petitioner's counsel may have had during the course of engaging in conduct that the Court found to be without merit — Petitioner does not state grounds upon which to quash a subpoena. Moreover, while Respondent's subpoena does include one paragraph seeking "any and all" records, Respondent's subpoena seeks highly specific production of item like stock ownership, maintenance billing, checks or money orders received, correspondence from Respondent or Respondent's nephew, certifications, and minutes of the board of Petitioner authorizing a summary proceeding. The inclusion of such specifics warrants denial of the motion to quash, even for a subpoena that otherwise seeks production of "all" documents. In re Nassau County Grand Jury (Doe Law Firm), supra, 4 N.Y.3d at 670, Soho Generation, supra, 236 A.D.2d at 277.[10]

Respondent also moved to hold Petitioner in contempt of Court for failure to comply with a subpoena *duces tecum*. Respondent bases its motion on an observation of a person affiliated

[10] The Court disposes of motion sequence number 5 of this matter this way.

with Petitioner riding an elevator with a bag full of shredded paper. Respondent's motion is predicated on sheer speculation. Moreover, as Respondent's subpoena *duces tecum* is returnable at a hearing, and as the hearing has not yet taken place, Respondent's motion is not ripe. Accordingly, the Court denies Respondent's motion to hold Petitioner in contempt as such, without prejudice to renewal if Petitioner's contemptuously fails to comply with the subpoena.[11]

This case is now is a hearing-ready posture. The Court restores this matter for a hearing on April 15, 2016 at 9:30 a.m. in part C, Room 844 of the Courthouse located at 111 Centre Street, New York, New York.

This constitutes the decision and order of this Court.

Dated: New York, New York
February 18, 2016

_____
HON. JACK STOLLER
J.H.C.

[11] The Court disposes of motion sequences number 9 this way.