

<b>Hobish v AXA Equit. Life Ins. Co.</b>
2020 NY Slip Op 34378(U)
December 31, 2020
Supreme Court, New York County
Docket Number: 650315/2017
Judge: Andrea Masley
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ANDREA MASLEY

PART

IAS MOTION 48EFM

*Justice*

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INDEX NO.

650315/2017

RICHARD HOBISH AS TRUSTEE OF THE HOBISH  
IRREVOCABLE TRUST, DATED 1/22/96, and AS  
EXECUTOR OF THE ESTATE OF TOBY HOBISH

MOTION DATE

MOTION SEQ. NO.

005

Plaintiffs,

- v -

**DECISION + ORDER ON  
MOTION**

AXA EQUITABLE LIFE INSURANCE COMPANY,

Defendant.

**MASLEY, J.:**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 219 were read on this motion to/for

SEAL

Plaintiffs Richard Hobish as Trustee of The Hobish Irrevocable Trust and as Executor of the Estate of Toby Hobish allege that defendant AXA Equitable Life Insurance Company (AXA) engaged in predatory practices by selling life insurance policies and then increasing premiums to "drive aging individuals out of their policies." (NYSCEF 115, Amended Complaint ¶ 20.) The plaintiffs allege claims for breach of contract and violations of General Business Law § 349.

In motion sequence number 005, AXA moves to seal and redact NYSCEF Doc. Nos. 121, 122, 129, 142, 143, 144, and 146. (NYSCEF 190, Krantz Affirmation ¶¶ 6-9.) AXA seeks to seal and redact information it categorizes into four groups: (1) sensitive personal information about non-parties (Personal Information), (2) proprietary information gathered and analyzed by AXA concerning its mortality, surrender, lapse, and experience (Proprietary Information - Experience Data), (3) proprietary information regarding assumptions concerning AXA's (i) mortality, surrender, lapse, premium funding, and investment income rates and (ii) reinsurance contracts (Proprietary Information - Assumption Data), and (4) confidential negotiated rates with AXA's service providers (Confidential Negotiated Rates). (NYSCEF 190, Krantz Affirmation ¶¶ 6-9.)

In support, AXA submits an affirmation of its counsel but no affidavits from persons with knowledge who are employed with AXA.

With respect to the first category of information, AXA seeks redaction of personal information concerning individuals who are not parties to this action. (NYSCEF 190, Krantz Affirmation ¶¶ 19.) AXA argues that the addresses and dates of birth concerning these non-parties impinges on their privacy and the public has no compelling interest in them. (NYSCEF 190, Krantz Affirmation ¶¶ 19.)

With respect to the second category of information, AXA seeks redaction of commercially sensitive information related to its products such as lapse rates and mortality rates. (NYSCEF 190, Krantz Affirmation ¶¶ 20.) AXA argues that the experience data has been gathered, analyzed, and maintained at great expense to AXA. (*Id.*) Additionally, AXA argues that “[r]elease of this information would allow competitors to analyze [AXA’s] mortality experience and policyholder behavior in a manner that is likely to damage [AXA’s] competitiveness in the marketplace.” (*Id.*)

With respect to the third category of information, AXA seeks redaction of information used to create insurance models and financial models that help to develop insurance products. (*Id.* ¶ 21.) AXA argues that “[i]f revealed, this information would permit competitors to analyze this proprietary information in a manner likely to damage [AXA’s] competitiveness in the marketplace.” (*Id.*)

With respect to the fourth category of information, AXA seeks redaction of expert fee information. (*Id.* ¶ 23.) It maintains that “[p]ublic disclosure of this information would cause competitive harm to [AXA] in negotiating fee arrangements with other consultants, experts, and other third-party service providers that could cause competitive harm to [AXA].” (*Id.*)

In opposition, plaintiffs argue that “AXA’s documents are stale [because] they concern analysis and decisions that occurred at least five years ago.” (NYSCEF 219, Memorandum in Opposition p. 4.) Plaintiffs contend therefore that “AXA cannot show that documents this old could cause harm to AXA’s ‘present day business.’” (*Id.*) Plaintiffs further argue that the “Confidential Negotiated Rates” are just the rates AXA paid its experts in the course of this litigation and AXA cannot explain how disclosure of this information is competitively sensitive to AXA’s present-day business. (*Id.* p. 1.) Plaintiffs also argue that sealing should be denied because the public interest is particularly important on matters of public concern such as here where a transnational insurance company marketed its policies as minimal-risk investments to the elders while planning to “jack up premiums designed to force those elderly insureds to give up their policies.” (*Id.* pp. 2, 3.) Plaintiffs do not oppose the sealing of the first category of information - Personal Information. (NYSCEF 219, Memorandum In Opposition p. 4.)

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

“(a) [e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether

good cause has been shown, the court shall consider the interests of the public as well as the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard.

(b) For purposes of this rule, 'court records' shall include all documents and records of any nature filed with the clerk in connection with the action. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders as set forth in CPLR 3103 (a)."

Judiciary Law § 4 provides that judicial proceedings shall be public. "The public needs to know that all who seek the court's protection will be treated evenhandedly," and "[t]here is an important societal interest in conducting any court proceeding in an open forum." (*Baidzar Arkun v Farman-Farma*, 2006 NY Slip Op 30724[U],\*2 [Sup Ct, NY County 2006] [citation omitted].) The public right of access, however, is not absolute. (*See Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000].)

The "party seeking to seal court records bears the burden of demonstrating compelling circumstances to justify restricting public access" to the documents. (*Mosallem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted].) Good cause must "rest on a sound basis or legitimate need to take judicial action." (*Danco Labs.*, 274 AD2d at 9.)

In the business context, courts have sealed records where trade secrets are involved or where the disclosure of documents "could threaten a business's competitive advantage." (*Mosallem*, 76 AD3d at 350-351 [citations omitted].) Additionally, the First Department has affirmed the sealing of records concerning financial information where there has not been a showing of relevant public interest in disclosure of the financing. (*see Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) For instance, in *Dawson v White & Case*, the First Department stated that the plaintiff-appellant failed to show "any legitimate public concern, as opposed to mere curiosity, to counter-balance the interest of defendant's partners and clients in keeping their financial arrangement private." (*Id.* [internal quotation marks and citation omitted].)

Preliminarily, good cause exists to seal and redact the Personal Information only to the extent it refers to the home address of a third-party. (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 WL 7145814 [Sup Ct, NY County 2012].) Although AXA indicates that it seeks to seal third party dates of births, it is unclear where in these submissions these dates of births appear. Accordingly, good cause does not exist to seal them at this time. AXA also fails to meet its burden of establishing good cause to seal the Proprietary Information - Experience Data and Proprietary Information - Assumption Data. Failure to show how years old information will cause harm to the present-day business of a party is fatal on a motion to seal. (*Mosallem*, 76 AD3d at 350 ["Nor have defendants shown that the documents, most of which are more than 10 years old, would cause harm to Grey's present-day business"].) Here, AXA does not even address plaintiff's argument that this information is at least 5 years old. Without an affidavit by an individual with personal knowledge fleshing out how this 5-

year old information still affects the present day business, the court cannot make an informed decision. (*Id.* at 350 [“Nor was an affidavit submitted from anyone with knowledge about Grey’s employment policies and procedures”].) Although AXA submitted the affirmation of its counsel, the affirmation is deficient. It merely provides in conclusory fashion that “[r]elease of this information would allow competitors to analyze [AXA’s] mortality experience and policyholder behavior in a manner that is likely to damage [AXA’s] competitiveness in the marketplace” or “[i]f revealed, this information would permit competitors to analyze this proprietary information in a manner likely to damage [AXA’s] competitiveness in the marketplace.” (*Id.*) The affirmation is also conclusory in its suggestion that this information is proprietary and akin to a trade secret because it does not actually provide specifics. It simply states, without more, that “the experience data has been gathered, analyzed, and maintained at great expense to AXA.” (NYSCEF 190, Krantz Affirmation ¶¶ 20.) Because the allegations here require the court to balance the public interest in the practices of a transnational insurance company with the need to protect the company’s data, this affirmation is insufficient and rejected. (*Applehead Pictures LLC v Perelman*, 80 AD3d 181, 191-192 [1st Dept. in 2010][“The presumption of the benefit of public access to court proceedings takes precedence, and sealing of court papers is permitted only to serve compelling objectives, such as when the need for secrecy outweighs the public’s right to access”].)

Because the affirmation of counsel is deficient, conclusory, and rejected, AXA has similarly failed to establish good cause to seal the Confidential Negotiated Rates. More information, at the very least, is required especially because plaintiffs assert that these fees concern AXA’s expert in connection with this litigation.<sup>1</sup> “[C]onfidentiality is clearly the exception, not the rule.” (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006].)

Accordingly, it is

ORDERED that the motion is granted to the extent that AXA shall only redact home addresses of third parties; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF Doc. No. 142 and its unredacted duplicates on the docket; and it is further

ORDERED that until further order of the court, the County Clerk shall deny access to the unredacted documents to anyone (other than the staff of the County Clerk or the court) except for counsel of record for any party to this case, a party, and any representative of counsel of record for a party upon presentation to the County Clerk of written authorization from the counsel; and it is further

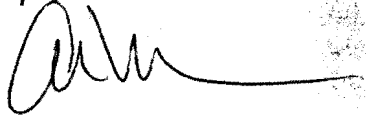
ORDERED that the parties may redact this home address from future court records; and it is further

AXA’s letter filed on NYSCEF Doc. No. 220 does not warrant an alternative result on this motion.

ORDERED that this order does not authorize sealing or redacting for purposes of trial; and it is further

ORDERED that the balance of the motion is denied with leave to renew by January 8, 2021 otherwise AXA waives its right to request this relief.

12/30/2020  
DATE

*Eden*  


CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	OTHER
		<input type="checkbox"/>	REFERENCE

APPLICATION:  
CHECK IF APPROPRIATE: