

**Matter of Landberg v National Enters., Inc.**

2007 NY Slip Op 32057(U)

July 6, 2007

Supreme Court, New York County

Docket Number: 0103104/2006

Judge: Paul G. Feinman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. PAUL G. FEINMAN

Index Number : 103104/2006

PART 52

LANDBERG, WILLIAM

vs

NATIONAL ENTERPRISES

Sequence Number : 002

SEAL ORDER

INDEX NO. 103104/2006

FILED DATE 4/17/07

FILED SEQ. NO. 002

FILED CAL. NO. 58

The following papers, numbered 1 to 2 were read on this motion to/for Seal File

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

12

Answering Affidavits -- Exhibits

Replying Affidavits

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DENIED BY THE COURT  
WITH ACCOMPANYING MEMORANDUM DECISION.

FILED

APR 13 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 7/6/07

*[Signature]*

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

*Case previously disposed of in SC,*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 52

-----X  
MATTER OF WILLIAM LANDBERG and  
LOUISE CRANDALL,

Petitioners,  
  
-against-

**PROCEEDING ONE**

Index Number 103104/2006  
Submission Date 4/17/07  
Mot. Seq. No. 002  
Cal. No. 58

NATIONAL ENTERPRISES, INC., MERCURY  
CREDIT CORP., and SUFFOLK COUNTY  
NATIONAL BANK,

Respondents.

-----X  
NATIONAL ENTERPRISES INC.,

Pctitioner,  
  
-against-

**PROCEEDING TWO**

Index Number 104710/2006  
Submission Date 4/17/07  
Mot. Seq. No. 002  
Cal. No. 71

MERCURY CREDIT CORP. and SUFFOLK  
COUNTY NATIONAL BANK, WEST END  
FINANCIAL ADVISORS LLC, and DR. LOUISE  
CRANDEL,

Respondents.

**DECISION & ORDER**

**FILED**  
JUL 13 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Papers considered in review of this motion to seal:

	Papers	Numbered
Proceeding One	Notice of Motion, Affidavit and Memo of Law in Support	1,2
Proceeding Two	Notice of Motion, Affidavit and Memo of Law in Support	1,2

**PAUL GEORGE FEINMAN, J.:**

These are two related special proceedings. In Proceeding One, petitioners, William Landberg and Louise Crandall, move to seal the record in the underlying special proceeding pursuant to 22 NYCRR 216.1. In Proceeding Two, respondents, West End Financial Advisors

LLC and Dr. Louise Crandall similarly move to seal the court record in the underlying special proceeding. Both motions are unopposed. Nevertheless, for the reasons stated below, the motions are denied.

These special proceedings were instigated by a Petition to Compel (Proceeding One) and a Petition to Quash (Proceeding Two) and involve a dispute over the enforcement of a judgment issued in 1991 against Landberg. During the dispute, National Enterprises, Inc., attempted to “involve third parties” with whom Landberg does business. Some of these parties included an investment firm with which Landberg is associated, bankers for that firm and the firm’s clients (Affidavit of Stephen P. Younger in Support of Motion to Seal [hereinafter Younger Affidavit] ¶ 2). According to the affidavit of the attorney for petitioners in Proceeding One, the papers in the court file of these special proceedings contain banking and transactional records as well as records of private business dealings between Landberg and various third parties and that both proceedings have been “settled” and “resolved in full” and the parties have “agreed” that the record should be sealed (Younger Affidavit ¶ 3, 4).

Petitioners and respondents argue that good cause exists for sealing the record in this case because the private interests in support of protecting the confidentiality of the papers on file outweighs the interest of the public. In support of this proposition, the movants claim that the papers at issue contain confidential records of private business dealings, financings, and transactions between Landberg and various third parties. Movants refer to *Dawson v White & Case*, 184 AD2d 246, 247 (1st Dept. 1992), where the motion to seal the court record was granted because the disclosure of the record of accounting against the defendant law firm was not necessary “to facilitate public discussion of policy issues . . . such as the financing and

management of law firms.”

Second, the movants contend that the “airing of accusations that are anonymous, unverified, and to a degree of doubtful veracity” is a legitimate ground for sealing court records (*United States v Amodeo*, 71 F3d 1044, 1048 [2d Cir. 1995]). They allege that groundless, unproven accusations of fraud have been made against petitioners and that since these matters go to the core of Landberg’s profession, public access to these records would tarnish his credibility and business standing and be detrimental to his clients (Petitioners’ Memorandum of Law in Support of Motion to Seal [hereinafter Memorandum] p3, ¶ 2). Movants rely on *Anonymous v Commissioner of Health*, which held that there was good cause to seal the file of a physician’s Article 78 proceeding where charges had not yet gone to hearing and had not yet been substantiated (7 Misc 3d 627, 634 [2005] *revd on other grounds* 21 AD3d 841 [1st Dept. 2005]). Movants also note that *Matter of Crain Communications v Hughes* has held that “[t]he common-law right to inspect and copy judicial records is not absolute, particularly where such records are a source of business information which might harm a litigant’s competitive standing . . .” (135 AD2d 351 [1st Dept. 1987]).

Third, movants claim that sealing is warranted because parties not involved in the underlying judgment or its enforcement such as Dr. Crandall, West End and its clients have no stake in the settled dispute and so their privacy interests should be protected from these papers that seek to drag them into the matter. Movants cite *Weinstein v Barnett*, (NYLJ, Mar. 24, 1995, at 29, col 2 [Sup Ct, 1st Dept., Friedman, J.]) and *Griffin v Scudder, Stevens & Clark, Inc.*, (NYLJ, June 28, 1991, at 22, col 3 [Sup Ct, 1st Dept., Bacr, J.]) in support of this proposition. In *Weinstein*, the Court noted in passing, that sealing court records may be appropriate in

matrimonial actions involving intimate affairs of a third party to the proceeding; and the Court in *Griffin*, ordered the court files sealed where the complaint contained information concerning the finances of non-parties.

Finally, the moving parties argue that there is no countervailing public interest in the matter strong enough to outweigh the privacy of the parties involved because there is no public interest in having false, baseless allegations in the public record since the matter is purely private and has been fully settled and resolved. According to the movants, any public interest in the matter is only minimal and does not outweigh the petitioners' interest in maintaining an unblemished reputation.

There exists a broad Constitutional presumption arising from the First and Sixth Amendments, as applied to the States by the Fourteenth Amendment, that the public is entitled to access to court proceedings and judicial records (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1 [1st Dept. 2000]). This presumption of openness regarding court records is also a firmly grounded common law principle (*Matter of Brownstone*, 191 AD2d 167 [1st Dept. 1993]). “Generally, this Court has been reluctant to allow the sealing of court records even where both sides to the litigation have asked for such sealing . . . . Consequently, a court is always required to make an independent determination of good cause before it may request a grant for sealing” (*Gryphon Domestic VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept. 2006]).

The Uniform Rules for the New York State Trial Courts provide that “[e]xcept where otherwise provided by statute or rule,” court records shall not be sealed “except upon a written finding of good cause, which shall specify the grounds thereof” (22 NYCRR 216.1[a]). The rule

further provides that “[i]n determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties.” In order to demonstrate that good cause exists to seal court records, as required to overcome this presumption of openness, the moving party must establish that compelling circumstances exist to justify secrecy (*Doe v New York Univ.*, 6 Misc 3d 866, 874-75 [Sup Ct, NY County 2004]). Although the following list is not exhaustive, “good cause” has been found to render sealing appropriate in cases involving trade secrets, closely held business secrets, confidences that if disclosed, will give a competitor an unearned advantage, scandalous libels or slanders, and matrimonial litigation where one side threatens to reveal humiliating details of marital intimacies (*Griffin v Scudder, Stevens & Clark, Inc.*, NYLJ, June 28, 1991, at 22, col 3 [Sup Ct, 1st Dept., Baer, J.]).

In *Dawson*, the court ordered sealing due to the private nature of the financial records involved. The Court found that the interest in keeping confidential the record of accounting against the defendant law firm was significant enough to outweigh the public interest in such information (*Dawson*, 184 AD2d at 246). In the case at bar, however, movants do not specify the reason that makes it vital that these records remain confidential. For example, the movants make no indication that there are trade secrets, business secrets, financial information that would unfairly benefit their business competitors, or any other reasons supporting confidentiality of the record. The moving parties refer only to papers relating to “matters such as financings and transactions” (Memorandum p1 ¶ 3). This Court is unable to determine the nature of the information involved from such vague terminology and therefore may not seal the record on this basis. The public has a right to access corporate financial information unless the movant can provide a legitimate basis for nondisclosure. Here, where Landberg is the manager of an

investment management company, the information involved may be relevant “to facilitate public discussion of policy issues” (*id.* at 247) regarding investment and therefore should be accessible to the public. Movants have not presented any evidence that justify the private need for secrecy of the record and thus have not overcome the presumption of openness.

The parties’ argument that unverified and false allegations in the papers warrant sealing is also unavailing. They rely on *Anonymous v Commissioner of Health*, which held that there was good cause to seal the file of a physician’s Article 78 proceeding where charges had not yet gone to hearing and had not yet been substantiated (7 Misc 3d at 627). However, applicable in that case was Public Health Law § 230 (9), which provided that pending disciplinary proceedings against a licensed physician not be open to the public and that terminated proceedings resolved in favor of the physician remain confidential. If the charges were substantiated the statute required the matter be made public. Sealing in that case protected the interests of the licensed physician while at the same time there was no violation of the presumption of openness because once the proceeding was complete, the record would remain sealed only if the physician triumphed. The Court noted that in enacting this statute, the legislature saw a need to protect licensed medical professionals from unproven allegations of misconduct, though it did not do so at the expense of the public, but rather established a balance between public and private interests. In the case before this Court however, movants have not pointed to any statutes mandating that the court record in cases such as this one be sealed nor have they shown that their private interests are so compelling that the interests of the public should be ignored.

Courts are sensitive to the fact that false or embarrassing claims “may have been inserted into court documents for the sole purpose of extracting a settlement of the action” (*Feffer v*

*Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc 2d 812, 815 [Sup Ct, NY County 1991]).

Even in the absence of a statute expressly providing, it may be appropriate to seal court records when the airing of unverified accusations are involved (*United States v Amodeo*, 71 F3d at 1044). However, movants have not shown that the allegations against them in this case are in fact groundless. Attorneys have an obligation to be truthful and as accurate as possible and must verify their statements. Frivolous claims are subject to sanctions. Moreover, though a client may lie to an attorney, all parties also have an obligation to tell the truth to the best of their knowledge and set it forth in a sworn affidavit. Unless proven otherwise, the Court must presume that any written claims made by an attorney as an officer of the court are made in good faith and are not baseless. Here, movants have submitted no such proof and so the record may not be sealed on this basis.

The movants also argue that there are business secrets that must be removed from public access. In *Crain*, the Court found it proper to seal the record in light of the trade secrets that were involved in the litigation holding that court records may be sealed where they are a “source of business information that might hurt a litigant’s competitive standing” (*Crain*, 135 AD2d at 351). The Court further held that “the determination of whether access to such records is appropriate is best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case” (*id.*). Movants have presented no evidence that the records at issue are a source of information that would harm Landberg’s business. The insistence that the parties have settled and resolved the dispute is not evidence that the allegations were unsubstantiated. Nor does the speculation that Landberg’s business interests will be harmed warrant sealing. “Conclusory assertions of harm do not suffice . . . . Such a

generalized preference for confidentiality is not enough. Nor is the desire of a corporation to protect its reputation, stature or image” (*Griffin v Scudder, Stevens & Clark, Inc.*, NYLJ, June 28, 1991, at 22, col 3 [Sup Ct, 1st Dept., Baer, J.]).

The fact that movants may experience prejudice as a result of this matter is insufficient to outweigh the public interest in the matter. Thus, in *Liapakis v Sullivan*, it was held that prejudice to the remaining law firm partners’ reputations caused by a resigning partner’s allegations of unethical and criminal conduct did not outweigh the clear public interest in such allegations, so as to warrant sealing the record (290 AD2d 393 [1st Dept 2002]). Indeed, most litigants, especially businesses, would prefer that their legal affairs be kept private. However, in order to protect investors from fraud and unethical business practices, they must be informed. The investing public has a right to know of any alleged wrongdoing by investment firms, even if that wrongdoing is unfounded, given that investing money requires as much information as possible. Private access to court records in such cases is one way to protect this interest.

Courts may be willing to seal records when allegations of wrongdoing are made against non-parties to the action. Movants rely on *Weinstein v Barnett*, which involved a matrimonial action where the sealing request was denied and the court only noted in dicta that sealing was more likely if information impinging on the privacy of the plaintiff’s former husband was involved (NYLJ, Mar. 24, 1995, at 29, col 2 [Sup Ct, 1st Dept., Friedman, J.]). Movants also cite *Griffin*, in which the court files were sealed where the complaint contained information concerning the finances of non-parties (*Griffin v Scudder, Stevens & Clark, Inc.*, NYLJ, June 28, 1991, at 22, col 3 [Sup Ct, 1st Dept., Baer, J.]). However, in that case, the files contained private information about the finances and wealth of shareholders and their privately held corporation,

and the company had a tradition of keeping confidential the number of shares held by partners and their compensation. Here, movants have merely made conclusory statements that allege the violation of privacy of non-parties to this action yet have submitted no evidence suggesting any compelling justification for restricting the public's access to court documents. Once again, the failure to specify the importance of the confidentiality of the transactions involved and any harm that would result to any party from the public knowledge of such transactions is the deficiency in this motion.

Finally, although it is true that "only legitimate public concern, as opposed to mere curiosity" (*Crain*, 135 AD2d at 352) will counterbalance strong private interests in favor of sealing, this Court does not find any private interests in this case strong enough to outweigh the public interest. "The mere fact that there may be little legitimate public interest in the particular litigation does not constitute good cause, for otherwise the presumption of openness would be promptly converted into its opposite" (*Griffin v Scudder, Stevens & Clark, Inc.*, NYLJ, June 28, 1991, at 22, col 3 [Sup Ct, 1st Dept., Baer, J.]). *Confidentiality is the exception* and the movants have not shown that "public access to the documents will likely result in harm to a compelling interest of the movant and that no alternative to sealing can adequately protect the threatened interest" (*Mancheski v Gabelli Group Capital Partners*, \_ NYS2d \_, 2007 NY Slip Op 02904 [2d Dept, April 3, 2007]). The public has an interest in investment fraud and the right to know if allegations of this sort are being made against the manager of an investment management company, whether they are true or false. Movants state that the dispute has been quietly and privately settled and resolved and that the parties have agreed to seal the record, but have not submitted a stipulation of settlement as part of these papers. In any event, sealing is a decision

for the Court, regardless of the wishes of the party. Parties agreeing to seal the record presumably only take their own interests into consideration and do not consider the interests of the public. The Court, therefore, must decide this issue with the interests of the public in mind. The movants have not demonstrated that any private interests in sealing the court record in this case outweigh the interests of the public right to access court documents.

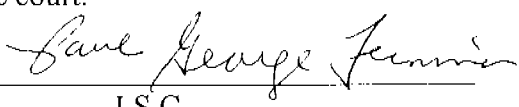
Finally, the Court observes that if a less drastic remedy than wholesale sealing of the record can achieve the purported goals of a party seeking sealing, i.e., the sealing of only certain exhibits or affidavits, then the Court should only grant such a partial sealing. If the parties seek renewal of this application in order to satisfy the criteria identified by the Court, they should also explain why partial sealing is inadequate. Accordingly, it is

ORDERED that the motion by William Landberg and Dr. Louise Crandall to seal the record in Proceeding One is denied on default; and it is further

ORDERED that the motion by West End Financial Advisors LLC and Dr. Louise Crandall to seal the record in Proceeding Two is denied on default.

This constitutes the decision and order of the court.

Dated: July 6, 2007  
New York, New York

  
\_\_\_\_\_  
J.S.C.

(2007 Pt 52 D&O\_103104\_2006\_002)

**FILED**  
JUL 13 2007  
NEW YORK  
COUNTY CLERK'S OFFICE