

**Matter of West Harlem Business Group v Empire
State Development Corporation**

2007 NY Slip Op 34369(U)

June 27, 2007

Supreme Court, New York County

Docket Number: 0116839/2006

Judge: Shirley Werner Kornreich

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

PRESENT: **SHIRLEY WERNER KORNREICH** J.S.C.

PART **54**

Justice

West Harlem Business Group

INDEX NO. 116839/06

MOTION DATE 3/1/07

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

Empire State Development Corp.

The following papers, ^{document submitted in camera} ~~numbered 1 to~~ were read on this motion ~~to~~ ^{for} Article 78 petition

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

RECEIVED
JUN 29 2007
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SUPPORT OFFICE

Petition
MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION AND ORDER. *Judgment*

FILED
JUL - 3 2007

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 3/1/07

HON. SHIRLEY WERNER KORNREICH

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

THIS CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S)

SUPREME COURT OF THE STATE OF YORK
COUNTY OF NEW YORK

-----X

In the Matter of the Application of

WEST HARLEM BUSINESS GROUP,

Petitioner,

For a Judgment Pursuant to Article 78
of the CPLR

-against-

EMPIRE STATE DEVELOPMENT
CORPORATION,

Respondent.

-----X

KORNREICH, SHIRLEY WERNER, J.

**DECISION, ORDER
& JUDGMENT**

Index No.: 116839/06

In this Article 78 proceeding, petitioner, West Harlem Business Group, challenge respondent Empire State Development Corporation 's determination after an administrative appeal, dated August 31, 2006 ("Final Determination") of a Freedom of Information Law ("FOIL")¹ request, dated June 16, 2006. The court directed an *in camera* review of documents by interim decision and order, dated May 4, 2007. Familiarity with the court's interim decision is assumed. After *in camera* review, the court directs that the documents, or parts thereof, listed on the attached log (pages i to x) must be disclosed for the reasons that follow.

Petitioner did not put all of the documents submitted to the court for *in camera* review on a privilege log and they were submitted without bate stamps to identify them. Some of the documents submitted were found during additional searches conducted while this proceeding was

¹New York State Public Officers Law, §84 et seq. ("POL").

pending. Accordingly, on the attached log, the court describes the documents by date and other identifying characteristics.

Respondent asserted that the inter or intra-agency exemption, or the attorney-client privilege, applied to all of the documents submitted. POL §87(2)(g) exempts “inter-agency or intra-agency materials” (“agency exemption”). POL §87(2)(a) exempts documents “specifically exempted from disclosure by state or federal statute,” which includes documents protected by the attorney-client privilege (“privilege”) codified in C.P.L.R. §4503.

The agency exemption does not include the following:

- I. statistical or factual tabulations or data;
- ii. instructions to staff that affect the public;
- iii. final agency policy or determinations;
- iv. external audits, including but not limited to audits performed by the comptroller and the federal government.

POL §87(2)(g).

Further, there is a presumption in favor of disclosure under FOIL, and the burden of proof is on the agency to demonstrate that the material falls squarely within an exemption. *M. Farbman & Sons, Inc. v. New York City Health & Hospitals Corp.*, 62 N.Y.2d 75 (1984); *Spencer v. Lombardi*, 267 A.D.2d 13 (1st Dept. 1999). Bearing these principles in mind, the attached log divides the documents to be disclosed into five sections, which will be explained below.

Section I, redact and release, includes documents that are not covered by the agency or privilege exemptions, with redactions to protect portions that fall within those exemptions.

Section I include documents for which respondent incorrectly asserted privilege with respect to legal bills from its attorneys and related payment vouchers. Legal bills are not privileged if they are devoid of a description of the services rendered. *Eisic Trading Corp. v. Somerset Marine*, 212 A.D.2d 451 (1st Dept. 1995)(fcc statements not privileged if do not contain detailed accounts of services rendered). Accordingly, respondent must disclose the bills with descriptions of the services redacted.

Section II involves documents that are not intra or inter-agency and/or were disclosed to unidentified persons or non-agency individuals. A document that has been disclosed to a third party, outside of the agency or agencies, generally is not covered by the agency exemption. In this case, petitioner contends that respondent did not properly invoke the agency exemption for written communications between respondent and a consultant, Allee King Rosen & Fleming, Inc. ("AKRF"), prior to its retention by respondent on November 11, 2006.

Petitioner and respondent agree that AKRF was also a consultant for Columbia University ("Columbia") on the Manhattanville redevelopment, the project which is the target of this FOIL request. Respondent asserts, however, that it hired AKRF with the understanding that there would be a "Chinese wall" separating the consultant's work for Columbia and respondent. Respondent also alleges that the date on which AKRF began working as its consultant was in March 2006, before it was formally retained. In response, petitioner claims that there is no "Chinese wall" exemption under FOIL, and, therefore, the agency exemption should not be applied to documents that reflect communications with AKRF.

During *in camera* review, the court found only one document, dated 4/3/06, that constituted a communication with AKRF. Thus, the court had to decide whether the document

that AKRF sent to respondent falls within the agency exemption. The court finds that the document should be disclosed and it is listed in Section II of the attached log.

The exemption for consultants hired by an agency to assist it in its deliberative governmental functions is a judge-made extension of the text of the agency exemption.

Department of the Interior & Bureau of Indian Affairs v. Klamath, 532 U.S. 1, 9-11 (2001).²

The agency exemption protects the deliberative process and rests upon:

the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance “the quality of agency decision,” by protecting open and frank discussion among those who make them within the Government. *Id.* (citations omitted)

The consultant exception recognizes that where a government agency hires a consultant to seek an objective opinion from an outside expert, the consultant’s report plays “essentially the same part in an agency’s process of deliberation” as “documents prepared by agency personnel might have done.” *Id.* at 10. However, in order for a consultant to fall under the agency exemption, the consultant must “not represent an interest of its own, or the interest of any other client, when it advises the agency...” *Id.* at 11. For the consultant’s documents to fall under the agency exemption, its only obligations must be “to truth and its sense of what good judgment calls for, and in those respects the consultant functions just as an employee would be expected to do.” *Id.* The rationale for the consultant exception falls apart where the consultant acts “in their own interest or on behalf of any person or group whose interest might be affected by the Government action addressed by the consultant.” *Id.* at 12.

²Case law interpreting the federal Freedom of Information Act is instructive in interpreting FOIL. *Matter of Fink v. Lefkowitz*, 47 N.Y.2d 567 (1979).

In this case, as AKRF is a consultant for Columbia and is acting in the interest of an entity whose action might be affected by respondent. Moreover, while acting for Columbia, AKRF has an interest of its own in the outcome of respondent's action, as AKRF, presumably, seeks to succeed in securing an outcome that its client, Columbia, would favor. The position of AKRF, thus, lacks sufficient neutrality for the court to find that AKRF does not represent "an interest of its own, or the interest of any other client, when it advises" respondent. The letter agreement, dated as of July 30, 2004, between Columbia and respondent, relating to the development of Manhattanville, provides that Columbia will pay respondent for certain costs associated with Columbia's proposal to rezone and develop properties, involving, among other things, the condemnation of certain properties by respondent under the power of eminent domain – properties owned by members of the public, including petitioner's members. Moreover, the single document that constitutes a communication between respondent and AKRF predates AKRF's formal retention by respondent in November 2006.

The "Chinese wall" exception that respondent would like the court to recognize is not sanctioned by any judicial precedent, and it does not eliminate AKRF's representation of potentially rival interests. Respondent's reliance upon AKRF may influence a decision that affects members of the public, such as petitioner, whose interest in respondent's action are adverse to those of Columbia. As there is a presumption in favor of disclosure under FOIL, and the burden is on the agency to demonstrate that the material falls squarely within the exemption, any doubts about the neutrality of AKRF must be resolved in favor of disclosure. *M. Farbman & Sons, Inc. v. New York City Health & Hospitals Corp.*, 62 N.Y.2d 75 (1984); *Spencer v. Lombardi*, 267 A.D.2d 13 (1st Dept. 1999). Accordingly, the AKRF communication listed in

Section II must be disclosed to petitioner.

Section III of the log lists documents that constitute “instructions to staff that affect the public, which is an exception to the agency exemption, pursuant to POL §87(2)(g)(ii); *Buffalo Broadcasting Co., Inc. v. City of Buffalo*, 126 AD2d 983 (3rd Dept. 1987)(instructions to police officers about media access to crime scene). Thus, the documents in Section III must be disclosed.

Section IV refers to an attachment that has not been provided to the court. As respondent has not met its burden of demonstrating that the attachment is subject to an exemption, it must be disclosed.

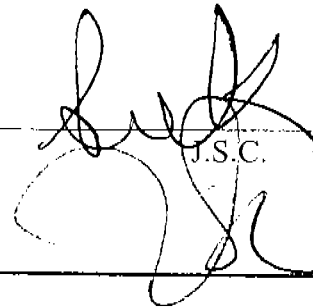
Section V is a list of documents that are intra or inter-agency, but not deliberative. Not every document that travels within or between agencies is exempt from disclosure under FOIL. In order to qualify for the exemption, the document must be “predecisional,” which means it must be prepared to assist the policy maker in making a decision and it must be “deliberative,” which means actually related to the process by which policy is formulated. *Hopkins v. United States Dep't of Housing & Urban Dev.*, 929 F.2d 81, 84-85 (2d Cir. 1991); *E.B. v. N.Y. City Bd. of Educ.*, 233 F.R.D. 289, 292 (E.D.N.Y. 2005). The documents in Section V, do not contain deliberations about policy and, therefore, they are outside the agency exemption. Most of them are emails discussing the availability of staff for the purpose of scheduling meetings.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the petition is granted to the extent that

the documents listed on the attached log, must be disclosed by respondent within seven days.

Dated: June 27, 2007



J.S.C.

Clerk

FILED
JUL - 3 2007
COUNTY CLERK'S OFFICE
NEW YORK

Log of Documents to be Disclosed

I. Redact & Release:

12/12/05 Scope of work (already released) with T. Lunke on bottom left corner - redact handwritten notes

2/1/06 e-mail chain Hulka to Cassidy & Chan with cc to Shatz - redact all but memo to "Dan," who is not identified, beginning with "Update"

ESDC Payment Authorization Form - Voucher 23864, with attached bills from respondent's attorneys (16 pages) - Redact description of services and release remainder

Task Sheet distributed by Columbia University at 4/5/06 meeting. Redact email from Chan to Hulk, Cassidy, Larcmont, Shatz with name Pidedjian, Antovk on top, subject: FW: task sheet C/U. Redact identical email with name Cassidy, Maria on top.

ESDC Payment Authorization Form - Voucher 27210, with attached bills from respondent's attorneys (14 pages) - Redact description of services and release the rest.

Responsive email 4/3/06 from Shatz to Cassidy, subject: FW: blight study outline. Disclosed to AKRF. This document is attached to Email 4/3/06 (original message) (two pages) from Britt_Page@akrf.com to Shatz with copy to Linh_Do@akrf.com, Dennis_Minceli@akrf.com with name Cassidy, Maria on top, subject: blight study outline, listed in Section II below.

II. Release as not intra or inter-agency and/or disclosed to unidentified non-agency individual:

Undated two page handwritten document with first page bearing letterhead of Karen Backus Real Estate, Inc.

Undated notes with author not apparent, 3 handwritten pages, attached to 1 page e-mail from Hulka to Corbett with copy to Stephen Hochschild (unidentified person)

Undated notes with no apparent author two pages handwritten stating at the top "Why can't city do this" and containing a list numbered 1 to 18

Email chain originating from Michael-Freedman Schnapp of New York Industrial Retention Network dated 11/28/ 2005 with attachment, plus responsive e-mail of same date from Lunke and e-mails (2) re: same dated 1/17/06 between Glasser and Lunke (3 pages)

Email 4/3/06 (original message) (two pages) from Britt_Page@akrf.com to Shatz with copy to Linh_Do@akrf.com, Dennis_Minceli@akrf.com with name Cassidy, Maria on top, subject: blight study outline. Redact responsive email 4/3/06 from Shatz to Cassidy, subject: FW: blight

study outline. Disclosed to AKRF.

Email chain (2 pages) originating from Roger Fortune dated 5/2/06 to Yanira Cantres (Office Manager at EVP Government & Community Affairs at Columbia University) with name Pidedjian, Antovk on top, subject: Proposed Manhattanville Meeting. Responsive email dated 5/3/06 from Cantres to Fortune with copy to Victoria Mason-Ailey. Responsive email dated 5/4/06 from Fortune to Chan w/ cc to Cobb Konon and Wambua. Responsive email dated 5/4/06 from Chan to Hulka, Laremont, Cassidy, and Shatz.

News article from New York weekend 5/5-7/06, "Morningside Fights" attached to fax cover sheet with letterhead Cater Ledyard & Milburn LLP *Counselors at Law* dated 5/5/06 from Ryan to Chan, Cassidy

Email 5/18/06 (two pages) from Richard G. Leland (attorney at Kramer Levin) to Cassidy w/ name Pidedjian, Antovk on top, subject: FW: Manhattanville - GPP. Redact responsive email 5/19/06 from Cassidy to Laremont, Hulka, Chan, Shatz, subject: FW: Manhattanville - GPP

News article (3 pages) from The New York Times. "With \$4 Billion, Columbia Raised Fund-Drive Ante," 5/21/06

News article (6 pages) from The New York Times attached to email 5/22/06 (one page) from Ryan to Chan, Cassidy, Shatz, Hulka w/ name Pidedjian, Antovk on top, subject: General article on Columbia from NY times. "The Manhattanville Project," 5/21/06

Email chain (2 pages) originating from Kate Bicknell (Project Manager, Commercial Development at Forest City Ratner Companies) dated 5/24/06 to Hulka, Steven Matlin w/ name Pidedjian, Antovk on top, subject: GPP Meeting 5/30. Responsive email dated 5/24/06 from Hulka to Bicknell with copy to Matlin, Chan, subject: RE: GPP meeting 5/30. Responsive email dated 5/24/06 from Chan to Hulka (see VI below for description of responsive mail).

Two-page handwritten notes dated 6/1/06, author not apparent.

Three-page handwritten notes dated 6/1/06 and labeled "Prentiss Hall MTG," author not apparent.

III. Instructions to Staff that Affect the Public

Email 3/1/06 from Cassidy to Chan w/ cc to Hulka, Laremont, Shatz, Subject: Inquiry from Alexis Ginsberg on Columbia University Expansion with name Pidedjian, Antovk on top - Redact original message from Chan to Hulka & Cassidy

Same as immediately preceding w/o name Pidedjian, Antovk on top and with handwritten notes, Redact original message from Chan to Hulka & handwritten notes

Email 3/1/06 from Hulka to Chan with copy to Cassidy, Subject: Inquiry from Alexis Ginsberg on Columbia University Expansion with name Pidedjian, Antovk on top - Redact original message from Chan to Hulka & Cassidy

IV. Attachment not provided to court

Email 5/12/06 (in response to original message) (two pages) from Joseph Petillo to Rachel Shatz with name Pidedjian, Antovk on top, subject: RE: Columbia University - proposed campus expansion: blight study solicitation. Redact original message 5/12/06 from Shatz to Cassidy, Laremont, Hulka, Chan, Ryan with copy to Petillo. Redact original message 5/12/06 from Cassidy to Laremont, Shatz, Hulka, Chan, Ryan with copy to Petillo, Nasroodin, Poole.

V. Not deliberative

11/16/05 e-mail chain from Cassidy to Laremont, Hulka, Chan with copy to Sullivan with name Chan, Joseph on top, subject: Columbia University - FOIL request. Attachment: Norman Siegel request Nov. 1, 2005

Email dated 2/8/07 from Yee to Hulka, Chan & Cassidy - release last page attached to other emails totaling 6 pages dated 2/7/06

Emails 2/8/06 from Cassidy to Yee, Hulka & Chan and reply from Cassidy

Emails 2/8/06 from Cassidy to Yee, Hulka & Chan and replies from Cassidy and Chan

Emails 2/15/06 from Yee to Hulka & Chan w/ cc to mmooney@sbs.nyc.gov, reply from Chan to Yee & Hulka, re-reply from Yee to Chan, non-deliberative emails are middle 4 pages out of 6 attached to email of 2/7/06 & 2/15/06 between Legall to Hulka with name Blaskovic, Suzanna on top

Emails 2/21/06 (one page) from Higgins to Hulka and reply from Hulka to Chan, Cassidy, Shatz, Laremont with name Pidedjian, Antovk on top

Emails 2/21/06 (two pages, one with just a phone number), from Higgins to Hulka, reply from Hulka to Chan, Cassidy, Shatz, Laremont, and reply from Chan to Hulka, with name Pidedjian, Antovk on top

Emails 2/24/06 (one page) from Mooney to Hulka, Chan, Laremont, Cassidy w/ cc to Brana, Blaskovic and reply from Cassidy to Mooney, Hulka, Chan, Laremont, Shatz w/ cc to Brana, Blaskovic with name Pidedjian, Antovk on top

Email 2/24/06 (one page) from Mooney to Hulka, Chan, Laremont, Cassidy w/ cc to Brana, Blaskovic with name Pidedjian, Antovk on top

Email 2/24/06 (one page) from Mooney to Hulka, Chan, Laremont, Cassidy w/ cc to Brana, Blaskovic and reply from Brana to Mooney, Hulka, Chan, Laremont, Cassidy, Shatz w/ cc to Blaskovic with name Pidedjian, Antovk on top

Email 2/24/06 (one page) from Mooney to Hulka, Chan, Laremont, Cassidy w/ cc to Brana, Blaskovic and reply from Chan to Mooney with name Pidedjian, Antovk on top

Email 3/6/04 from Mooney to Hulka, Chan, Laremont, Shatz, Cassidy w/ cc Brana, Blaskovic, Chin (unidentified person), with Pidedjian, Antovk on top

Email, tentative appointment 3/8/06 3:30 to 5:00, with name Pidedjian, Antovk on top re: updated - Manhattanville Status Update (several copies)

Email 3/9/06 (one page) from Mooney to Hulka, Chan, Laremont, Cassidy, Shatz w/ cc Brana, Blaskovic, subject: Manhattanville mtg -new dates

Same as immediately preceding with reply from Laremont to all (one page)

Same as immediately preceding with reply from Shatz to all (one page)

Same as immediately preceding with reply from Cassidy to all (one page)

Same as immediately preceding with reply from Chan to all (two pages)

Same as immediately preceding with reply from Mooney to all (two pages)

Email 3/8/06 (one page) from Wasserman to Cobb Konon, Hulka, Gastil, Karnovsky, Wasserman, Ford, Ascher, Wambua, Chan with Pidedjian, Antovk on top, subject: RE: Updated: Manhattanville Status Update

Email 3/10/06 (one page) from Mooney to Hulka, Chan, Cassidy, Laremont, Anita, Shatz w/ cc to Brana, Blaskovic, with Pidedjian, Antovk on top, subject: Manhattanville mtg - CONFIRMATION

Email 3/10/06 (one page) from Cobb Konon to Chan with Pidedjian, Antovk on top, subject: RE: accepted: Updated: Manhattanville/ EDC status update w/ Ann Hulka

Same as immediately preceding with reply from Chan to Cobb Konon (one page)

Same as immediately preceding with reply from Cobb Konon to Chan (two pages)

Email tentative appointment 3/20/06 9:30 to 10:00 with name Pidedjian, Antovk on top, subject, Updated: Manhattanville/ EDC Status Update w/ Ann Hulka

Email 3/28/06 (one page) from Chan to Hulka, Shatz, Ryan, Laremont with Pidedjian, Antovk on top. Subject: RE: Columbia University Mapping Meeting 4-5-06. Redact original message from Cassidy to Chan w/ cc to Hulka, Shatz, Ryan, Laremont. Redact original message from Chan to Cassidy w/ cc to Hulka, Shatz.

Email 3/28/06 (two pages) from Ryan to Cassidy, Chan w/ cc to Hulka, Shatz, Laremont with Pidedjian, Antovk on top, subject: RE: Columbia University Mapping Meeting 4-5-06. Redact original message from Cassidy to Chan w/ cc to Hulka, Shatz, Ryan, Laremont. Redact original message from Chan to Cassidy w/ cc to Hulka, Shatz.

Same as immediately preceding with reply from Chan to Ryan (two pages). Redact original message from Cassidy to Chan w/ cc to Hulka, Shatz, Ryan Laremont. Redact original message from Chan to Cassidy w/ cc to Hulka, Shatz.

Email 4/4/06 (three pages) from Chan to Jeanine Baer with Pidedjian, Antovk on top, subject: FW: Columbia University mapping meeting 4-5-06. Redact original message 4/3/06 from Chan to Ryan, Cassidy w/ cc to Hulka, Shatz, Laremont. Redact original message 3/28/06 from Ryan to Cassidy, chan w/ cc to Hulka, Shatz, Laremont. Redact original message 3/28/06 from Chan to Cassidy w/ cc to Hulka, Shatz.

Same as immediately preceding (three pages) with reply from Baer to Chan. Redact original message 4/3/06 from Chan to Ryan, Cassidy w/ cc to Hulka, Shatz, Laremont. Redact original message 3/28/06 from Ryan to Cassidy, Chan w/ cc to Hulka, Shatz, Laremont. Redact original message 3/28/06 from Chan to Cassidy w/ cc to Hulka, Shatz.

Same as immediately preceding (three pages) with reply from Chan to Baer. Redact original message 4/3/06 from Chan to Ryan, Cassidy w/ cc to Hulka, Shatz, Laremont. Redact original message 3/28/06 from Ryan to Cassidy, Chan w/ cc to Hulka, Shatz, Laremont. Redact original message 3/28/06 from Chan to Cassidy w/ cc to Hulka, Shatz.

Same as immediately preceding (three pages) with reply from Ryan to Chan. Redact original message 4/3/06 from Chan to Ryan, Cassidy w/ cc to Hulka, Shatz, Laremont. Redact original message 3/28/06 from Ryan to Cassidy, Chan w/ cc to Hulka, Shatz, Laremont. Redact original message 3/28/06 from Chan to Cassidy w/ cc to Hulka, Shatz.

Same as immediately preceding (three pages) with reply from Chan to Ryan. Redact original message 4/3/06 from Chan to Ryan, Cassidy w/ cc to Hulka, Shatz, Laremont. Redact original message 3/28/06 from Ryan to Cassidy, chan w/ cc to Hulka, Shatz, Laremont. Redact original message 3/28/06 from Chan to Cassidy w/ cc to Hulka, Shatz.

Same as immediately preceding (four pages) with reply from Ryan to Chan. Redact original message 4/3/06 from Chan to Ryan, Cassidy w/ cc to Hulka, Shatz, Laremont. Redact original message 3/28/06 from Ryan to Cassidy, chan w/ cc to Hulka, Shatz, Laremont. Redact original

message 3/28/06 from Chan to Cassidy w/ cc to Hulka, Shatz.

Email 4/13/06 (in response to redacted original message) (one page) from Laremont to Chan, Hulka, Cassidy, Shatz w/ name Pidedjian, Antovk on top, subject: RE: Task Sheet C/U. Redact original message 4/13/06 from Chan to Hulka, Cassidy, Laremont, Shatz, subject: FW: Task Sheet C/U.

Email 4/13/06 (in response to redacted original message) (one page) from Cassidy to Chan, Hulka, Laremont, Shatz w/ name Pidedjian, Antovk on top, subject: RE: task sheet C/U. Redact original message 4/13/06 from Chan to Hulka, Cassidy, Laremont, Shatz, subject: FW: Task sheet C/U.

Same as immediately preceding with reply from Chan to Cassidy, Hulka, Laremont, Shatz. Redact original message 4/13/06 from Chan to Hulka, Cassidy, Laremont, Shatz, subject: FW: Task sheet C/U.

Same as immediately preceding with reply from Cassidy to Chan, Hulka, Laremont, Shatz. Redact original message 4/13/06 from Chan to Hulka, Cassidy, Laremont, Shatz, subject: FW: Task sheet C/U.

Same as immediately preceding with reply from Shatz to Chan w/ cc to Cassidy, Hulka, Laremont. Redact original message 4/13/06 from Chan to Hulka, Cassidy, Laremont, Shatz, subject: FW: Task sheet C/U.

Same as immediately preceding with reply from Laremont to Chan, Cassidy, Hulka, Shatz. Redact original message 4/13/06 from Chan to Hulka, Cassidy, Laremont, Shatz, subject: FW: Task sheet C/U.

Email 4/19/06 (one page) from Chan to Hulka, Cassidy, Laremont, Shatz with name Pidedjian, Antovk, subject: Columbia University meeting will be next week, Wednesday, 4-26-06, at 3:00 PM.

Email 4/25/06 (in response to redacted original message) (one page) from Cassidy to Chan with name Pidedjian, Antovk on top, subject: RE: Columbia University meeting tomorrow at 3:00 PM. Redact original message 4/25/2006 from Chan to Hulka, Cassidy, Laremont, Shatz, subject: Columbia University meeting tomorrow at 3:00 PM.

Same as immediately preceding with reply from Chan to Cassidy (one page). Redact original message 4/25/2006 from Chan to Hulka, Cassidy, Laremont, Shatz, subject: Columbia University meeting tomorrow at 3:00 PM.

Same as immediately preceding with reply from Cassidy to Chan (two pages). Redact original message 4/25/2006 from chan to Hulka, Cassidy, Laremont, Shatz, subject: Columbia University

meeting tomorrow at 3:00 PM.

Same as immediately preceding with reply from Laremont to Chan (one page). Redact original message 4/25/2006 from Chan to Hulka, Cassidy, Laremont, Shatz, subject: Columbia University meeting tomorrow at 3:00 PM.

Same as immediately preceding with reply from Ryan to Chan (two pages). Redact original message 4/25/2006 from Chan to Hulka, Cassidy, Laremont, Shatz, subject: Columbia University meeting tomorrow at 3:00 PM.

Email 4/27/06 (one page) from Chan to Roger Fortune w/ name Pidedjian, Antovk on top, subject: tentative: Manhattanville meeting

Email 4/27/06 (in response to redacted original message) (one page) from Cassidy to Chan w/ cc to Hulka, Laremont, Shatz w/ name Pidedjian, Antovk on top, subject: RE: Columbia University Plan Update, May 11th in them AM. Redact original message 4/27/06 from Chan to Hulka, Laremont, Cassidy, Shatz, subject: Columbia University Plan Update, May 11th in them AM

Email 5/4/06 (in response to disclosed original message [see *III* above]) (two pages) from Shatz to Chan, Hulka, Laremont, Cassidy w/ name Pidedjian, Antovk on top, subject: RE: Proposed Manhattanville Meeting

Same as immediately preceding with reply from Hulka to Chan (two pages)

Same as immediately preceding with reply from Cassidy to Shatz, Chan, Hulka, Laremont w/ cc to Ryan (two pages)

Same as immediately preceding with reply from Chan to Shatz, Hulka, Laremont, Cassidy (two pages)

Same as immediately preceding with reply from Ryan to Cassidy, Shatz, Chan, Hulka, Laremont (three pages).

Same as immediately preceding with reply from Ryan to Chan (four pages)

Same as immediately preceding with reply from Chan to Ryan (four pages)

Same as immediately preceding with reply from Laremont to Chan (two pages)

Same as immediately preceding dated 5/5/06 with reply from Cassidy to Chan, Shatz, Hulka, Laremont (two pages)

Same as immediately preceding dated 5/5/06 with reply from Chan to Cassidy (three pages)

Same as immediately preceding dated 5/5/06 with reply from Chan to Fortune (two pages)

Fax cover sheet with letterhead Cater Ledyard & Milburn LLP *Counselors at Law* dated 5/5/06 from Ryan to Chan, Cassidy with attachment: news article from New York weekend 5/5-7/06, "Morningside Fights" (two pages)

Email 5/9/06 (continuation of preceding emails) (one page) from Chan to Hulka, Laremont, Cassidy, Shatz w/ cc to Ryan w/ name Pidedjian, Antovk on top, subject: Meeting at Prentiss Hall.

Same as immediately preceding with reply from Cassidy to Chan, Hulka, Laremont, Shatz w/ cc to Ryan (one page)

Same as immediately preceding with reply from Hulka to Chan (one page)

Same as immediately preceding with reply from Shatz to Chan (one page)

Same as immediately preceding with reply from Laremont to Chan (one page)

Same as immediately preceding with reply from Ryan to Chan, Hulka, Laremont, Cassidy, Shatz (two pages)

Packet of stapled emails (5 pages) containing email from 4/9/06 and 4/10/06, printed out on 2/14/07 w/ name Pidedjian, Antovk on top. First page: email 5/9/06 from Fortune to Chan w/ name Pidedjian, Antovk on top, subject: Proposed Prentiss Hall Meeting. Second page: same as preceding page plus reply from Chan to Fortune with name Pidedjian, Antovk on top. Third page: redact entire email 5/10/06 from Fortune to Chan w/ name Pidedjian, Antovk on top, subject: Draft GPP. Fourth page: email 5/10/06 (response to redacted original message) from Chan to Fortune w/ name Pidedjian, Antovk on top, subject: RE: Draft GPP. Redact third paragraph of email. Redact entire original message email 5/10/06 from Fortune to Chan, subject: Draft GPP.

Fifth page: email 5/10/06 (response to redacted original message) from Fortune to Chan w/ name Pidedjian, Antovk on top, subject: RE Draft GPP. Redact all of email after first sentence. Redact third paragraph of original message email 5/10/06 from Chan to Fortune, subject: RE: Draft GPP. Redact entire original message email 5/10/06 from Fortune to Chan, subject: Draft GPP.

Email 5/10/06 (in response to redacted original message) (two pages) from Chan to Hulka, Laremont, Cassidy, Shatz w/ cc to Ryan w/ name Pidedjian, Antovk on top, subject: FW: Draft GPP. Redact original message 5/10/06 from Chan to Fortune, subject: RE: Draft GPP. Redact original message 5/10/06 from Fortune to Chan, subject: RE: Draft GPP.

Same as immediately preceding with reply from Ryan to Chan, Hulka, Laremont, Cassidy, Shatz

(two pages)

Email 5/10/06 (one page) from Ryan to Chan w/ name Pidedjian, Antovk on top, subject: Where in Prentice of Pretise Hall on the Columbia Campus?

Same as immediately preceding with reply from Chan to Ryan, plus response from Ryan to Chan (two pages)

Same as immediately preceding with reply from Chan to Ryan (two pages)

Email 5/12/06 (one page) from Chan to Victoria Medford w/ name Pidedjian, Antovk on top, subject: Accepted: Columbia University meeting

Email 5/12/06 (one page) from Chan to Hulka, Laremont, Cassidy w/ cc to Ryan w/ name Pidedjian, Antovk on top, subject: June 1st meeting invitation at Prentiss Hall - Columbia University Project

Same as immediately preceding with reply from Ryan to Chan, Hulka, Laremont, Cassidy, Shatz (two pages).

Email accepted appointment (one page) sent 5/10/06 at 12:15 PM by Chan to Medford, subject: Accepted: Updated: CONFIRMED: Columbia University meeting

Email 5/18/06 (one page) from Chan to Hulka, Laremont, Cassidy, Shatz, w/ cc to Ryan w/ name Pidedjian, Antovk on top, subject: 6-1-06 meeting at Prentiss Hall w/ Columbia University confirmed. Attachment is immediately preceding message.

Email 5/18/06 (one page) from Chan to Medford w/ name Pidedjian, Antovk on top, subject, Accepted: Updated: CONFIRMED: Columbia University meeting

Same as immediately preceding with reply from Medford to Chan (two pages)

Email 5/18/06 from Chan to Hulka, Laremont, Cassidy, Shatz w/ cc to Ryan w/ name Pidedjian, Antovk on top, subject: FW: Address and Subway Directions for Prentiss Hall

Same as immediately preceding with reply from Ryan to Chan (two pages)

Same as immediately preceding with reply from Medford to Chan (two pages)

Same as immediately preceding with reply from Cassidy to Chan (two pages)

Email 5/22/06 (one page) from Ryan to Chan w/ cc to Cassidy, Hulka, Shatz, Rachel w/ name Pidedjian, Antovk on top, subject: NY Times and Columbia University's announcement

Email 5/22/06 (one page plus attachment) from Ryan to Chan, Cassidy, Shatz, Hulka w/ name Pidedjian, Antovk on top, subject: General article on Columbia from NY times. Attachment: news article (6 pages) from The New York Times. "The Manhattanville Project," 5/21/06

Email 5/24/06 (in response to email chain) from Chan to Hulka w/ name Pidedjian, Antovk on top, subject: Re: GPP Meeting 5/30 in response to email chain originating from Kate Bicknell (Project Manager, Commercial Development at Forest city ratner Companies) dated 5/24/06 to Hulka, Steven Matlin, subject: GPP Meeting 5/30. Responsive email dated 5/24/06 from Hulka to Bicknell w/ cc to Matlin, Chan, subject: RE: GPP meeting 5/30.

Same as immediately preceding with reply from Hulka to Chan (two pages)

Email 5/25/06 (in response to redacted original message) (one page) from Fortune to Chan w/ name Pidedjian, Antovk on top, subject: Re: Columbia University. Redact original message email 5/25/06 from Chan to Fortune, subject: Columbia University.

Same as immediately preceding with reply from Chan to Fortune (one page). Redact original message email 5/25/06 from Chan to Fortune, subject: Columbia University.

Email tentative appointment 5/26/06 9:00 to 10:00 w/ name Pidedjian, Antovk on top, subject: Manhattanville Meeting

Email 5/30/06 (response to disclosed original message) (one page) from Shatz to Chan, Hulka, Laremont, Cassidy w/ name Pidedjian, Antovk on top, subject: RE: Address and Subway Directions for Prentiss Hall

Same as immediately preceding with reply from Cassidy to Shatz, Chan, Hulka, Laremont (one page)

Email 5/31/06 (one page with 32 page attachment) from Chan to Hulka, Laremont, Cassidy, Shatz w/ cc to Ryan w/ name Chan, Joseph on the top, subject: FW: Address and Subway Directions for Prentiss Hall. Redact attachment

Email 5/31/06 (one page with 32 page attachment) from Chan to Kazanas w/ name Pidedjian, Antovk on top, subject: FW: Address and Subway Directions for Prentiss Hall. Redact second sentence (You...October). Redact attachment.

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

In the Matter of the Application of

WEST HARLEM BUSINESS GROUP,

Petitioner,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law

-against-

EMPIRE STATE DEVELOPMENT
CORPORATION,

Respondent.

Index No. 116839/06
Justice Shirley Kornreich

*Decision
Order
+
Judgment*

FILED

JUL 23 2007

AT
11:15 A.M.
N.Y. CO. CLERK OFFICE

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