

**Martin v Daily News, L.P.**

2011 NY Slip Op 30076(U)

January 12, 2011

Sup Ct, New York County

Docket Number: 100053/08

Judge: Martin Shulman

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

PRESENT: **MARTIN SHULMAN**  
J.S.C.

PART 1

Index Number : 100053/2008

MARTIN, LARRY D.

vs

DAILY NEWS L.P.

Sequence Number : 005

QUASH SUBPOENA, FIX CONDTIONS

INDEX NO. 100053/08

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 005

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ ~~Order to Show Cause~~ - Affidavits - Exhibits 1-19

Answering Affidavits - Exhibits A-C

~~Notice of Cross-Motion + Answering Order~~ - Exhibits A-D

Replying Affidavits - Exhibits 19-22

PAPERS NUMBERED

1, 2  
3, 4  
6, 7

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion and cross-motion are determined in according with the attached decision and order.

**FILED**

JAN 14 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: January 12, 2011

**MARTIN SHULMAN**  
J.S.C. J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 1

-----X

LARRY D. MARTIN,  
Plaintiff,

Index No.: 100053/08

-against-

DECISION/ORDER

DAILY NEWS, L.P., ERROL LOUIS and  
RAVI BATRA,  
Defendants.

**FILED**

-----X

JAN 14 2011

**Martin Shulman, J.**

NEW YORK  
COUNTY CLERK'S OFFICE

In this defamation action, non-party Ravi Batra ("Batra") moves for an order: 1) quashing a subpoena plaintiff Larry D. Martin ("Justice Martin" or "plaintiff") served upon him seeking to depose Batra ("plaintiff's subpoena" at Exh. 9 to Motion), and for a protective order with respect thereto;<sup>1</sup> 2) alternatively, modifying plaintiff's subpoena; 3) quashing a subpoena duces tecum defendants Daily News L.P. and Errol Louis (collectively "defendants") served upon him ("defendants' subpoena" at Exh. 15 to Motion), and for a protective order with respect thereto; 4) alternatively, modifying defendants' subpoena; and 5) imposing costs and sanctions against plaintiff's co-counsel, Harold Lee Schwab, Esq. ("Schwab") and/or his firm, for alleged frivolous conduct. Plaintiff and defendants oppose Batra's motion and Schwab cross-moves for: 1) costs and sanctions against Batra for frivolously seeking costs and sanctions against him and/or his firm; and 2) enjoining Batra from filing any further motion or commencing any action against plaintiff or his attorneys without prior court approval.

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<sup>1</sup> By prior decision and order dated April 23, 2010 (*Martin v Daily News L.P.*, 2010 WL 1821988), this court previously granted in part and denied in part Batra's motion to quash plaintiff's subpoena for the production of documents. After this court issued the April 23, 2010 decision and order plaintiff issued the subject subpoena to take Batra's deposition.

The salient facts of this action are summarized in this court's unpublished decision and order dated July 14, 2009 (*Martin v Daily News L.P.*, 2009 WL 2221457) (hereinafter the "dismissal order") and in the previously referenced April 23, 2010 decision and order. The defined terms in those orders are again used herein.

### **Motion and Cross-Motion for Costs and Sanctions**

The court first addresses the portion of Batra's motion seeking costs and sanctions against Schwab and/or his firm and Schwab's cross-motion for the same relief against Batra. Briefly, Batra bases his sanctions request upon Schwab's alleged oral and written misrepresentations to this court about him, which Batra contends were materially false and made primarily to harass or maliciously injure him.

The basis of Batra's claims is Schwab's statement to the court at a May 18, 2010 status conference that one of plaintiff's theories to establish the element of malice is that defendant Louis failed to inquire into Batra's background as a source and that such inquiry would have revealed that Batra had been professionally sanctioned in the past. By letter dated May 24, 2010 (Exh. 10 to Motion), Schwab clarified that he may have misspoken and Batra had not actually been sanctioned in the Singer/Riskin litigation.

Not content with this retraction, Batra promptly sent his own letter to the court and counsel for the parties further clarifying that costs, rather than sanctions, had been imposed against him on a denied motion. Batra's letter also requested leave of court to move for sanctions against Schwab for making false statements without proper due diligence (Exh. 11 to Motion). This in turn prompted Schwab's June 7, 2010 missive (Exh. 14 to Motion) expounding upon Batra's alleged professional transgression in the

Singer/Riskin litigation and referencing further transgressions dating as far back as 1991. The motion and cross-motion papers go into lengthy detail and include several supporting exhibits.

Unlike Batra's and Schwab's moving papers, the court will use a "less is more" approach to determine this tangential matter. Simply put, all requests for sanctions (including Schwab's request to enjoin Batra from further litigation without prior court approval) are denied. The matter should have ended with the above described correspondence. Any misstatement Schwab may have made in court was adequately explained and corrected so that the "well of justice" was not "poisoned".

### **Defendants' Subpoena**

Defendants' subpoena seeks only documents from Batra, specifically:

Pursuant to Judiciary Law §§44 and 45, all documents relating, referring or constituting complaints, calls, or other communications between Ravi Batra and the Commission on Judicial Conduct ("Commission"), its members or staff members, relating to the Plaintiff, Larry D. Martin.

Attached to defendants' subpoena is a limited confidentiality waiver from Justice Martin.

Batra argues that defendants' subpoena should be quashed because, under Judiciary Law ("JL") §45, proceedings before the Commission are confidential and as such he is prohibited from admitting or denying having filed a complaint about Justice Martin with the Commission. Batra contends defendants are free to contact the Commission to obtain redacted copies of the documents they seek.

In opposition, defendants' counsel claims she requested such documentation from the Commission but, in response, the Commission advised "that pursuant to Judiciary Law §§ 44(4) and 45(1), the Commission could only disclose 'proceedings,'

even with a waiver by the judge, where the Commission has authorized a formal written complaint.” Thereafter, defendants’ counsel received a confidential letter from the Commission and responsive documents, none of which related to Justice Martin’s handling of the Belinda action.

The court’s review of JL §45 reveals no prohibition against a complainant disclosing that he or she filed a complaint about a judge with the Commission. Nonetheless, the court agrees with Batra’s claim that defendants’ subpoena is overbroad to the extent it seeks documentation of potential complaints Batra may have made to the Commission about Justice Martin which do not pertain to plaintiff’s refusal to recuse himself in the Belinda action. The Second Article is the only publication at issue in this defamation action and its allegations regarding plaintiff’s involvement in the Belinda action are the only statements claimed to be false. Accordingly, Batra’s motion to quash is granted to the extent that Batra shall comply with defendants’ subpoena to the extent that it seeks documentation regarding complaints, if any, to the Commission about plaintiff’s involvement in the Belinda action.

### **Plaintiff’s Subpoena**

Batra argues plaintiff should not be permitted to depose him at all or, alternatively, that any deposition be limited to: 1) no more than three hours; and 2) inquiry regarding only “the period July 1, 2006 through February 8, 2007 relating to the Second Article and its subject matter.” In support of his motion, Batra contends plaintiff is attempting to bypass this court’s prior determination limiting plaintiff’s prior subpoena duces tecum to Batra (see this court’s April 23, 2010 decision and order in *Martin v*

*Daily News L.P.*, 2010 WL 1821988), and the information sought can be obtained from the defendants.

The court agrees. Plaintiff does not sufficiently explain the relevancy of “the overall relationship between Mr. Batra and Mr. Louis” which he seeks to explore. Justice Martin has obtained documentation from Batra in response to his prior subpoena, subject to the limitations this court imposed. There is no allegation that Batra’s production of documents was insufficient. Further, plaintiff explored this relationship at defendant Louis’ deposition and does not allege that Louis’ testimony was insufficient. As it appears Batra’s deposition testimony would be duplicative of Louis’ testimony, the portion of Batra’s motion to quash plaintiff’s subpoena is granted. See *Tannenbaum v. City of New York*, 30 A.D.3d 357, 358-359 (1<sup>st</sup> Dept. 2006)(court properly denied request to depose non-party where plaintiff “failed to show special circumstances or that the information sought was relevant and could not be obtained from other sources”); CPLR 3101(a)(4). The court need not address Batra’s requests for alternative relief.

The court has considered Batra’s and the parties’ remaining arguments and finds them lacking in merit. For all of the foregoing reasons it is hereby

ORDERED that the portion of non-party Ravi Batra’s motion to quash and for a protective order regarding plaintiff’s subpoena is granted; and it is further

ORDERED that the portion of non-party Ravi Batra’s motion to quash and for a protective order regarding defendants’ subpoena is granted in part and denied in part as set forth above; and it is further

[\* 7]

ORDERED that the portion of non-party Ravi Batra's motion for sanctions against Schwab and/or his firm, and Schwab's cross-motion for sanctions against Batra, are denied.

Counsel for plaintiff and defendants are directed to appear for a status conference on February 8, 2011 at 9:30 a.m. at **60 Centre Street, Room 325, New York, New York.**

This constitutes this court's Decision and Order. Courtesy copies of this Decision and Order have been provided to counsel for the parties and Batra.

Dated: New York, New York  
January 12, 2011



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HON. MARTIN SHULMAN, J.S.C.

**FILED**

JAN 14 2011

NEW YORK  
COUNTY CLERK'S OFFICE