

**Matter of Fairfax Fin. Holdings Ltd. v New York
Police Dept.**

2011 NY Slip Op 33807(U)

June 13, 2011

Sup Ct, New York County

Docket Number: 114574/10

Judge: Alice Schlesinger

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

ALICE SCHLESINGER

IA PART 16
PART 76

PRESENT:

SCHLESINGER

Justice

Fairfax Financial Holdings
- v - LTD
NY Police Dept

INDEX NO.

114574/10

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

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

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~~ petition is denied in accordance with the accompanying memorandum decision.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated:

JUN 13 2011
June 13, 2011

Alice Schlesinger
ALICE SCHLESINGER 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

-----X
In the Matter of the Application of Fairfax Financial
Holdings Limited and Crum & Forster Holdings Corp.,

Petitioners,

Index No. 114574/10
Motion Seq. No. 001

For an Order Pursuant to CPLR 3102(e) authorizing
service of Subpoenas Ad Testificandum and Duces
Tecum on

New York Police Department,

Respondent.

UNFILED JUDGMENT

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obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B)X

SCHLESINGER, J.:

On April 28, 2011, after receiving submissions from petitioner Fairfax Financial Holdings (Fairfax) and opposition from a defendant in a contentious New Jersey litigation, Institutional Credit Partners, LLC (ICP) and after hearing oral argument, I issued an interim order directing the New York City Police Department to provide the Court with the file concerning an investigation of Detective Bernard Hardy by the Department's Internal Investigation Unit as it related to an arrest of Yuan Cao on October 2, 2006. I said I would then conduct an *in camera* review of the file to determine whether all or part of it should be turned over to petitioner. That has all been done. Additionally, after oral argument on June 8, 2011, I gave counsel for Fairfax an opportunity to demonstrate in a letter why it should receive the file, and ICP was allowed to respond to that letter.

My decision here must be guided by the dictates of Civil Rights Law §50-a. That law states in subdivision 3 that after such a review, the Court will make a determination as to whether the records are "relevant and material" to the pending action. *See also, People v Perez*, 44 AD3d 417 (1st Dep't 2007), *lv denied* 10 NY3d 769 (2008)(denying disclosure of officer's disciplinary records in a buy and bust case based on failure to prove that the file contained information "relevant and material" to defendant's case).

Here, the action is a New Jersey one wherein Fairfax is accusing ICP, among others, of engaging in an illegal scheme to harm Fairfax so as to drive its stock price down and reap "ill-gotten profits from short positions in Fairfax's securities" (letter of June 10, 2011).

The reviewed file concerns an investigation of Detective Hardy prompted by an article in the New York Times. The article discussed the fact that ICP, Cao's employer who had made a complaint against him leading to his arrest, had also made a \$5,000 donation after the arrest to a boxing club where Detective Hardy's son boxed. The investigation concluded that the "charges", that there was an improper connection between the gift and the arrest, were "unsubstantiated". Hardy, who was on terminal leave at the time of the investigation, was never interviewed by the Police but had denied any such connection to others.

I have given petitioner Fairfax a number of opportunities to convince me that, while there might be some slight or subtle connection between Fairfax and this investigation, the file itself was either material and/or relevant to the New Jersey litigation as is required for disclosure under the Civil Rights Law. I find that Fairfax has failed to do that. The only possible connection is some unsourced allegation that ICP believed that Cao, who was charged with stealing valuable software material from the company, was a "corporate spy" for Fairfax, his current employer. Counsel for Fairfax insists that Cao was never their employee so the entire connection has no weight.

But more than that, I simply see no relevance or materiality of this file to the claims Fairfax is making in the New Jersey action. It should be noted also that the New York Police Department believes the file should remain confidential because of the

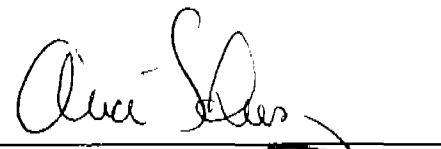
"unsubstantiated" conclusion reached. Because I find the burden has not been met, petitioner's application is denied.

Accordingly, it is hereby

ADJUDGED that the petition is in all respects denied. NYPD shall retrieve the documents provided for *in camera* inspection from the Part Clerk in Room 222.

Dated: June 13, 2011

JUN 13 2011



J.S.C.
ALICE SCHLESINGER

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1418).