

**510 E. 6th St. LLC v Perez**

2022 NY Slip Op 31663(U)

May 23, 2022

Supreme Court, New York County

Docket Number: 152128/2019

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 41

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510 EAST 6TH STREET LLC,

Plaintiff

Index No. 152128/2019

- against -

DECISION AND ORDER

KAMEPHIS PEREZ,

Defendant  
-----x

LUCY BILLINGS, J.S.C.:

In an order dated January 20, 2020 (Kalish, J.), based on the parties' stipulation, the court appointed former Supreme Court Justice Larry Schachner, now affiliated with National Arbitration and Mediation, LLC (NAM), to supervise disclosure and empowered him to render any orders related to disclosure in this action, unless prohibited by statute. C.P.L.R. § 3104(b) and (c). Defendant tenant now moves to vacate Special Master Schachner's order dated February 8, 2022, C.P.L.R. § 3104(d), and to remove the Special Master from his supervision of disclosure due to bias, incompetence, and misconduct.

I. VACATUR OF THE FEBRUARY 2022 ORDER

The February 2022 order relates to plaintiff landlord's post-deposition requests for disclosure relevant to defendant's counterclaims for lost wages and for intentional infliction of emotional distress. The order requires defendant to list the

dates for which he claims lost wages; to execute an authorization for release of his employment attendance records, showing the days and amounts he was not paid due to absence and the reasons he was absent; and to execute an authorization for release of his treatment records from his psychiatrist Dr. Rudoy.

Defendant claims that the records plaintiff seeks via these authorizations are overbroad and that the order requires him to create documents, the list and the executed authorizations, rather than to produce documents already created, and thus exceeds the scope of permissible disclosure. See Crawford v. Burkey, 124 A.D.3d 1184, 1185 (3d Dep't 2015); Czarnecki v. Welch, 23 A.D.3d 914, 915 (3d Dep't 2005); Orzech v. Smith, 12 A.D.3d 1150, 1151 (4th Dep't 2004). Defendant does not deny, however, that the records plaintiff seeks already have been created; that plaintiff, not defendant, has created the authorizations, except for defendant's signature; and that C.P.L.R. § 3120(1)(i) allows authorizations as a device "to permit the party seeking discovery . . . to inspect, copy . . . any designated documents . . . which are in the possession, custody or control of the party or person served." See Ferguson v. Durst Pyramid, LLC, \_\_\_ A.D.3d \_\_\_, 2022 WL 1549786, at \*2 (1st<sup>Dep't</sup> May 17, 2022); Winslow v. New York-Presbyt./Weill-Cornell Med. Ctr., 203 A.D.3d 533, 534 (1st Dep't 2022); Reed v. Lexington 79th Corp., 149 A.D.3d 508, 509 (1st Dep't 2017); Madia

v. CBS Corp., 146 A.D.3d 424, 424 (1st Dep't 2017). The records plaintiff seeks are in defendant's control. Defendant may request them himself from his employers and Dr. Rudoy. The order for defendant to list the dates when he claims lost wages was obviously for his benefit, to prevent the production of records from being overbroad, and to narrow them to the records relevant to his claimed lost wages.

Nevertheless, to address defendant's objections, the court modifies the Special Master's order as follows. Within five days after entry of this order, plaintiff may serve interrogatories asking defendant to list the dates for which he claims lost wages and the dates when he sought treatment from Dr. Rudoy for emotional distress caused by plaintiff. Defendant shall answer within 20 days after service of plaintiff's interrogatories. C.P.L.R. § 3133(a). Within five days after receipt of his answers, plaintiff may forward to defendant authorizations for his employment attendance records limited to records for the dates defendant listed, showing the amounts he was not paid due to absence and the reasons he was absent, and authorizations for records of his treatment from Dr. Rudoy, limited to the dates defendant listed. If defendant fails to provide those dates, plaintiff's authorizations for the employment records and medical records may encompass the entire periods for which defendant claims lost wages and emotional distress respectively. Since the

record of this motion indicates that his claimed lost wages stem from this action, the authorization for employment records may extend from commencement of this action to the present. The authorization for medical records may extend from one year before commencement of this action to the present. C.P.L.R. § 215(3); Winslow v. New York-Presbyt./Weill-Cornrell Med. Ctr., 203 A.D.3d at 534; Offor v. Mercy Med. Ctr., 171 A.D.3d 502, 503 (1st Dep't 2019); Jarusauskaite v. Almod Diamonds, Ltd., 198 A.D.3d 458, 459 (1st Dep't 2021). Defendant shall sign and return the authorizations to plaintiff within five days after he receives the authorization forms.

Alternatively, defendant may obtain the records specified in the authorizations from his employers and from Dr. Rudoy directly and serve those records on plaintiff within 20 days after defendant receives the authorization forms. C.P.L.R. § 3120(2). If plaintiff believes defendant has withheld any records, plaintiff may depose the custodian of the records. If a deposition reveals that defendant has withheld records, he shall bear the costs of the deposition.

## II. REMOVAL OF THE SPECIAL MASTER

Despite the court's modification of the Special Master's February 2022 order, the order indicates no bias, incompetence, or misconduct. In fact, as noted above, the order demonstrates an effort, albeit rebuffed by defendant, to benefit him, by

preventing an overbroad production of employment records and narrowing them to the records relevant to his claimed lost wages. Since defendant has not availed himself of his right to a review of any of the Special Master's prior orders, defendant may not successfully claim that any of them demonstrates bias, incompetence, or misconduct.

In any event, the prior orders that defendant now claims are biased, incompetent, or the product of misconduct, despite his failure to seek their review, are for in camera inspection of the contract of sale and assignment of rents to plaintiff from the former owner of plaintiff's building in which defendant resides, yielding an order that plaintiff produce those documents heavily redacted. While defendant now, in hindsight, might suggest why the redacted information might lead to relevant evidence, when he sought the documents before the court, prior to the Special Master's appointment, defendant's reason was that they "will show exactly how dire the plaintiff's financial straits are and why . . . he [sic] has undertaken this harassment activity and this overcharge activity." Aff. of Renee Digrugilliers in Opp'n (Mar. 7, 2022) Ex. 4, at 34. Given this purpose, the court (Kalish, J.) found those documents of "no relevance," id., and struck defendant's requests for those documents. Id. at 35. The Special Master in turn was bound to follow this unappealed court order. Even in the face of this order, however, and over

plaintiff's objection, he ordered plaintiff to produce sections of the documents after his in camera review revealed sections that referred to defendant's apartment.

The only other conduct on which defendant bases his request to remove former Justice Schachner as the Special Master is that he billed the parties for conferences January 21, April 30, May 31, and December 21, 2020, and September 30, 2021, that defendant claims never occurred and for a half hour conference January 28, 2020, that defendant claims the Special Master ended after 11 minutes. Plaintiff does not contest this alleged overbilling, except to suggest, without a showing of personal knowledge, that the Special Master reserved time on those dates with the parties' consent, time that the parties later declined to use. Defendant presents an unsworn email from NAM that no conference even was scheduled in September 2021, but this email is inadmissible hearsay and supports his complaint about only one of several dates. Defendant does not demonstrate that the alleged overbilling is due to Special Master Schachner's misconduct, rather than an inadvertent error by staff administering his services, and does not indicate that he brought the alleged overbilling directly to Special Master Schachner's attention.

Consequently, the court orders an evidentiary hearing June 24, 2022, at 2:00 p.m., for defendant to establish overbilling by the Special Master that warrants former Justice Schachner's

removal and the substitution of a new Special Master. The hearing will be via videoconference unless at least five days in advance either party requests that the hearing be in person at 71 Thomas Street, Room 204, New York County. As an alternative to the hearing, the parties may stipulate to the substitution of a new Special Master or that, once defendant complies with the above order regarding authorizations, disclosure is complete.

### III. DEFENDANT'S REQUEST FOR AN AUTHORIZATION

Finally, defendant seeks to compel plaintiff to execute an authorization for release of the entire file maintained by plaintiff's attorney related to this action. Defendant's Notice of Motion does not specify this relief, except to the extent that the Notice of Motion requests "such other and further relief as the Court deems just and proper." Notice of Def.'s Mot. to Vacate and to Remove Special Master at 5 (Feb. 11, 2022). See Ramirez v. Selective Advisors Group, LLC, 202 A.D.3d 608, 608 (1st Dep't 2022); Sedina V.L. v. Markis R.C., 198 A.D.3d 599, 599 (1st Dep't 2021); Henderson-Jones v. City of New York, 120 A.D.3d 1123, 1124 (1st Dep't 2014); DaimlerChrysler Ins. Co. v. Seck, 82 A.D.3d 581, 582 (1st Dep't 2011). Nevertheless, assuming defendant's motion adequately requested this relief, since defendant fails to show that the Special Master's February 2022 order encompassed this request or that defendant otherwise has sought this relief from the Special Master, the court denies this

request as premature.

IV. CONCLUSION

To recapitulate, the court grants defendant's motion to vacate Special Master Schachner's order dated February 8, 2022, to the extent of modifying that order as set forth above. C.P.L.R. § 3104(d). The court grants defendant's motion to remove the Special Master from his supervision of disclosure to the extent of ordering a hearing as set forth above. The court denies defendant's motion to compel plaintiff to execute an authorization for release of the file maintained by plaintiff's attorney as premature. C.P.L.R. § 3104(c).

DATED: May 23, 2022

*Lucy Billings*  
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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C.