

AJ Wealth Strategies, LLC v Smoose

2022 NY Slip Op 34220(U)

December 12, 2022

Supreme Court, New York County

Docket Number: Index No. 653035/2022

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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AJ WEALTH STRATEGIES, LLC, AJWS PARTNER HOLDINGS LP	INDEX NO. <u>653035/2022</u>
Plaintiffs,	MOTION DATE _____
- v -	MOTION SEQ. NO. <u>003</u>
ELIZABETH SMOOSE, CLAYTON COCHRAN,	DECISION + ORDER ON MOTION
Defendants.	

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 39, 40, 41, 42, 43, 44, 45, 46, 73, 77, 78, 79
 were read on this motion to/for SEAL.

Upon the foregoing documents, it is

In motion sequence number 003, plaintiffs AJ Wealth Strategies, LLC (AJ Wealth) and AJWS Partner Holdings LP (AJWS) move under Section 216.1 of the Uniform Rules for Trial Courts, by Order to Show Cause, to redact NYSCEF Doc. Nos. (NYSCEF) 7, 17, 18, 19, and 20¹ on the ground that these documents contain confidential and proprietary information. Plaintiffs’ motion is unopposed. There is no indication that the press or public have an interest in this action.

NYSCEF 7 and 17 are publicly redacted copies of an email dated March 10, 2022, attaching a 62-page document that plaintiffs describe as “print-outs of annual client service reports from Plaintiffs’ proprietary Salesforce database . . .” (NYSCEF

¹ These documents are the publicly redacted copies filed by plaintiffs. Sealed copies of these documents with proposed highlighted redactions are filed at NYSCEF 42-45. NYSCEF 7 and 17 are the same document, and the unredacted version is filed as NYSCEF 42.

41, chart identifying documents at 2²; see also NYSCEF 11, Volesko aff³ ¶ 52.)

Plaintiffs seek to redact practically all of the information in the attachment containing client service reports, including the identities of clients; clients' financial, asset, and planning information; investment strategies; descriptions of services provided, or to be provided to clients; client notes; and meeting information. (*Id.*)

NYSCEF 18 contains an email chain dated May 25, 2021 through March 8, 2022, and an email dated January 24, 2022 and forwarded on March 10, 2022. Plaintiffs seek to redact their clients' identities and information regarding client life insurance, other assets, and estate planning strategies. Plaintiffs also include proposed redactions of names that do not appear to be client names, including employee names and the name of an outside advisor.

NYSCEF 19 contains several email chains, including one on March 4, 2022, one between March 9, 2022 and March 10, 2022, and one on March 7, 2022. Plaintiffs seek to redact their clients' identities, the names of clients' LLC's, and information about client accounts, including the last four digits of clients' accounts.

NYSCEF 20 is an email chain dated March 30, 2022 through March 31, 2022 and forwarded on August 11, 2022. Plaintiffs seek to redact the identity of one of their clients, their email address, the name of a business they own an interest in, as well as the client's accountant and their contact information. Plaintiffs also include proposed redactions of the names of plaintiffs' then employees, the date of the last email and subject line.

² References to page numbers are to NYSCEF generated page numbers.

³ Justyn Volesko is a co-founder and managing partner of AJ Wealth and involved in management of AJWS. (NYSCEF 11, Volesko aff ¶ 1.)

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

“(a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.”

“Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records.” (*Mosallem v Berenson*, 76 A.D.3d 345, 348 [1st Dept 2010] [citations omitted].) The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Id.* at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotations omitted].)

In the business context, courts have sealed records where the disclosure of documents “could threaten a business's competitive advantage.” (*Mosallem*, 76 AD3d at 350 [citations omitted].) Records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party “ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information.” (*D'Amour v Ohrenstein & Brown*, 17 Misc.3d 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

First, plaintiffs have demonstrated good cause to redact the names and contact information, as well as financial, asset and planning information of their clients in NYSCEF 18-20, as plaintiffs maintain as confidential the identities of their clients (NYSCEF 11, *Volesko aff* ¶ 11) and there is no countervailing public interest in the disclosure of these non-parties' financial or personal information. (See *Dawson*, 184 AD2d at 247 [1st Dept 1992].) However, some of the information that plaintiffs seek to redact in NYSCEF 18, 19 and 20 plainly does not fall under this category. Specifically, plaintiffs propose redactions of names and contact information of individuals who appear to be plaintiffs' employees or clients' outside advisors. Plaintiffs have not demonstrated that the names or information of these employees and outside advisors could be used to identify their clients. Additionally, plaintiffs have not demonstrated that the last four digits of account numbers in NYSCEF 19 are confidential or capable of being used to identify clients and are specifically excluded from Rule 202.5(e)(1)(4) of the Uniform Civil Rules for the Supreme Court & the County Court. Thus, plaintiffs are directed to file revised redactions of NYSCEF 18 through 20, excluding the names and contact information of individuals who are not clients or related to clients such that they could be used to identify those clients, including employees of plaintiffs and outside advisors of clients, as well as the last four digits of accounts.

Second, plaintiffs have demonstrated good cause for the redactions they seek in NYSCEF 7 and 17. "Proprietary information, in the nature of current or future business strategies which are closely guarded by a private corporation, is akin to a trade secret, which, if disclosed, would give a competitor an unearned advantage." (*Mancheski v Gabelli Grp. Cap. Partners*, 39 AD3d 499, 503 [1st Dept 2007].) In support of their

motion, plaintiffs point to the affidavit of Justyn Volesko, who explains that plaintiffs' Salesforce platform, "has been extensively customized to integrate and provide holistic information about the wide array of services AJ Wealth Strategies, LLC provides" and that he "spent thousands of hours of [his] time and significant money customizing [the platform], such that the platform offers significant functionality far outstripping that available under the default Salesforce platform available to the public." (NYSCEF 11, Volesko aff ¶ 7.) The dashboard designed by AJ Wealth Strategies, LLC contains "information about the clients' assets, communications with AJ Wealth, investment strategies, and the services AJ Wealth provided (or planned to provide in the future) to the client." (*Id.* ¶ 55.) Plaintiffs have demonstrated, for purposes of this sealing motion, that in addition to confidential information about nonparty clients, the information in the platform such as services provided and offered to clients, if revealed, could provide an advantage to their competitors.

Accordingly, it is hereby

ORDERED that motion sequence number 003 is granted in part and denied in part; and it is further

ORDERED that the New York County Clerk, upon service to him of this order, shall permanently seal NYSCEF 42-45; and it is further

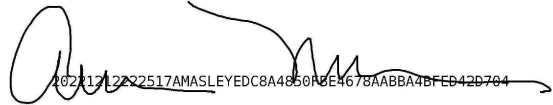
ORDERED that, within ten days of this order, plaintiffs shall upload revised redacted copies of NYSCEF 18-20 in accordance with this decision; and it is further

ORDERED the New York County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative

of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed sealing order to the court (via SFC-Part48@nycourts.gov and NYSCEF) instead of filing another seal motion; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



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12/12/2022

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE