

Ongor v Highmore Group Advisors, LLC
2023 NY Slip Op 30463(U)
February 14, 2023
Supreme Court, New York County
Docket Number: Index No. 651518/2022
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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YAVUZ AKIN ONGOR,

Plaintiff,

- v -

HIGHMORE GROUP ADVISORS, LLC, HIGHMORE
OPPORTUNITIES FUND (OFFSHORE) LTD., BRIAN
ALTENBURG, SOCRATES CRUZ, and AYN
INVESTMENTS LLC

Defendants.

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INDEX NO. 651518/2022

MOTION DATE _____

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77

were read on this motion to/for SEAL.

Upon the foregoing documents, it is

In motion sequence number 004, defendants Highmore Group Advisors, LLC (HGA), Highmore Opportunities Fund (Offshore) Ltd. (Fund), and Brian Altenburg (together, Highmore Defendants) move, by order to show cause, to file redacted copies of NYSCEF Docs No. (NYSCEF) 67, 68, 70, and 72¹ pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts.² (NYSCEF 76, Order to Show Cause [OSC].) The Highmore Defendants also seek an order “directing defendant Socrates Cruz to similarly redact the same information from the documents filed in support of his

¹ The Highmore Defendants previously sought to file these documents which were originally filed at NYSCEF 12-14 and 16 entirely under seal. (NYSCEF 39, OSC [motion seq. no. 001.]) The Highmore Defendants also sought to file NYSCEF 17 under seal, but upon reconsideration did not renew that request. (*Id.*; NYSCEF 73, memorandum of law at 5, n. 1.)

² Publicly redacted copies of these documents are filed at NYSCEF 65, 66, 69, and 71.
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Motion to Dismiss, and re-file those documents in redacted form.” (*Id.*) The motion is unopposed. There is no indication that the press or public have an interest in this matter.

NYSCEF 67 is an Investor Questionnaire and Subscription Agreement (the Subscription Agreement). The Highmore Defendants seek to redact a minimum initial subscription amount for a subscription of shares in the Fund, the name of a law firm representing HGA and its affiliates, and the name and address of a law firm representing the Fund.

NYSCEF 68 contains background documentation and signatures pages to the Subscription Agreement. The Highmore Defendants seek to redact the name and location of plaintiff’s bank wiring payment to the Fund; plaintiff’s addresses, telephone number and fax numbers; and defendant Cruz’s address.

NYSCEF 70 is a Supplement Agreement dated August 4, 2020. The Highmore Defendants seek to redact plaintiff’s address.

NYSCEF 72 is the Highmore Solicitation and Referral Agreement (the Solicitation Agreement). The Highmore Defendants seek to redact defendant Cruz’s address; the percentage of “Management Fees” to be received by defendant Cruz; and the percentage of the “Highmore Solutions Fees” to be received by defendant Cruz.

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 AD3d 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].)

The Highmore Defendants have demonstrated good cause for some, but not all, of the redactions they seek. In support of their motion, the Highmore Defendants provide the affidavit of Brian Altenburg, a defendant and co-founder and managing partner of HGA. (NYSCEF 63.) Altenburg states that “[t]he Highmore Defendants are concerned that the public disclosure of this information would damage their competitive

standing in the marketplace by revealing the confidential terms of their business relationships with their third-party solicitors to competitors in the marketplace.” (*Id.* ¶ 9.)

The minimum subscription amount and fee percentages in NYSCEF 67 and 72 plainly fall under this category of competitively sensitive information and there has been no showing of public interest to outweigh the parties’ interest in keeping their financial arrangement private. (*Dawson*, 184 AD2d at 247.) Moreover, the Highmore Defendants have demonstrated good cause to redact individuals’ addresses, bank names and locations, telephone and fax numbers in NYSCEF 68 through 72, as this information is personally sensitive and there is no legitimate public interest in the same. However, the Highmore Defendants have not demonstrated good cause to redact the names or address of HGA’s or the Fund’s attorneys in NYSCEF 67. This information is not confidential, and the Highmore Defendants do not demonstrate how its disclosure could harm HGA’s “competitive standing.”

The Highmore Defendants also seek to direct defendant Cruz to “similarly redact the same information from the documents filed in support of his Motion to Dismiss, and re-file those documents in redacted form . . .” (NYSCEF 76, OSC.) As to documents filed by Cruz, the Highmore Defendants only refer to NYSCEF 29, 32, and 33 in their memorandum of law. NYSCEF 29 and 33 are copies of NYSCEF 72 and 70 respectively, and therefore, defendant Cruz is directed to comply with this order and refile them with the same redactions as in NYSCEF 70 and 72 authorized in this decision. The Highmore Defendants and Cruz also previously filed NYSCEF 22,³ 27

³ NYSCEF 22 is the Highmore Defendants’ memorandum of law in support of motion sequence number 002. The Highmore Defendants explain on this motion that they previously sought to file certain supporting documents under seal, but “[i]nsofar as those

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and 34 under seal and in publicly redacted form and have not brought an OSC to permanently seal/redact these documents. (See NYSCEF 21, 26, and 35.) None of the information which the court has found good cause to redact here, or even that the Highmore Defendants have requested to redact, is contained in the proposed redactions in NYSCEF 22, 27, or 34.⁴ Therefore, NYSCEF 22, 27, and 34 will be unsealed. Defendant Cruz also filed NYSCEF 32 under seal without proposed redactions without an OSC for such relief, and contrary to the Highmore Defendants' assertion, it is not the same document as any of the documents the Highmore Defendants now seek to file under seal on this motion. Thus, NYSCEF 32 will be unsealed.

Accordingly, it is

ORDERED that motion sequence number 004 is granted in part and denied in part; and it is further

ORDERED, that within ten days of this order, the Highmore Defendants shall filed a revised publicly redacted copy of NYSCEF 65 in accordance with this decision; and it is further

ORDERED, that the New York County Clerk, upon service to him of this order, shall permanently seal NYSCEF 12, 13, 14, 16, 29, 33, 67, 68, 70, and 72; and it is further

supporting documents previously filed do not quote or paraphrase from the portions of the documents now sought to be filed under seal, the Highmore Defendants will not now renew that request either." (NYSCEF 73, memorandum of law at 5, n. 1.)

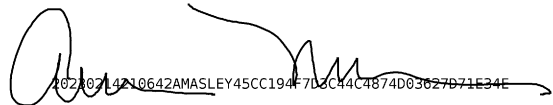
⁴ Cruz appears to cite to NYSCEF 32 in NYSCEF 34, but the quotes under redaction are actually from the Subscription Agreement, not the document filed as NYSCEF 32.

ORDERED, that the New York County Clerk, upon service to him of this order, shall unseal NYSCEF 17, 22, 27, 32, and 34; 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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2/14/2023

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: