

Matter of Intermediate Capital Group, Inc. v Rosse

2023 NY Slip Op 31066(U)

April 3, 2023

Supreme Court, New York County

Docket Number: Index No. 653683/2022

Judge: John J. Kelley

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

PRESENT: HON. JOHN J. KELLEY **PART 56M**

Justice

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In the Matter of

INTERMEDIATE CAPITAL GROUP, INCORPORATED and
INTERMEDIATE CAPITAL GROUP, PLC,

Petitioners,

- v -

CHARLES ROSSE,

Respondent.

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INDEX NO. 653683/2022

MOTION DATE 01/11/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for SEAL.

In this disposed proceeding to confirm an arbitration award, the respondent moves pursuant to 22 NYCRR 216.1 to seal the petition and final arbitration award that had been filed in this proceeding and uploaded as docket entry numbers 1 and 3, respectively, to the New York State Court Electronic Filing system. Although the petitioners agreed not to oppose the motion, and in fact did not oppose the sealing of these records, the motion nonetheless is denied.

A brief outline of the petitioner’s contentions is set forth in the petition, as well as in the parties’ submissions in support of and in response to the petition. In short, the respondent, who was employed by the petitioners, sought recovery for money he claimed that they owed to him. The arbitrator found in favor of the petitioners. In the instant proceeding, the petitioners sought to confirm the award. In a stipulation dated December 5, 2022, the respondent agreed to refrain from opposing the petition, and the petitioners in turn stipulated to refrain from opposing the respondent’s instant sealing motion. In an order and judgment dated March 17, 2023, the court granted the petition and confirmed the award. In this motion, the respondent contends that the claims that he made are of a sensitive nature, suggests that the petition and arbitration

award that had been filed in this proceeding might reveal information that is sensitive or embarrassing to himself, and asserts that those documents might subject him to adverse consequences if open to public scrutiny. These contentions are insufficient to support the respondent's request for a sealing order.

22 NYCRR 216.1(a) provides, in relevant part, that

“[e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records . . . 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.”

“[T]here is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosalleem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). Although the public's right to access is not absolute (*see Danco Labs. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept. 2000]), “[t]he presumption of the benefit of public access to court proceedings takes precedence, and sealing of court papers is permitted only to serve compelling objectives, such as when the need for secrecy outweighs the public's right to access” (*Applehead Pictures, LLC v Perelman*, 80 AD3d 181, 191 [1st Dept 2010]; *see Matter of East 51st St. Crane Collapse Litig.*, 106 AD3d 473, 474 [1st Dept 2013]; *Danco Labs. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d at 6; *see also Schulte Roth & Zabel, LLP v Kassoover*, 80 AD3d 500, 501-502 [1st Dept 2011]). As the Appellate Division, First Department, has explained, it has “been reluctant to allow the sealing of court records” (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.U.*, 28 AD3d 322, 324 [1st Dept 2006]; *see Matter of Holmes v Winter*, 110 AD3d 134, 138 [1st Dept 2013], *revd other grounds* 22 NY3d 300 [2013]; *Mosalleem v Berenson*, 76 AD3d at 350; *see generally Davis v Nyack Hosp.*, 130 AD3d 455, 456 [1st Dept 2015]; *Matter of Brownstone*, 191 AD2d 167, 168 [1st Dept 1993]).

“Thus, the court is required to make its own inquiry to determine whether sealing is warranted, and the court will not approve wholesale sealing of [court] papers, *even when both sides to the litigation request sealing*” (*Applehead Pictures, LLC v Perelman*, 80 AD3d at 192

[citations omitted] [emphasis added]; see *Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.U.*, 28 AD3d at 324; *Liapakis v Sullivan*, 290 AD2d 393, 394 [1st Dept 2002]; *Matter of Hofmann*, 284 AD2d 92, 93 [1st Dept 2001] [denying request to seal court records despite the parties' confidentiality agreement]).

The party seeking to seal court records has the burden of establishing "good cause" for the sealing order (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]). "Since confidentiality is the exception," the movant must establish that "public access to the documents at issue will likely result in harm to a compelling interest of the movant and that no alternative to sealing can adequately protect the threatened interest" (*id.* [citations omitted]). This court has discretion, on a case-by-case basis, to determine if good cause exists (*see id.*). Hence, where a party fails to show the existence of a compelling reason to seal a record, sealing should be denied (*see Davis v Nyack Hosp.*, 130 AD3d at 456).

Neither a party's embarrassment nor a general desire for privacy is sufficient, of itself, to establish good cause for sealing a court file (*see Matter of Holmes v Winter*, 110 AD3d at 138; *Mosallem v Berenson*, 76 AD3d at 351; *Liapakis v Sullivan*, 290 AD2d at 394; *Matter of Benkert*, 288 AD2d 247, 247 [1st Dept 2001]; *Matter of Hofmann*, 284 AD2d at 93; *State of New York ex rel. Aniruddha Banerjee v Moody's Corp.*, 54 Misc 3d 705, 708 [Sup Ct, N.Y. County 2016]).

Conclusory claims of the need for confidentiality, based on the alleged adverse consequences arising from public access to certain documents, and even the existence of a confidentiality agreement between the parties, are insufficient bases upon which to seal court records (*see Heng Ren Silk Rd. Invs. LLC v Duff & Phelps, LLC*, 203 AD3d 659, 660 [1st Dept 2022] [conclusory statements that defendant might be subject to draconian penalties if it were found to be in violation of the Chinese Data Security Law by filing a confidential valuation report with a United States court are insufficient to establish good cause for sealing]; *Norddeutsche Landesbank Girozentrale v Tilton*, 165 AD3d 447, 448-449 [1st Dept 2018] [although the disclosures that the defendants sought to seal involved sensitive financial information that

related to information contained in tax returns, their request for a sealing order was properly denied, since those documents were not actual tax returns, and did not involve trade secrets or information that could result in a competitive disadvantage to defendants]; *Matter of Benkert*, 288 AD2d at 247; *Matter of Hofmann*, 284 AD2d at 93; *Matter of Tram Thuy Nguyen*, NYLJ, Feb. 23, 2016, at 22, col 6, 2016 NYLJ LEXIS 2391 [Sur Ct, N.Y. County, Feb. 18, 2016]; *Matter of Golden*, NYLJ, Jul. 16, 2015, at 24, col 1 [Sur Ct, N.Y. County]; *Matter of Brown*, NYLJ, Apr. 10, 2013, at 23, col 6 [Sur Ct, Kings County]; *Matter of Soltesz*, NYLJ, Jun. 29, 2015, at 25 [Sur Ct, Bronx County]). The court notes that, in any event, the parties remain bound by any confidentiality agreement into which they entered or will enter, as that is a binding contract subject to generally applicable rules of contract construction (*see generally Garda United States v Sun Capital Partners*, 194 AD3d 545, 547-548 [1st Dept 2021]). Furthermore, the remedy for preventing the potential for significant embarrassment is to permit a party to proceed anonymously (*see Doe v Yeshiva Univ.*, 195 AD3d 565, 566 [1st Dept 2021]), an option that the respondent did not elect here.

Inasmuch as the respondent has made no showing of good cause as to why the petition and arbitration award should be sealed in this proceeding, his motion must be denied.

Accordingly, it is

ORDERED that the motion is denied.

This constitutes the Decision and Order of the court.

4/3/2023
DATE


JOHN J. KELLEY, 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