

**People v VDARE Found., Inc.**

2023 NY Slip Op 34369(U)

December 11, 2023

Supreme Court, New York County

Docket Number: Index No. 453196/2022

Judge: Sabrina Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. SABRINA KRAUS PART 57TR**

*Justice*

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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA  
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW  
YORK

Petitioner,

- v -

VDARE FOUNDATION, INC.,

Respondent.

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**INDEX NO. 453196/2022**

**MOTION DATE 12/8/2023**

**MOTION SEQ. NO. 003**

**AMENDED  
DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 106, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124

were read on this motion to/for CONTEMPT.

On January 23, 2023, this Court determined that the subpoena issued by Petitioner in this proceeding was valid and reasonable, properly issued in the public interest and within the Attorney General’s statutory authority to supervise and investigate New York charities. The Court also determined that VDARE presented no basis for a stay. Accordingly, the Court directed VDARE to (1) re-produce all previously produced hard copy documents in a revised form that bears only those redactions outlined by the Court by February 10, 2023; (2) complete the production of all responsive material contained in the previously identified universe of VDARE’s electronic files by February 24, 2023; and (3) simultaneously produce corresponding redaction logs with each production.

It is undisputed and, in fact specifically acknowledged by Respondent on the record at oral argument, that Respondent has not complied in any way with this Court's order and that said failure to comply was intentional.

Respondent took numerous actions to avoid compliance with the order including the commencement of a Federal Action, which has since been dismissed, and a pending appeal with the Appellate Division, which initially stayed enforcement of the order, but has since vacated the stay.

To prevail on a civil contempt claim, a party must establish the following four elements: (1) there was a lawful court order in effect clearly expressing an unequivocal mandate; (2) it must appear, with reasonable certainty, that the party to be held in contempt has disobeyed the order; (3) the party to be held in contempt had knowledge of the order, although it is not necessary that the party actually be served with the order; and (4) the moving party must demonstrate that its rights have been prejudiced. *El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 29 (2015).

Respondent argues that this court's January Order was not a lawful mandate, and in fact cross-moves to vacate that order arguing that the AG has violated numerous provisions of New York's Rules on professional conduct in securing the order and that the Appellate Division is "likely" to reverse the order. The court rejects these arguments as being wholly without merit.

Additionally, by refusing any compliance with the Court's January 23 Order, Respondent has impaired the remedy the Court awarded the Attorney General—subpoena compliance by February 10, 2023. *See State v. Stallings*, 183 A.D.2d 574, 574–575 (1st Dep't 1992); *People v. The Trump Org., Inc.*, No. 451685/2020, 2022 WL 1222708 (Sup. Ct. N.Y. Cnty. Apr. 26, 2022).

The Attorney General's investigation has now been delayed by nearly a year. Courts have found prejudice from much shorter delays (*Id.*).

Petitioner, at argument, stated it had no objection to giving Respondent one final opportunity to comply with the court order. Given the numerous extensions agreed to by the parties in connection with the Federal and Appellate litigation the court finds one last chance appropriate.

Petitioner's counsel previously represented it could comply with the order within 15 days.

WHEREFORE it is hereby:

ORDERED that the motion for contempt is denied without prejudice to renewal if Respondent fails to comply with this court's January 2023 order on or before January 3, 2024; and it is further

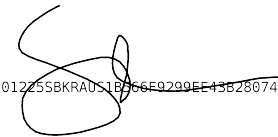
ORDERED that the cross-motion to vacate the order is denied; and it is further

ORDERED that, within 20 days from entry of this order, Petitioner shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

This constitutes the decision and order of this court.



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12/11/2023

DATE

SABRINA KRAUS, 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