

Sherman v Zampella

2025 NY Slip Op 32926(U)

July 18, 2025

Supreme Court, New York County

Docket Number: Index No. 655176/2021

Judge: Andrew Borrok

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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: COMMERCIAL DIVISION PART 53

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ADAM SHERMAN, RICHARD J. MCCORD,

Plaintiff,

- v -

ANIELLO ZAMPELLA, COINDADO LLC, COTTONWOOD
VENDING LLC,

Defendant.

INDEX NO. 655176/2021

MOTION DATE 05/07/2025,
05/09/2025

MOTION SEQ. NO. 005 006

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 141, 142, 143, 144, 145, 146, 147, 148, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 7.15.25), Adam Sherman’s motion (Mtn. Seq. No. 005) to compel non-parties Payward, Inc. and Payward Ventures, Inc. d/b/a Kraken (**Kraken**) to comply with the subpoena duces tecum dated April 15, 2025 (the **Subpoena**; NYSCEF Doc. No. 135) is GRANTED.

Pursuant to CPLR 3101(a)(4), a party may obtain discovery from a non-party in possession of material and necessary evidence upon a showing that the requested information is relevant to the prosecution or defense of the action (*DiBuono v Abbey, LLC*, 163 AD3d 524, 525 [2d Dept 2018]). A motion to quash a subpoena should be granted “[o]nly where the futility of the process to uncover anything legitimate is inevitable or obvious ... or where the information sought is utterly irrelevant to any proper inquiry” (*M&T Bank Corp. v Moody's Inv'rs Services, Inc.*, 191

AD3d 1288 [4th Dept 2021], *citing Matter of Anheuser-Busch, Inc. v Abrams*, 71 NY2d 327, 332 [1988]).

This case involves, among other things, Aniello Zampella's admitted transfers from Cottonwood to himself. Previously, and pursuant to a Decision and Order (NYSCEF Doc. No. 57) dated February 27, 2023, the Court ordered him to produce, among other things, his digital wallet and rejected his position that the plaintiff is not entitled to the records of what he claims are "his" digital assets because he concedes certain outflows from Cottonwood to him.

Subsequently, on May 3, 2023, Mr. Zampella submitted an affidavit stating:

1. Respectfully, I have responded and complied with the Court Order directing me to produce accounting work papers, the 2016 and 2017 Master Spreadsheets, and my personal bitcoin wallet addresses. We have provided the accounting work papers and the 2016 and 2017 Master Spreadsheets. We have provided every accounting document available, these include all the work papers and third-party audited financials. I further provided all 406 bitcoin wallet addresses that Cottonwood last had when it ceased operations. I had also sent this wallet information in an e-mail to the Department of Homeland Security & NYPD after the hack of Digital Ocean to help in the criminal prosecution of the perpetrator(s)
2. I truthfully responded that I do not have any personal bitcoin wallet addresses. My veracity and the ethics of my attorney have been unfairly and baselessly challenged because of this response. I again state that I do not use any personal bitcoin wallets and therefore I do not have personal bitcoin wallet addresses. I have never used personal bitcoin wallets. All of my bitcoin transactions are done through centralized exchanges, which do not [...] have individual personal wallets or individually segregated wallet addresses. If the Plaintiff had properly asked me these questions in a deposition, or through interrogatories, I would have properly explained. Plaintiff is well aware of my trading practices and yet continues to embark on a costly fishing expedition to overreach for information out of scope to the spurious allegations in the case at hand.

(NYSCEF Doc. No. 133).

Thereafter, in a letter dated March 10, 2023, from Mr. Zampella to this Court, Mr. Zampella, stated, in pertinent part:

[...] The Court Order requires that we provide "Mr. Zampella's personal Digital wallet addresses..." Mr. Hirsch argues that we have not produced any personal digital wallet addresses. We do not know how else to comply with this request other than by saying **we have produced the only wallet addresses we have**. Mr. Hirsch has misrepresented that wallet addresses are available for these transactions while, in fact, **Kraken does not record historical wallet addresses used for transactions older than 3 months**. See <https://support.kraken.com/hc/en-us/articles/360001369923-Ledger-history-does-not-include-addresses-or-hashes-for-cryptocurrency-deposits-withdrawals> ("Ledger history export files do not show the blockchain addresses or transaction IDs for cryptocurrency deposits or withdrawals.") [...] The facts remain that we complied with the motion to compel by providing **a complete screenshot of the only known transfers of bitcoin from Cottonwood to Mr. Zampella's personal account**. It now appears that Mr. Hirsch also wants Mr. Zampella's personal exchange information. Mr. Zampella does not understand how his personal information is relevant to this case especially in light of the fact that we have provided the information on the the only known transfers that were made from Cottonwood's accounts to Mr. Zampella's personal account.

(NYSCEF Doc. No. 67 [emphasis added]).

Because Mr. Zampella failed to adduce any evidence of the inflows into Cottonwood LLC from himself as directed, this Court entered a sanctions order (NYSCEF Doc. No. 68) dated March 15, 2023, against him where it was "conclusively presumed that the outflows from Cottonwood were outflows that were not a return of bitcoin to Mr. Zampella."

It is now clear that Mr. Zampella's representations to this Court, taken in the light most favorable to Mr. Zampella, were materially misleading. Mr. Zampella had access to the records he was ordered to produce but instead chose not to do so. Among other things, Kraken's website makes clear that a wallet addresses history is readily available upon request (NYSCEF Doc. No. 129 at 7; *id.* at n 2). These records were available and should have been made available pursuant to the

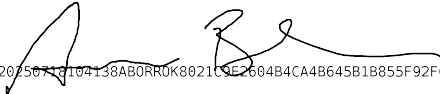
Court’s prior order (NYSCEF Doc. No. 57). As the Court previously explained, it does not matter that Mr. Zampella may be able to demonstrate his ownership to certain of these assets by demonstrating how he himself has acquired them. It is also wrong that the information is irrelevant or a fishing expedition. What remains at issue is the amount of misappropriation and the issue of damages. As such, the motion is granted and Mr. Zampella, Coindado LLC, and Cottonwood Vending LLC’s motion (Mtn. Seq. No. 006) to quash the Subpoena is DENIED.

The Court has considered the defendants’ remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that Mr. Sherman’s motion (Mtn. Seq. No. 005) to compel Kraken to comply with the Subpoena is granted; and it is further

ORDERED that defendants’ motion (Mtn. Seq. No. 006) to quash the Subpoena is denied.


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7/18/2025
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE