

People v Agusta
2026 NY Slip Op 32117(U)
May 5, 2026
Supreme Court, New York County
Docket Number: Index No. 450927/2026
Judge: Gerald Lebovits
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS

PART

07

Justice

-----X

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

INDEX NO. 450927/2026MOTION DATE 03/27/2026MOTION SEQ. NO. 001

Petitioner,

- v -

MICHAEL J AGUSTA,

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 8, 9, 10, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion for

DISCOVERY

Letitia James, Attorney General of New York, New York, NY (Julio Sharp-Wasserman, Karen Cacace, and Young Lee of counsel), for petitioner.

Tarter Krinsky & Drogin, LLP, New York, NY (Alexander Tiktin of counsel), for respondent.

Gerald Lebovits, J.:

Petitioner, the People of the State of New York, acting through Attorney General Letitia James (OAG), brings this special proceeding to compel respondent Michael J. Agusta to comply with a January 2026 testimonial subpoena. OAG also seeks \$5,873.70 in attorney fees and costs as a sanction for Agusta's subpoena noncompliance. Agusta cross-moves to change the venue of this proceeding to Nassau County; or, in the alternative, to modify the subpoena (or require its reissuance) to provide for his testimony to be given in Nassau County rather than New York County.

BACKGROUND

In May 2025, OAG's Labor Bureau began an investigation into Agusta about potential violations of state and federal employment laws. (*See* NYSCEF No. 2 at 3-4 [mem. in support].) OAG served two document subpoenas on Agusta, which have been the subject of extensive dispute between the parties. (*See id.* at 4-6.) In November 2025, OAG served a subpoena for testimony on Agusta, to be given in December 2025 at OAG's Manhattan office. (*Id.* at 6.) Four days after service, Agusta's attorney told OAG that Agusta would only provide subpoenaed testimony in Nassau County, on the ground that Agusta had a health issue that would make travel difficult. (*See id.*) On December 11, 2025, following repeated inquiries by OAG to determine whether Agusta would attend the scheduled December 19 subpoena date, the subpoena hearing

was rescheduled for January 20, 2026. On January 19, Agusta told the chief of the Labor Bureau that no medical issue prevented him from testifying in Manhattan, but that he was not required to do so because the underlying events on which OAG sought his testimony had occurred in Nassau County. (*Id.* at 7.) Agusta did not appear on January 20. (*Id.*)

In February 2026, OAG brought this special proceeding to enforce its testimonial subpoena. OAG now moves to enforce and for an award of sanctions under CPLR 2308. Agusta cross-moves for change of venue and to modify or quash the subpoena.

Agusta's request for a change of venue is denied. OAG's request to compel Agusta to testify is granted, and his request to modify the subpoena to permit him to testify in Nassau County is denied. OAG's request for sanctions is denied.

DISCUSSION

I. Agusta's Cross-Motion to Transfer Venue

Because Agusta's cross-motion to transfer this proceeding to Nassau County would, if granted, render academic the remainder of the motion, this court considers the cross-motion first. The cross-motion to transfer venue is denied.

OAG brought the instant action pursuant to CPLR 2308 (b), which provides that a party issuing a non-judicial subpoena "may move in the supreme court to compel compliance." Because CPLR 2308 (b) is silent as to venue, the general venue provisions in CPLR article 5 apply. CPLR 503 permits laying venue in a county in which either party resided when the action was commenced, or the county in which a substantial part of the events occurred. (CPLR 503 [a].) If petitioner has picked a proper venue, respondent has the "burden to show that plaintiff's choice of venue was improper." (*"Margaret Doe" v Bloomberg L.P.*, 212 AD3d 405, 406 [1st Dept 2023].)

This is a special proceeding to enforce a subpoena. The subpoena was issued by OAG's Labor Bureau, whose office is located in New York County. (*See* NYSCEF No. 37 ¶ 23 n 5.) And it is undisputed that the subpoena was issued from and is returnable in New York County. Thus, for venue purposes, a substantial part of the events underlying this proceeding occurred in New York County. (*See New York Republican State Comm. v New York State Commn. on Govt. Integrity*, 138 AD2d 884, 885 [3d Dept 1988] [holding, in a special proceeding to quash a nonjudicial subpoena, that for venue purposes, the material event underlying the proceeding is the decision-making process in which the determination to issue the subpoena was made; and that this process took place in New York County when the "subpoenas were issued from the Commission's office in that county pursuant to an investigation conducted there"].)

Agusta emphasizes that the facts that OAG sought to investigate through its subpoena—namely how he treated individuals performing work on his house and property—occurred in Nassau County. (*See* NYSCEF No. 35 at 5-6.) In these circumstances, Nassau County would likely be a proper venue for this proceeding, had OAG chosen to bring the proceeding there. But

OAG instead chose New York County. It is therefore Agusta's burden, in cross-moving for change of venue, to show that venue in New York County is *improper*. Agusta has not done so. In particular, Agusta identifies no authority for the proposition that when a party issues a nonjudicial subpoena from its office in County A and makes that subpoena returnable in County A, a proceeding to enforce (or to vacate) that subpoena may not be venued in County A if the subpoena seeks answers about conduct that was (or might be) occurring in County B.

Agusta's cross-motion to change the venue of this proceeding is denied.

II. OAG's Motion to Compel Compliance with its Subpoena

OAG moves for an order compelling Agusta to testify in Manhattan pursuant to the subpoena served on him. (NYSCEF No. 1.) Agusta argues that this court should quash or modify the subpoena under CPLR 2304 to change the place of his testimony to Nassau County. (*See* NYSCEF No. 35 at 10-12.) This argument is unpersuasive.

OAG has the power to issue subpoenas, including the testimonial subpoena at issue here. (CPLR 2302 [a].) Agusta does not argue that the "the futility of the process to uncover anything legitimate is inevitable or obvious" or that the information sought is utterly irrelevant to any proper inquiry," as required to warrant quashing the subpoena. (*Matter of Empire Wine & Spirits LLC v Colon*, 145 AD3d 1157, 1159 [3d Dept 2016] [internal quotation marks omitted].) At most, Agusta argues that he is "ready, willing, and able to testify in Nassau County" and that OAG's effort to "[r]equir[e] Manhattan testimony in these circumstances serves only [OAG's] preference, not any identified case-specific necessity." (NYSCEF No. 22 at 11.) But Agusta does not claim that OAG lacks the power under article 23 of the CPLR to insist on its preferred place of testimony. Nor has Agusta has not articulated any reason (medical or otherwise) why it would be unduly burdensome on him to have to travel to Manhattan to testify.

In these circumstances, the court declines, in its discretion, to modify the subpoena to provide for testimony in Nassau County. Agusta must, within 14 days of entry of this order, appear and give testimony at the location specified in the underlying subpoena.

OAG also seeks sanctions against Agusta, on the ground that he opted not to respond to the subpoena and instead waited for OAG to bring this enforcement proceeding. The sanctions request is denied. (*See Irizarry v New York City Police Dept.*, 260 AD2d 269, 271 [1st Dept 1999] ["[W]here a non-judicial subpoena is served, one need not move to quash to avoid sanctions [but may] safely wait until the party who served the subpoena moves to compel compliance."].)

Accordingly, it is

ORDERED that the branch of Agusta's cross-motion seeking to change the venue of this proceeding to Nassau County is denied; and it is further

ORDERED that the branch of OAG's motion to enforce its testimonial subpoena on Agusta is granted, and Agusta must appear and give testimony at the location specified in the subpoena within 14 days of entry of this order; and it is further

ORDERED that the branch of Agusta's cross-motion to quash or modify the subpoena to change the place of testimony to Nassau County is denied; and it is further

ORDERED that the branch of OAG's motion seeking under CPLR 2308 an award of attorney fees and costs stemming from Agusta's subpoena noncompliance is denied.

5/5/2026

DATE


 HON. GERALD LEBOVITZ
 J.S.C.

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE