

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

**PRESENT: HON. ARTHUR ENGORON PART 37**

*Justice*

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

Plaintiff,

INDEX NO. 451685/2020

MOTION DATE 04/11/2022,  
04/11/2022

MOTION SEQ. NO. 010, 011

- v -

THE TRUMP ORGANIZATION, INC., DJT HOLDINGS LLC,  
DJT HOLDINGS MANAGING MEMBER LLC, SEVEN  
SPRINGS LLC, ERIC TRUMP, CHARLES MARTABANO,  
MORGAN, LEWIS & BOCKIUS LLP, SHERI DILLON,  
DONALD J. TRUMP, IVANKA TRUMP, DONALD TRUMP,  
JR., and CUSHMAN AND WAKEFIELD, INC.,

Defendants.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 010) 676, 677, 678, 679, 698, 700, 701, 727, 745

were read on this motion to SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 011) 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 699, 702, 703, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757

were read on this motion to COMPEL

Upon the foregoing documents, it is hereby ordered that the motions of petitioner to amend its caption to include Cushman and Wakefield, Inc. (hereinafter, "C&W") as a respondent, to compel C&W to comply with investigatory subpoenas, and to allow petitioner to file certain supporting documents *in camera* are granted, and C&W's cross-motion to quash is denied.

Background

This special proceeding, familiarity with which the Court will assume, arises out of an investigation commenced by petitioner, the People of the State of New York, by Letitia James, Attorney General of the State of New York (hereinafter, "OAG"), into the financial practices of respondent the Trump Organization, its employees, and its affiliates. Specifically, OAG is investigating whether respondents misstated the value of certain assets on annual financial statements, loan applications, and tax submissions, and whether respondents made other material misrepresentations to third parties to secure favorable loan terms and insurance coverage as well as to obtain tax and other economic benefits. One such affiliate that OAG is investigating is the Trump Organization's former appraiser, C&W.

As here relevant, OAG served subpoenas on C&W on September 20, 2021, and on February 16, 2022. The September 2021 subpoena sought information and documents arising out of C&W's relationship with the Trump Organization, including information concerning the work performed by C&W, the revenue derived from that work, and documents stemming from its decision to terminate its relationship with the Trump Organization. The February 2022 subpoena sought additional appraisals from five C&W appraisers who had prepared reports for the Trump Organization.

C&W partially responded to the subpoenas. However, on March 23, 2022, C&W advised OAG that it would not respond to the remaining outstanding requests. By letter dated March 28, 2022, C&W raised a host of objections to the subpoenas and further stated that "its response to the non-objectionable portions of [OAG's] subpoenas is complete." NYSCEF Doc. No. 694.

OAG has moved to compel compliance with the subpoenas, and to add C&W as a respondent in this proceeding. OAG has also moved to permit certain documents to be filed *in camera*. C&W has cross-moved to quash the subpoenas.

#### Discussion

Executive Law § 63(12) empowers OAG to bring a proceeding "[w]hensoever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business." The statute defines "fraud" to include "any device, scheme, artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions."

When evaluating the merits of a subpoena issued by a governmental investigatory body, such as OAG, controlling case law requires a court to determine whether the subpoena seeks information "utterly irrelevant" to the investigation. La Belle Creole Int'l, S.A. v Att'y Gen., 10 NY2d 192, 196 (1961); Application of Dairymen's League Co-op. Ass'n, 274 AD 591, 595 (1st Dep't 1948) ("[a] subpoena duces tecum of the Commissioner of Investigation may not be vacated unless the person subpoenaed can demonstrate that it calls for documents which are utterly irrelevant to any proper inquiry"). See generally, In re Edge Ho Holding Corp., 256 NY 374, 382 (1931) (Cardozo, J.) ("[o]nly where the futility of the process to uncover anything legitimate is inevitable or obvious must there be a halt upon the threshold").

Here, OAG has satisfied its burden of demonstrating that the materials sought from C&W are not "utterly irrelevant" to its inquiry. As OAG persuasively argues, "[i]t is plainly germane to an inquiry into choices related to key appraisal variables whether the same appraisers made similar or different choices for other clients in comparable circumstances." NYSCEF Doc. No. 681. For example, although appraisals of adjacent buildings on the same date will be completely different based on their respective sizes, ages, conditions, occupancies, the assumptions for the rate of inflation should be the same.

C&W's argument that compliance with the subpoena will result in "harm to [C&W's] business relationships with a significant number of clients unrelated to [the Trump Organization]" because it would violate its confidentiality agreements is unavailing, as New York law does not allow

entities like C&W to contract away its responsibilities to produce documents to law-enforcement authorities. People v McQueen, 125 NYS3d 838 (Sup Ct, NY County 2020) (holding to allow a company “to shield its conduct through the use of an NDA would frustrate OAG’s regulatory and law enforcement duties” and that “[a]greements against public policy are illegal, void, and unenforceable”).

Further, C&W’s argument that enforcement of the subpoena would be futile because any action against C&W would be time-barred under the applicable statutes of limitations is incorrect as a matter of law. Big Apple Concrete Corp. v Abrams, 103 AD2d 609, 615 (1st Dep’t 1984) (“the fact that an action may be barred for violations which occurred during the period covered by the records requested pursuant to a subpoena does not of itself render these records irrelevant”).

Additionally, as OAG states, it has an independent investigative interest in determining whether there was a pattern and practice at C&W of failing to adhere to its internal quality control practices. Moreover, this Court has reviewed numerous documents *in camera* demonstrating that C&W was not consistent in adhering to its internal quality control practices when conducting appraisals on behalf of the Trump Organization. Accordingly, it is within OAG’s purview to investigate C&W’s appraisals to determine if C&W has appropriately and accurately disclosed to regulators and other governmental authorities whether its internal quality controls were followed.

Thus, OAG has demonstrated that C&W should be added as a respondent to this special proceeding, and that C&W must comply in full with the subpoenas issued to C&W.

OAG’s motion to file certain documents *in camera* is granted, as “[t]he Attorney General may, as he offered to do here, proffer the factual basis for the investigation by an *in camera* showing, as well as by affidavit.” Am. Dental Co-op., Inc. v Att’y Gen. of State of N.Y., 127 AD2d 274, 280 (1st Dep’t 1987).

The Court has considered C&W’s other arguments and finds them to be unavailing and/or non-dispositive.

Thus, for the reasons stated herein, OAG’s motions to amend its caption to include C&W as a respondent, to compel C&W to comply with investigatory subpoenas, and to allow petitioner to file certain supporting documents *in camera* are granted, and C&W must comply, in full, with the subpoenas by May 27, 2022; and C&W’s cross-motion to quash is denied.

<u>4/27/2022</u> DATE	<u>ARTHUR ENGORON, J.S.C.</u>			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input 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	