

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** IAS MOTION 37EFM

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,

- 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,

**DECISION + ORDER ON
 MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 257, 258, 259, 260, 261, 262, 263, 264, 265, 267, 268, 269, 271, 272, 273, 274, 275, 276

were read on this motion to/for

REARGUE

Upon the foregoing documents, it is hereby ordered that the motion by respondents The Trump Organization, Inc. (“TTO”), Eric Trump, and Charles Martabano to reargue that part of this Court’s Decision and Order of 9/23/2020 (NYSCEF Doc 254) (“the prior decision and order”) that found that Mr. Martabano had waived the attorney-client and/or work product privileges of documents in his possession that he received or generated in the course of his legal representation of TTO and that were subject to a subpoena from petitioner, by not providing an adequate privilege log “despite repeated opportunities and attempts” (*id.* at 2), is granted, and Mr. Martabano, who apparently (or at least allegedly) has turned over said documents to this Court for an *in-camera* privilege review, need not turn them over directly to petitioner.

CPLR 2221(d) provides, in relevant part, that a motion for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion.” See generally Foley v Roche, 68 AD2d 558, 567-68 (1st Dept 1979). In the prior decision and order, this Court relied heavily on Anonymous v High Sch. For Env'l. Studies, 32 AD3d 353 359 (1st Dept 2006) for the general proposition that failure to produce an adequate privilege log timely waives the privilege. As a general proposition, that is the law. However, this Court overlooked (or “misapprehended”) two distinguishing features between that case and the instant one: in that case, the respondent was much more recalcitrant than Mr. Martabano has been; and in that case the subject attorney still represented the subject client (note that just when Mr. Martabano ceased representing TTO is not completely clear). Here, movants have already turned over hundreds of documents and have convinced the Court that technical challenges made compliance more difficult.

Hornbook law holds that only a client can waive a privilege. Mr. Martabano and his counsel may not have been, indeed, were hardly, punctilious in responding to the subject subpoenas, but not to the extent that a former client's allegedly privileged documents should be produced en masse, without an *in-camera* review. "Let the punishment, fit the crime; to err is human, to forgive is divine."

Petitioner points out that the subject subpoenas were issued many months ago, since which time petitioner has been attempting, through "good faith" negotiations, to obtain the documents to further the subject probe. Obviously, petitioner could have come to court months ago to seek to compel compliance (which should not at all be taken as a criticism, just an observation).

Thus, the instant motion to reargue is granted, and that part of the prior decision and order (NYSCEF Doc 254) that directed Mr. Charles Martabano to produce to petitioner the subpoenaed documents in his possession is hereby vacated, with any responsive documents to be turned over to this Court for *in camera* review if not already done so.

10/7/2020

DATE

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CASE DISPOSED

GRANTED

 DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

ARTHUR F. ENGORON, J.S.C.

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NON-FINAL DISPOSITION

GRANTED IN PART

 OTHER

SUBMIT ORDER

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FIDUCIARY APPOINTMENT

REFERENCE