

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE:

SEALED ORDER NO. 1
(To be available only
to the government)

15-MC-2227

BROOKLYN OFFICE

★ DEC 03 2015 ★
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

GRAND JURY INVESTIGATION
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Jack B. Weinstein U.S. Senior District Judge:

1. The government in an ex parte application has requested the court to determine whether specified emails sought in connection with a pending Grand Jury investigation have been appropriately redacted. *See* Ct. Exhs. 1, 5, 6, 10.
2. The company (“company”) in possession of the documents has redacted them on the theory that they may contain information exchanged between a former employee (“employee”) and a former attorney (“attorney”), and are covered by an attorney-client privilege of the employee.
3. The court finds they were not subject to an attorney-client privilege of the employee. The employee was warned by the company that the documents created during employment were company property. *See* Ct. Exh. 1, 7, 11. As company documents they would not be subject to a privilege between the employee and an attorney acting for the employee and also for the company.
4. The company has waived its own attorney client privilege with the attorney. *See* Ct. Exhs. 2, 11. The company will redact the outlined portions of documents 54, 67, 82, 96, 128 and control No. RPO1494264. The outlined portions may be redacted before delivery of the documents to the government.
5. For purposes of this application to unseal, exchanges in redacted emails between the attorney and employee were part of a scheme, conspiracy or fraudulent attempt to commit a

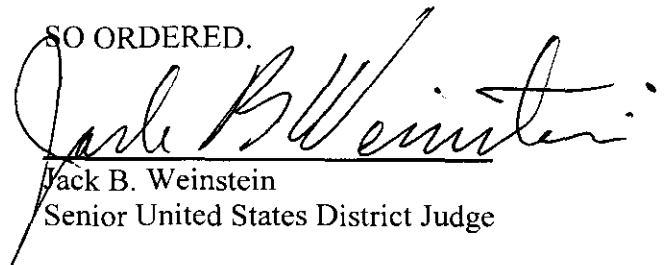
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securities fraud. The attorney-client relationship and privilege, if any, is voided by the criminal
conduct (“Cr”). *See* Court Exh. 10. Alternatively, they concerned company business (“Cobus”),
not subject to a personal privilege. In some cases they were not privileged because of Cr and
Cobus.

6. Without a full understanding of details of the alleged crimes involved, and the benefit of
having interested parties explain the nature, and purpose, of each email and how it fits into a
criminal story or the ordinary operation of a lawful security business, it is not possible to decide
that it is more likely than not that the documents were Cr or Cobus related. *See* sealed appendix
A, in box marked “Sealed,” not to be opened without court order. The court finds the documents
sought are sufficiently probably Cobus or Cr, or both, not privileged to the employee for Grand
Jury purposes.

7. The evidence examined by the court (including Ct. Exh. 6) sufficiently meets the
standard set out by the Court of Appeals for the Second Circuit to establish that the Crime-fraud
and business document findings in paragraph 6 have been established. *See United States v.*
Jacobs, 117 F.3d 2, 87 (2nd Cir. 1997); In re Grand Jury subpoenas dated March 2, 2015, No. 15-
1976, 2015 WL 5806060 at *2 (2nd Cir. Oct. 6, 2015).

8. The company shall furnish the government for use by the grand jury with unredacted
copies of all documents in court exhibit 10, except for the portions redacted in accordance with
paragraph 4, above. The employee is entitled to no redactions.

SO ORDERED.



Jack B. Weinstein
Senior United States District Judge

Date: December 3, 2015
Brooklyn, New York