

Aurateq systems Int'l Inc. v. Black-NYC LLC, 114692/07
Decided: October 28, 2008

Justice Sheila Abdus-Salaam

NEW YORK COUNTY
Supreme Court

Justice Abdus-Salaam

It is ordered that this motion by the law firm of Cox Padmore Skolnik & Shakarchy, counsel who represented respondent Three Good Fellows, Inc. in the special proceeding, for an order quashing or modifying the information subpoena is denied, as is the related motion by the law firm for a protective order limiting the information sought in the information subpoena (seq. 003). The cross-motion by petitioner for an order citing the law firm in contempt for failing to comply with the information subpoena is denied.

Petitioner Aurateq obtained a judgment confirming the arbitration award against respondents and judgment was entered against respondents in the amount of \$393,772. 81. Aurateq has served subpoenas duces tecum upon the judgment debtors and information subpoenas upon the law firm seeking information regarding the debtors' transfer of money, their assets, the names of their officers, directors and shareholders and the current address and telephone numbers of David Marvisi, Goodfellows' principal. The firm has asserted an attorney-client privilege with respect to items six through ten of the information subpoena. However, the firm has not met its burden of showing that the information is protected.

"A client cannot assert the attorney-client privilege as to documents in the lawyer's possession if they were not prepared for litigation or for the purpose of seeking or imparting legal advice and they are not otherwise subject to a privilege against disclosure. The mere circumstance that the documents were revealed in confidence to a lawyer does not of itself transform the papers into privileged communications." ([Matter of Bekins Record Storage Co., 62 NY2d 324 \[1984\]](#)). The sixth request seeks information regarding transfers of money to and from the debtors after commencement of the action and the seventh request seeks identification of all assets of the judgment debtors. The ninth request asks for the name of each corporation, partnership and

limited liability company owned by David Marvisi, or in which he owns an equity interest of forty-nine percent or more, as of December 31, 2004. The firm has claimed that to the extent that it has this information, it would have been given to the firm in confidence. However, the information sought is commonly found in either bank or other financial records and in documents submitted to governmental agencies. A corporation cannot "funnel" its records and documents into the hands of its attorneys and then claim privilege (see [People v. Belge](#), 59 AD2d 307 [1977], citing [Radiant Burners, Inc. v. American Gas Ass'n](#), 320 F.2d 314, 324 [7th Cir. 1963], cert denied 375 US 929 [1963]). The firm has not shown that any of this information is protected by the attorney-client privilege.

The eighth and tenth requests seek addresses and telephone numbers for the corporate shareholders, officers and members and David Marvisi. While the firm has cited to some lower court decisions holding that a client's address is privileged (see e.g. [Boller v. Barulich](#), 147 Misc. 2d 502 [1990]; [The Art Board, Inc. v. Worldwide Business Exchange Corp.](#), 134 Misc. 2d 350 [1986]; [Potamkin Cadillac Corp. v. Karmgard](#), 100 Misc. 2d 627 [1979]), those cases are at odds with the principle, enunciated by the Court of Appeals in [Spectrum Systems International Corporation v. Chemical Bank](#) (78 NY2d 371 [1991]) that "[i]n order for the privilege to apply, the communication from attorney to client must be made "for the purpose of facilitating the rendition of legal advice or services, in the course of a professional relationship." ([Rossi v. Blue Cross & Blue Shield](#), 73 NY2d 588, 593, 542 NYS2d 508, 540 NE2d 703.) The communication itself must be primarily or predominantly of a legal character (*id.*, at 594, 542 NYS2d 508, 540 NE2d 703)." (78 NY2d 771, 377-378). There has been no showing that information imparted by the respondents or Mr. Marvisi to the firm regarding addresses and phone numbers was a communication primarily of a legal character.

Based upon the foregoing, the firm is directed to comply with the information subpoena within 20 days after service of a copy of this order with notice of entry.