

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

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SAMUEL D. NUNBERG,	:	Index No.
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Petitioner,	:	
	:	
- against -	:	AFFIDAVIT OF
	:	SAMUEL D. NUNBERG
	:	IN SUPPORT OF
DONALD J. TRUMP FOR PRESIDENT, INC., and	:	STAY OF ARBITRATION
TRUMP 2012 PCA	:	<u>PROCEEDINGS</u>
	:	
Respondent.	:	

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STATE OF NEW YORK)
 :
 : ss.:

COUNTY OF NEW YORK)

1. I am the Petitioner in this proceeding. I make this affidavit based upon my personal knowledge in support of my application pursuant to CPLR § 7503(b) for a stay of the arbitration proceeding improperly commenced against me by Trump 2012 PCA (“Trump Campaign”), without legal or factual basis.

2. I am a political consultant and solely in that capacity I first provided consulting services to Donald J. Trump (“Mr. Trump”) through a third party consulting company from January 2011 through December 2012, and then directly retained as an independent contractor with the now defunct and non-existent Trump 2012 PCA. In 2016, I was paid by “Trump 2016 PCA” and the “Donald J. Trump Exploratory Committee. Trump 2012 PCA, as a fictitious entity, may not legally conduct business or maintain a suit under General Obligations Law § 130.

3. Then I continued providing political consulting services to Mr. Trump though the Consulting Agreement, dated as of April 14, 2015, that I entered into with The Donald J. Trump

Exploratory Committee (Exhibit “A”) (the “Consulting Agreement”), pursuant to which I was retained as a political consultant during the period between April 14, 2015 and August 3, 2015.

4. The Consultant Agreement, which was drafted by the Exploratory Committee’s attorneys, has a clear and unambiguous forum selection clause that mandates that all disputes must be heard in court, providing as follows:

11. Disputes. This Agreement will be governed by the law of the State of New York State. Any dispute relating to this agreement may be resolved only in a federal or state court sitting in New York State and you hereby submit to the jurisdiction of such courts and IRREVOCABLY WAIVE YOUR RIGHT TO TRIAL BY JURY (i.e., you agree that a judge and not a jury will hear and decide the case.

5. Despite the fact that I have no written agreement to arbitrate with the Trump Campaign and the controlling Consulting Agreement requires that disputes be heard in a New York Court, in retaliation for my change of political opinion and the free exercise of my First Amendment right to abandon my political backing of Mr. Trump and to endorse and associate with U.S. Senator Ted Cruz publicly, which I did, the Trump Campaign is attempting to bring a frivolous and retaliatory arbitration proceeding against me essentially to punish me and shut me up.

6. Further, the Trump Campaign is misguidedly and improperly attempting to use the sword of a private arbitration proceeding against me to silence media coverage of a loud and angry argument on a public street between its former campaign manager, Corey Lewandowski (“Terminated Campaign Manager”) and a female Trump Campaign staffer, concerning their sordid and apparently illicit affair, which on information and belief, was witnessed by another Trump Campaign staffer, as reported in the *New York Post*, Page Six, on May 19, 2016 in an article entitled “*Trump Campaign Staffers Get into Public Screaming Match*” by Emily Smith. A copy of the article is annexed hereto as Exhibit “B”.

7. Upon information and belief, that “lovers’ quarrel” occurred in public on 61st Street and Third Avenue, New York, New York, near the Terminated Campaign Manager’s apartment, and it was witnessed by persons other than me who, as reported in the article, confirmed the incident to the *New York Post*. Upon information and belief, Michael C. Bender, a political journalist employed by Bloomberg Politics, also witnessed the incident.

8. I did not provide the *New York Post* with any information concerning that embarrassing and lurid event. Further, even had I witnessed or learned of it in May 2016, long after my Consulting Agreement had been terminated, nothing would prevent me from doing so since such a public inappropriate display by the former campaign manager and, upon information and belief, his paramour, had nothing to do with any confidential information derived by me from my contractual relationship with the Exploratory Committee or Mr. Trump. These events occurred outside the scope of my contractual relationship with the Exploratory Committee or Mr. Trump.

9. In sum, there is no basis for the Trump Campaign to harass me with a frivolous arbitration proceeding seeking \$10 million to be awarded to it against me by an arbitrator with absolutely no good faith basis in law or fact. I would hope the Trump Campaign can raise funds in a more traditional and practical manner. In any event, I have not agreed to any agreement with the Trump Campaign to arbitrate.

10. I am ready, willing and able to defend myself against such claims in Court, where I will be afforded due process and the ridiculous nature of the Trump Campaign’s irrational and vindictive assault against me simply for exercising my fully justified and constitutionally protected rights to change political allegiance and vote as I chose can be displayed to the public.

FACTUAL BACKGROUND

11. My relationship with Mr. Trump started on or about June, 2011 through Drake Ventures, Inc. At that time, as an independent contractor, I ghost wrote many of Mr. Trump's political tweets during the period in which his followers increased from 500,000+ to over 6,000,000. I also consulted with Mr. Trump directly on his scheduling of political events, briefings and suggested talking points for interviews as well as helping to build Mr. Trump's political profile.

12. My relationship with Mr. Trump changed in January 1, 2014 when I worked directly as an independent consultant at will for Trump 2012 PCA without a contract and my duties remained the same. I also began to travel with Mr. Trump to his political events where he gave speeches and held press conferences. During that period, it was clear that Mr. Trump planned to seek the Republican Party's nomination for the President of the United States in the 2016 primary. As that occurred, I personally developed major themes, pledges and policy points for his candidacy along with developing messaging, which detailed the sharp contrasts to his political rivals. This advice was instrumental in Mr. Trump becoming the presumptive nominee of the Republican Party.

13. In or about the summer of 2014, Mr. Trump and I agreed that I would assist in recruiting political operatives for his anticipated campaign. Mr. Trump even offered the position of Campaign Manager to me which I declined. Instead, we came to an understanding that I would work as a lead strategic advisor with a concentration on the communications, policy and opposition research of his campaign.

14. During the course of that consulting relationship, on January 1, 2015, at Mr. Trump's request, I executed a Confidentiality Agreement, a copy of which is annexed as Exhibit "C."

15. I participated in recruiting the Terminated Campaign Manager, who was terminated by Mr. Trump on June 20, 2016, who Mr. Trump and I agreed would have distinct responsibilities from mine, and with my input the Terminated Campaign Manager was hired. Unfortunately, soon after his employment, discord developed in the campaign as the Terminated Campaign Manager began a campaign to oust any competing voices within the developing campaign. The Terminated Campaign Manager also sought to create a wall between Mr. Trump and all campaign staffers.

16. Despite the Terminated Campaign Manager's efforts to silence competing voices, I persisted in providing Mr. Trump with objective assessments and advice. Because of the tremendous risk Mr. Trump was taking in running for the presidency, it was my duty to give frank advice. My advice was often contrary to that provided by the Terminated Campaign Manager to Mr. Trump, which the Terminated Campaign Manager did not appreciate. At all times, the advice I provided Mr. Trump was in my opinion to his best interest. Unlike the Terminated Campaign Manager, I was not a "Yes Man" in my frank meetings with Mr. Trump. Eventually this rift led to my termination.

17. After the Terminated Campaign Manager had ingratiated himself to Mr. Trump by being a sycophantic "Yes Man," he contrived and made false accusations against me to Mr. Trump which ultimately resulted in the termination of my at-will consulting relationship with Trump 2016 PCA in or about late February 2015.

18. However, after a period of six weeks, I was once more retained pursuant to the Consulting Agreement on April 15, 2015 after I explained to Mr. Trump's satisfaction that I had been improperly terminated by the Terminated Campaign Manager based upon false information.

19. Although my Facebook posts were available at all times during my prior employment with Mr. Trump and Trump 2012 PCA, in or about late July, 2015, the Terminated Campaign Manager used as a pre-text an eight year old Facebook post to have me terminated. Upon information and belief, the Terminated Campaign Manager and other staff members colluded to leak the Facebook post to the press. My termination was at-will and without any cause as expressed by the Exploratory Committee in an email from David Cohen, an assistant general counsel of The Trump Organization (Exhibit "D"). The email states:

Mr. Nunberg:

Reference is made to that certain Consulting Agreement dated April 14, 2015 by and between Samuel Nunberg and Donald J. Trump Exploratory Committee, as amended by that certain Amendment to Consulting Agreement dated as of May 12, 2015 (the "Consulting Agreement").

Reference is also made to that certain Agreement dated January 1, 2015 (the "Confidentiality Agreement") between Trump 2012 PCA and Samuel Dan Nunberg, which Confidentiality Agreement survives the termination of the Consulting Agreement and of which Donald J. Trump, among others, is an express third party beneficiary.

The Consulting Agreement is hereby terminated effective immediately upon the giving of this notice. Be reminded that the Confidentiality Agreement continues to bind you. The Confidentiality Agreement expressly survives the termination of the Consulting Agreement pursuant to Section 10 of the Confidentiality Agreement and Section 8 of the Consulting Agreement. Note further that the Confidentiality Agreement imposes additional obligations and restrictions upon you in addition to confidentiality. The Confidentiality Agreement will be strictly enforced.

David Cohen

20. After my termination of employment, I continued to develop my political consulting activities which I was not restricted from doing under the Consulting Agreement or otherwise.

21. I continued to keep abreast of the developments in the presidential campaign including following Mr. Trump's public statements made in campaign appearances, interviews and debates. These public remarks made by Mr. Trump, in which I took no part in developing or advising, lead me to my personal opinion that the Republican Party would be better served with U.S. Senator Ted Cruz as its nominee for the presidency of the United States. Senator Cruz expressed a much more coherent, principled and conservative ideology as well as policies as compared to Mr. Trump.

22. My public pronouncement in Politico Playbook on March 28, 2016, a copy of which is annexed as Exhibit E, I am quoted as follows:

EXCLUSIVE: Sam Nunberg, 34, fired Trump aide, frequent reporter-whisperer, and available pundit (lives on Upper East Side), endorses CRUZ: "Cruz is a Reagan Conservative. Donald Trump does not have a coherent political ideology – if anything, I would describe him as a Chris Christie Republican. ... When did I decide that I could no longer support Trump? Last fall, when he did not have any idea of what the nuclear triad is in a debate. I was concerned but I figured that he would bulk up on policy ... He has not. I do not see a candidate who takes these issues seriously.

... The last straws were the KKK Tapper interview, telling Morning Joe 'I am really good at this stuff' on foreign policy when he is not ...

"If an open convention was good enough for Lincoln, Eisenhower, Nixon and Ford, it is good enough even for the great Donald Trump. If Trump's opponent had 1,236 delegates and he had 1, he would be demanding a brokered convention."

23. Although nothing restricted my ability to associate with another presidential campaign; there is nothing disparaging in my remarks towards Mr. Trump; and it is my

constitutionally protected right of free speech, political speech and freedom of association under the United States Constitution and New York State Constitution, apparently the Trump Campaign has taken the position by virtue of commencing arbitration against me that this a breach of my Consulting and Confidentiality Agreements.

24. Nevertheless, on May 28, 2016, I was served with a Statement of Claim by the Trump Campaign in which I am falsely accused of breaching the Consulting and Confidentiality Agreements by virtue of my exercise of my constitutionally protected rights. A copy of the Statement of Claim dated May 28, 2016 is annexed as Exhibit “F.” Paragraph 19 of the Statement of Claim sets forth the Trump Campaign’s chagrin against my announcement “backing Mr. Trump’s primary rival, Senator Ted Cruz, for the Republican nomination for the presidency of the United States.”

25. Not only is the exercise of my constitutional rights not subject to any arbitration agreement by the Trump Campaign with which I have no written agreement to arbitrate, the Trump Campaign should not be permitted to bootstrap arbitration upon me under the Consulting Agreement because pursuant to Paragraph 11 of the Consulting Agreement quoted above, such vindictive and frivolous claims made in bad faith against me must be pursued in a New York State Court. I never agreed, and I am not bound to defend myself against these retaliatory claims in which the Trump Campaign is seeking at least \$10 million in damages against me in the Star Chamber of arbitration.

26. The only other claim cited with particularity is in paragraph 17 of the Statement of Claim filed by Trump 2012 PCA which states: “Two months later, in a May 25, 2016 *Politico* article, it was reported that Mr. Nunberg had leaked information concerning an alleged confrontation between two campaign staffers to the *New York Post*. See Kenneth P. Vogel and

Ben Schreckinger, *Trump Campaign Rift Gets Personal*, Politico (May 25, 2016), <http://www.politico.com/story/2016/05/trump-campaign-manafort-lewandowski-223532> (the "Politico Article")." A copy of the Trump 2012 PCA Statement of Claim is annexed as Exhibit "G." May 25, 2016 Politico article is annexed as Exhibit "H."

27. Contrary to being "caught red handed," as set forth in the May 25, 2016 Politico article, I did not admit to being a source of the incident between the former Campaign Manager and another staffer in the Trump Campaign. Moreover, since this tawdry public incident between Mr. Lewandowsky and a female Trump Campaign staffer occurred well-after the termination of my Consulting Agreement with the Trump Exploratory Committee, I could not have possibly "leaked" any confidential or other campaign information since I was not privy to any confidential or other information from the Campaign.

28. The *New York Post* article, as reflected in Exhibit "B" hereto, indicates that there were numerous witnesses of the incident which occurred on a public street in New York City for all to see. The article itself quotes three sources and other "onlookers," none of which are me.

29. Not only are these allegations completely meritless, any allegations that I communicated to the *New York Post* concerning this public incident, which I deny categorically, are outside the scope of both the Confidentiality and Consulting Agreements and are not arbitrable thereunder. In fact, two of the sources in the article appear to be current campaign staffers who attempt to spin the argument outside the former Campaign Manager's residence between an irate female campaign staffer and the former Campaign Manager.

30. The Statement of Claim asserts claims on behalf of the Trump 2012 PCA. Trump 2012 PCA does not have anything to do with the Trump Campaign during this presidential cycle. In fact, Trump 2012 PCA is not even listed in the New York State Department of Corporations

database. The sole entity that I am contracted to in connection with the Trump 2016 campaign is the Exploratory Committee. The Consulting Agreement requires in Paragraph 11 that all disputes thereunder be heard only in a federal or state court sitting in New York State.

31. Moreover, while the Consulting Agreement, which was drafted by the Exploratory Committee's counsel, refers to and incorporates the Confidentiality Agreement in Paragraph 8 thereof, I did not intend to incorporate into the Consulting Agreement the inconsistent arbitration provision contained in the Confidentiality Agreement. I accepted the forum selection clause in the Consulting Agreement calling for resolution of disputes only in a New York court, with due process protections, and by entering into that subsequent and superseding agreement I did not agree to proceed in a private arbitration proceeding.

32. I should not be deprived of my Due Process rights available in a court of law. I am entitled to the panoply of procedural safeguards available to me in court, including the right to appeal, and there is no valid agreement requiring me to arbitrate the matters raised by the Trump Campaign.

WHEREFORE, I respectfully request pursuant to CPLR § 7503(b) that the Court temporarily stay the arbitration before the American Arbitration Association commenced by Respondent, Donald J. Trump For President, Inc., as described in the Statement of Claim on the grounds that a valid agreement to arbitrate was not made between Respondent and Petitioner pending the determination of this proceeding and upon the final determination of this matter enter judgment permanently staying the arbitration, and grant such other and further relief as is just and proper.



SAMUEL D. NUNBERG

Sworn to before me this
17th day of July, 2016.



Notary Public

OMAR F. MCKENZIE
Notary Public, State of New York
Reg. No. 01MC6337492
Qualified in New York County
Commission Expires February 29, 2020