

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

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SAMUEL D. NUNBERG,

Index No.

Petitioner,

**PETITION**

- and -

DONALD J. TRUMP FOR PRESIDENT, INC. and  
TRUMP 2012 PCA,

Respondents.

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**TO THE SUPREME COURT OF THE STATE OF NEW YORK:**

Petitioner, Samuel D. Nunberg, by his attorneys, Nessenoff & Miltenberg LLP, complaining of the unauthorized Demand for Arbitration served by the Respondent, Trump 2012 PCA on behalf of Respondent, Donald J. Trump for President, Inc., alleges:

1. This proceeding is brought to stay the unauthorized arbitration commenced on behalf of Donald J. Trump For President, Inc., the corporate entity through which Donald J. Trump is conducting his 2016 presidential campaign, by a fictitious entity named "Trump 2012 PCA," which upon information and belief, lacks capacity to contract or sue.

2. Under the pretext of a confidentiality provision contained in a purported agreement between an entity named Trump 2012 PCA and Petitioner, Samuel D. Nunberg ("Mr. Nunberg"), Donald J. Trump For President, Inc. is attempting to chill Mr. Nunberg's constitutionally protected rights of free speech and association while also interfering with his political consulting business activities.

3. The allegations in the Statement of Claim arise out of political free speech that allegedly occurred in the 2016 presidential campaign cycle, having nothing to do with the 2012 presidential campaign for which, upon information and belief, Trump 2012 PCA was improperly used.

4. Unfortunately, Donald J. Trump For President, Inc., with whom Mr. Nunberg has no agreement to arbitrate, is attempting to bully Mr. Nunberg into silence, although he has not disparaged Mr. Trump or any other entity referred to in the Agreement.

5. Mr. Nunberg (“Mr. Nunberg”), is a resident of New York County in the State of New York.

6. Upon information and belief, Respondent, Donald J. Trump for President, Inc. (the “Trump Campaign”), is a corporation duly organized under the laws of Virginia in 2016 and is authorized to do business as a foreign corporation in the State of New York with a principal place of business at 725 Fifth Avenue, New York, New York 10022.

7. The primary purpose of the Trump Campaign is to support and pursue the 2016 presidential candidacy of Donald J. Trump (“Mr. Trump”), who is the presumptive nominee of the Republican Party, for the Office of President of the United States.

8. Trump 2012 PCA is a fictitious entity, which upon information and belief, has been conducting business illegally in violation of New York General Obligation Law § 130.

9. Upon information and belief, Mr. Trump utilized this fictitious entity improperly in violation of New York General Obligation Law § 130 when he toyed with running for president during the 2012 presidential campaign cycle, but he did not proceed as a candidate.

10. Upon information and belief, the fictitious entity, Trump 2012 PCA, was not used by Mr. Trump in connection with the 2016 presidential campaign, and it would be inappropriate

and confusing for Mr. Trump to do so for purposes of the 2016 presidential campaign cycle and pursuant to the Federal Election Laws and its reporting requirements governing campaign finances during the 2016 presidential campaign cycle.

11. Mr. Nunberg is a political consultant and in that capacity was first retained to provide consulting services directly to Mr. Trump through a consulting company from January 2011 through December 2012 and then directly as an independent contractor during the period between January 2013 and April 2015 (except for a short hiatus in February and March 2014 as well as March 2015).

12. Mr. Nunberg thereafter entered into the Consulting Agreement, dated as of April 14, 2015, between The Donald J. Trump Exploratory Committee (the “Exploratory Committee”) and Mr. Nunberg (the “Consulting Agreement”) (Exhibit “A”), pursuant to which Mr. Nunberg continued to provide political consulting services directly to Mr. Trump during the period between April 14, 2015 and August 3, 2015, when the at will Consulting Agreement was terminated without cause.

13. The Exploratory Committee is a separate and distinct entity from the Trump Campaign, and each is governed by distinct rules imposed by the federal election laws and regulations.

14. The Consulting Agreement, which was in effect and governed Mr. Nunberg’s employment during all times relevant to the claims raised in the Statement of Claim, was drafted by the Exploratory Committee’s attorneys and has a clear and unambiguous forum selection clause, which mandates that all disputes must be resolved in a New York 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. (Emphasis supplied).

15. Mr. Nunberg never entered into an agreement to arbitrate any dispute with the Trump Campaign and the controlling Consulting Agreement he did enter into with the Exploratory Committee concerning the 2016 presidential campaign requires that disputes be heard only in a New York Court.

16. Nevertheless, on or about May 28, 2016, the Trump Campaign served Mr. Nunberg with a frivolous and retaliatory Demand for Arbitration and Statement of Claim before the American Arbitration Association, dated May 28, 2016 (the “Initial Demand for Arbitration” or “Initial Statement of Claim”), seeking damages of at least \$10 million without any good faith basis. A copy of the Demand for Arbitration is annexed hereto as Exhibit “B.”

17. The Trump Campaign’s improper attempt to commence arbitration proceedings against Mr. Nunberg after the Consulting Agreement was terminated was without basis in law or fact and was done in malicious retaliation for Mr. Nunberg’s subsequent change of political opinion and in violation of Mr. Nunberg’s First Amendment right to abandon his political backing of Mr. Trump and to freely exercise his political choice to endorse and associate with U.S. Senator Ted Cruz, as Mr. Nunberg did publicly.

18. Further, in retribution the Trump Campaign abused process and maliciously attempted to use the private arbitration forum, as well as the *in terrorem* demand of over \$10 million in damages set forth in the Statement of Claim without good faith basis, against Mr. Nunberg in a misguided attempt to cover up media coverage of an apparent affair its former campaign manager was witnessed as having with a Trump Campaign female staffer, as reported in the New York Post, Page Six article on May 10, 2016 entitled “*Trump Campaign Staffers Get*

*into Public Screaming Match*” by Emily Smith. A copy of the New York Post, Page Six article, dated May 19, 2016, is annexed hereto as Exhibit “C”.

19. Without basis, the Trump Campaign falsely alleged in the Initial Statement of Claim (and reprises that false claim in the Second Statement of Claim even after Mr. Nunberg denied that claim in an affidavit) that Mr. Nunberg provided that story concerning Mr. Lewandowski and the Trump Campaign female staffer to the New York Post.

20. Not only did Mr. Nunberg not provide the reported information to the New York Post concerning that public display which was witnessed by others on a public street, on information and belief, the reported public quarrel between Trump Campaign personnel occurred outside the scope of the activities the Trump Campaign. As such, none of the alleged restrictions arguably arising out of the Consulting Agreement control disclosure of such public extracurricular activities.

21. In any event, there is no agreement between the Trump Campaign and Mr. Nunberg to arbitrate the disputes alleged in either the First or the Second Statement of Claim filed with the American Arbitration Association.

22. Furthermore, as reflected in the Consulting Agreement, which was in effect during the period between April 14, 2015 and the date of Mr. Nunberg’s at will termination on August 3, 2015, the Exploratory Committee and Mr. Nunberg did not agree to submit any dispute to arbitration before the American Arbitration Association.

23. To the contrary, the Consulting Agreement’s forum selection provision that was drafted and required by the Exploratory Committee’s counsel expressly provides that “[a]ny 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.”

24. As a result thereof, the Trump Campaign's Initial Demand for Arbitration was void, and there is no basis for the submission to arbitration of the dispute alleged in the Statement of Claim.

25. Pursuant to CPLR § 7503(b) the Petitioner was entitled to a stay of the initial arbitration on the ground that a valid agreement to arbitrate was not entered into between the Mr. Nunberg and the Trump Campaign.

26. Upon advising the Trump Campaign that Mr. Nunberg would pursue his rights under CPLR Article 75 in the New York State Supreme Court to stay the arbitration, the Trump Campaign immediately requested that Mr. Nunberg not proceed, but instead to enter into a standstill agreement ostensibly in an attempt to resolve the matter.

27. Unfortunately, rather than negotiating in good faith, the Trump Campaign used the standstill period as a ruse to improperly refile the arbitration by the fictitious entity, Trump 2012 PCA, ostensibly on behalf of the real party in interest, the Trump Campaign.

28. This came after the Trump Campaign had the opportunity to terminate Mr. Lewandowski while the standstill agreement was in place.

29. The second Statement of Claim, dated July 11, 2016 (the "Second Statement of Claim") (Exhibit "D"), has been brought improperly by the fictitious entity, Trump 2012 PCA, not only in violation of GBL §130, but also it has nothing to do with the Trump Campaign's activities in the 2016 presidential campaign cycle and Mr. Nunberg's contractual duties under the Exploratory Committee for that campaign, which last employed Mr. Nunberg as an independent contractor.

30. The Trump Campaign is the real party in interest to the claims once more asserted in the Second Statement of Claim, as evidenced by the assertions set forth in the Initial Statement

of Claim, which alleges that it is the entity that allegedly was harmed.

31. As previously set forth, Trump 2012 PCA, as a fictitious entity, its principal may not legally conduct business or maintain a suit under General Obligations Law § 130. Thus, that illegal fictitious entity may not proceed with the arbitration since the Agreement was *ultra vires*.

32. Nor do the confidentiality provisions of the Agreement with that illegal entity apply in any way to the Trump Campaign, which is the real party in interest in this matter.

33. In that regard, the Agreement and its confidentiality provision apply only to a “Trump Company,” which is defined in paragraph 6(f), as follows:

“Trump Company” means any entity, partnership, trust or organization that, in whole or in part, was created by or for the benefit of Mr. Trump or is controlled or owned by Mr. Trump.

34. The Trump Campaign was not in existence prior to or at the time of the Agreement, and Mr. Nunberg did not agree or intend that it apply to any future entity such as the Trump Campaign.

35. Moreover, it is a violation of public policy for an arbitrator to adjudicate such issues of Constitutional Law controlling Mr. Nunberg’s right of free speech and association under the Constitutions of the United States and New York State, which the Trump Campaign through the skill of the fictitious entity, Trump 2012 PCA, is wrongfully attempting to pursue.

36. The gravamen of the claim attacks Mr. Nunberg for his reasoned endorsement of Senator Cruz, and for his statements to the press concerning the ongoing presidential campaign. Mr. Nunberg is being harassed by the Trump Campaign for exercising free speech and voicing his opinion on material issues that the public is entitled to know before voting on November 8, 2016.

37. It is also violates public policy to impose a prior restraint on constitutionally

protected free speech as the Trump Campaign is wrongfully attempting to do in the arbitration proceeding.

38. Public policy mandates that these matters affecting such precious Constitutional Rights be heard in a Court of Law that is best suited to adjudicate such issues of Free Speech in the course of a presidential campaign and to which the public is entitled to be informed.

39. Twenty days has not elapsed since receipt of the Demand for Arbitration in the Second Statement of Claim by the Petitioners.

40. No prior application for the relief requested herein has been made to this Court or any other Court.

**WHEREFORE**, Petitioner, Samuel D. Nunberg, requests pursuant to CPLR § 7503(b) that judgment be entered preliminarily and permanently staying the arbitration Respondents, Donald J. Trump For President, Inc. and Trump 2012 PAC, from proceeding with the claims raised in commenced under the Second Statement of Claim, and all proceedings therein on the grounds that a valid agreement to arbitrate was not made between Respondent and Petitioner, and that the Court grant such other and further relief as justice requires.

Dated: New York, New York  
July 12, 2016

**NESSENOFF & MILTENBERG, LLP**

By: \_\_\_\_\_

Andrew T. Miltenberg

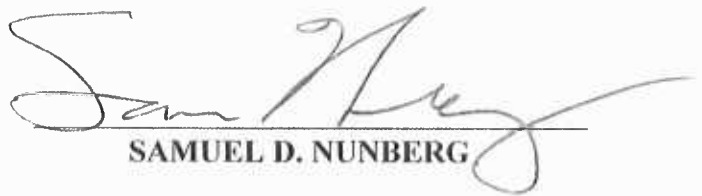
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(212) 736-4500




**VERIFICATION**

STATE OF NEW YORK            )  
  :        **ss.:**  
COUNTY OF NEW YORK        )

**SAMUEL D. NUNBERG**, being duly sworn, deposes and says: that he is Petitioner; that he has read the foregoing Petition and the allegations set forth therein are true, and as to the allegations set forth on information and belief he believes it to be true, based upon his personal knowledge and review of the public record.

  
\_\_\_\_\_  
**SAMUEL D. NUNBERG**

Sworn to before me this  
12 day of July, 2016.

  
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**Notary Public**

CLIVE C BARROWES  
Notary Public - State of New York  
NO. 01BA6294118  
Qualified in Bronx County  
My Commission Expires Dec 16, 2017