

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

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES,
Attorney General of the State of New York,

Petitioner,

-against-

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, DONALD J. TRUMP, IVANKA TRUMP, and DONALD TRUMP, Jr.,

Respondents.

Index No. 451685/2020

**SECOND SUPPLEMENTAL
VERIFIED PETITION**

Petitioner, the People of the State of New York, by Letitia James, Attorney General of the State of New York, as and for her Petition, respectfully alleges:

PRELIMINARY STATEMENT

1. The Office of the Attorney General (“OAG”) is currently investigating potential violations of New York State law arising from transactions undertaken by the Trump Organization and Donald J. Trump.
2. The background of that investigation is laid out in detail in the prior filings of this proceeding, including in the Verified Petition, dated August 21, 2020 (Dkt. 181) (“Original Petition”) and the Supplemental Verified Petition, dated January 18, 2022 (Dkt. 630) seeking to compel the testimony of Donald J. Trump, Donald Trump, Jr. and Ivanka Trump (the “Supplemental Petition”). Those pleadings and the existing record of this proceeding are hereby

incorporated by reference.

3. As part of that investigation, OAG is also seeking to determine whether other parties to those transactions were misled by the Trump Organization or whether they may have may have independently engaged in fraudulent or misleading practices in connection with those transactions.

4. As detailed in prior filings, Cushman & Wakefield, Inc. (“Cushman”) has provided valuation and other services for the Trump Organization and other parties that have engaged in transactions with the Trump Organization.

5. In an effort to determine whether certain valuations prepared by Cushman were fraudulent or misleading, and whether Cushman itself has engaged in fraudulent or misleading practices in its issuance of appraisals, OAG has issued a series of subpoenas to Cushman including most recently subpoenas issued in September 2021 and February 2022.

6. Cushman has refused to comply with the February 2022 subpoena and has refused to make further productions pursuant to the September 2021 subpoena.

7. Therefore, Petitioner seeks an order pursuant to C.P.L.R. § 2308(b) to enforce its subpoenas without further delay.

THE PARTIES

8. The Attorney General is responsible for overseeing the activities of New York corporations and the conduct of their officers and directors, in accordance with the New York Executive Law and other applicable laws.

9. Respondent Cushman & Wakefield, Inc. is domestic business corporation with its principal place of business at 1290 Avenue of the Americas, New York, NY 10104. Cushman & Wakefield, Inc. is part of Cushman & Wakefield plc a publicly traded company with shares listed on the New York Stock Exchange.

JURISDICTION, APPLICABLE LAW, AND VENUE

10. The Attorney General brings this special proceeding on behalf of the People of the State of New York pursuant to the New York Executive Law and CPLR Article 4.

11. Executive Law § 63(12) allows the Attorney General to bring a proceeding “[w]hensoever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business.”

12. The test of fraudulent conduct under § 63(12) “is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud.” *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104, 107 (3d Dep’t 2005), *aff’d on other grounds*, 11 N.Y.3d 105 (2008).

13. A violation of any federal, state, or local law or regulation constitutes “illegality” within the meaning of § 63(12). *See, e.g., id.* at 104; *Oncor Commc’ns, Inc. v. State*, 165 Misc. 2d 262, 267 (Sup. Ct. Albany Cty. 1995), *aff’d*, 218 A.D.2d 60 (3d Dep’t 1996); *People v. Am. Motor Club, Inc.*, 179 A.D.2d 277 (1st Dep’t 1992), *appeal dismissed*, 80 N.Y.2d 893; *State v. Winter*, 121 A.D.2d 287 (1st Dep’t 1986).

14. The requirement to show “persistent” or “repeated” acts is generally met so long as the Attorney General can show any number of “separate and distinct fraudulent or illegal acts which affected more than one individual.” *People v. 21st Century Leisure Spa Int’l Ltd.*, 153 Misc. 2d 938, 944 (Sup. Ct. N.Y. Cty. 1991).

15. The Attorney General has broad authority to issue subpoenas and take sworn testimony to determine whether a proceeding should be brought. The Attorney General is “authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.” Exec. Law § 63(12).

16. A sufficient factual basis for a subpoena under § 63(12) exists as long as there is a “reasonable relation to the subject-matter under investigation and to the public purpose to be achieved.” *Matter of La Belle Creole Int’l, S.A. v. Attorney-General of the State of N.Y.*, 10 N.Y.2d 192, 196 (1961).

17. The Attorney General is presumed to be acting in good faith when issuing a subpoena. *Am. Dental Coop.*, 127 A.D.2d at 280. Thus, a § 63(12) subpoena will not be quashed unless it seeks material “utterly irrelevant to any proper inquiry” or where the futility of the process “to uncover anything legitimate is inevitable or obvious.” *La Belle Creole*, 10 N.Y.2d at 196.

18. Likewise, the Martin Act empowers the Attorney General to investigate securities fraud, “either upon complaint or otherwise.” G.B.L. § 352(1). Under the Martin Act, the Attorney General can conduct investigations by examining witnesses and “requir[ing] the production of any books or papers which [s]he deems relevant or material to the inquiry.” *Id.* § 352(2).

19. Courts have repeatedly recognized the broad investigatory authority of the Attorney General under the Martin Act. *Assured Guar. (UK) Ltd. v. J.P. Morgan Inv. Mgt. Inc.*, 18 N.Y.3d 341, 349-50 (2011) (“[T]he Attorney-General [has] broad regulatory and remedial powers to prevent fraudulent securities practices by investigating and intervening at the first indication of possible securities fraud on the public[.]”); *Greenthal v. Lefkowitz*, 342 N.Y.S.2d 415, 417 (1st Dep’t 1973), *aff’d*, 32 N.Y.2d 457 (1973) (recognizing that the Martin Act grants the Attorney General “exceedingly broad” power and “wide discretion in determining when an inquiry is warranted”); *Gardner v. Lefkowitz*, 97 Misc. 2d 806, 811-12 (Sup. Ct., N.Y. County 1978) (“[T]he power of the Attorney-General under article 23-A of the General Business Law . . .

. is exceedingly broad and grants a wide discretion to the Attorney-General in determining whether an inquiry is warranted[.]”).

20. Venue is properly set in New York County pursuant to CPLR §§ 503, 505, and 509, because Petitioner is resident in New York County and has selected New York County, and because Petitioner is a public authority whose facilities involved in the action are located in New York County.

FACTS

21. Of particular relevance to this investigation, Cushman provided valuation services on three properties for transactions involving the Trump Organization.

22. First, Cushman issued multiple appraisals of the property located at 40 Wall Street in downtown Manhattan. Cushman issued three appraisals to Capital One Bank in 2010, 2011 and 2012 in connection with a \$160 million mortgage on the property. NYSCEF Nos. 467-469; *see also* Second Colangelo Aff. ¶¶ 191-194.¹ Cushman prepared another appraisal for Ladder Capital Finance LLC (“Ladder Capital”) in June 2015, in connection with a \$160 million refinancing of the loan on 40 Wall Street. That appraisal was incorporated into the underwriting of a \$160 million loan and was reported to securities investors as part of two transactions securitizing portions of the loan into commercial mortgage-backed securities.²

23. Second, Cushman prepared two valuations of the Seven Springs Estate for the

¹ Citations to “Ex.” are to the exhibits annexed to this petition. Citations to “Thompson Aff.” are to the Affirmation of Austin Thompson, *in camera* today, April 8, 2022. Citations to “Second Colangelo Aff.” are to the Second Affirmation of Matthew Colangelo filed *in camera*. This Court permitted the *in camera* submission in September 2020. *See* dkt. 254.

² *See* [Free Writing Prospectus Structural and Collateral Term Sheet for Wells Fargo Commercial Mortgage Trust 2015-LC22](#), Sept. 8, 2015; [Free Writing Prospectus for Deutsche Mortgage & Asset Receiving Corporation COMM 2015-LC23 Mortgage Trust](#), Nov. 2, 2015.

Trump Organization.³ The first valuation was conducted in July 2014 and was conveyed orally to counsel for the Trump Organization. Dkt. 630 ¶¶ 32-46. The second valuation was an appraisal issued in March 2016, valuing Seven Springs as of December 1, 2015. Dkt. 630 ¶¶ 48, 234-294. That appraisal was submitted to the Internal Revenue Service to obtain a tax benefit from an easement donation on the Seven Springs property. *Id.*

24. Third, Cushman prepared an appraisal of the Trump National Golf Course – Los Angeles (“Trump Golf LA”) property in December 2014. Dkt. 630 ¶¶ 191-233. That appraisal was submitted to the Internal Revenue Service to obtain a tax benefit from an easement donation on the Trump Golf LA property. *Id.*

25. In addition to those three properties, Cushman has regularly appraised other buildings owned by the Trump Organization, including Trump Tower on Fifth Avenue; Trump International on Central Park West; Trump National Golf Club – Westchester in Briarcliff Manor, New York; Trump National Doral in Miami; Trump International Hotel and Tower in Chicago; Trump International Hotel Las Vegas; and Trump National Golf Club – Bedminster in Bedminster, New Jersey.

26. Cushman has also provided brokerage services to the Trump Organization for 40 Wall Street and Trump Tower.

27. Finally, Cushman regularly provided employees at the Trump Organization with information about real estate markets in which the company operated. That information was cited as support for the inflated valuations included in the Statement of Financial Condition for Donald J. Trump (“SOFC”). Based on a review of documents produced to OAG, there are hundreds of

³ Seven Springs is a parcel of real property consisting of approximately 212 acres within the towns of Bedford, New Castle, and North Castle in Westchester County, New York.

instances of Cushman employees providing individuals at the Trump Organization (primarily Controller Jeffrey McConney) with generic market information that would then be incorporated into the SOFC.

28. Further factual background of the OAG's investigation as it relates to Cushman is more fully set out in the Affirmation of Austin Thompson dated April 8, 2022 ("Thompson Aff."), submitted *in camera* to protect the confidentiality of this ongoing investigation. *See Michaelis v. Graziano*, 5 N.Y.3d 317, 323 (2005); *Am. Dental Coop., Inc. v. Attorney-General*, 127 A.D.2d 274, 280 (1st Dep't 1987).

29. As a result of these extensive interactions, OAG served an initial subpoena *duces tecum* on Cushman on June 11, 2019. Ex. 601. Based on information produced by Cushman in response to that subpoena, as well as on other information in OAG's possession, the Attorney General served a second subpoena *duces tecum* on Cushman on August 15, 2019. Ex. 602.

30. Based on certain records produced by Cushman, as well as on other information in OAG's possession, the Attorney General then sought testimonial evidence from five Cushman employees.

31. While Cushman initially expressed its desire to comply with OAG's subpoenas, the company nonetheless withheld hundreds of responsive documents and instructed four witnesses not to answer numerous questions based on meritless privilege assertions by the Trump Organization.

32. In addition, Cushman maintained numerous spurious objections to the subpoenas issued by OAG including a reservation of rights as to a "reasonable way forward that includes the payment by issuer [OAG] of the extensive and material costs associated with C&W's production, including production costs and attorney's fees." *See* Ex. 603, Letter from McEntire

to Colangelo and Thompson, dated Aug. 29, 2019.

33. The Trump Organization ultimately withdrew its privilege claims over documents held by Cushman in December 2020. Cushman ultimately produced approximately 8,500 documents between June 2019 and November 2020.

34. On January 13, 2021, Cushman disclosed that “Cushman & Wakefield has made the decision to no longer do business with the Trump Organization.”⁴

35. As a result of developments in its ongoing investigation, in September 2021, OAG asked Cushman to produce documents concerning a former employee who had worked on leasing space at 40 Wall Street and subsequently left the company to join the Trump Organization.

36. Cushman took the adversarial position that such documents were not covered by the earlier subpoenas issued by OAG. In an email dated September 21, 2021, counsel for Cushman informed OAG that “we would ask that your office issue a new subpoena to Cushman and specify the materials sought. We think this will help to expedite the process and will check with our client to confirm whether we can accept service.” *See* Ex. 604, Email from Robert M. Rosen, dated Sept. 21, 2021 .

37. On September 30, 2021, OAG issued an additional subpoena to Cushman issued pursuant to both Executive Law § 63(12) and the Martin Act, General Business Law § 352 seeking documents and written responses to requests for information (the “September 2021 Subpoena”). Ex. 605.

38. The September 2021 Subpoena called for information concerning the work

⁴ Natalie Wong, et al., *Bloomberg*, “Real Estate Brokerage Cushman Cuts Ties With Trump Organization,” Jan. 13, 2021 available at: <https://www.bloomberg.com/news/articles/2021-01-13/real-estate-brokerage-cushman-cuts-ties-with-trump-organization?sref=Z3GaUHRy>

performed by Cushman for the Trump Organization, the revenue derived from that work and the total revenue from the Trump Organization and Donald J. Trump each year.

39. To avoid any potential issues concerning the scope of the document requests, the September 2022 Subpoena sought a clearly defined set of documents including, among other things:

- a. All documents and communications concerning any work performed for Donald J. Trump or the Trump Organization.
- b. All documents and communications concerning any work performed concerning property or assets owned by Donald J. Trump or the Trump Organization.
- c. And all documents relating to Cushman's "decision to no longer do business with the Trump Organization," announced on or about January 13, 2021.

40. While reserving its objections, Cushman began producing documents responsive to some of the requests in the September 2021 Subpoena. Between October 8, 2021 and December 23, 2021, Cushman produced more than 45,000 responsive documents.

41. Those October-December 2021 productions omitted responses to entire requests. For example, Cushman provided no documents concerning the decision to cease doing business with the Trump Organization, no documents concerning the policies and procedures governing the work performed for the Trump Organization, and no information concerning the brokerage work performed at 40 Wall Street and Trump Tower.

42. Based on information provided by Cushman and others, OAG issued another subpoena on February 16, 2022 (the "February 2022 Subpoena"). Ex. 606.

43. The February 2022 Subpoena sought copies of additional appraisal reports prepared by the Cushman appraisers involved in the appraisals for 40 Wall Street, Seven Springs

and Trump Golf LA.

44. For 40 Wall Street, Requests 1, 2 and 3 of the February 2022 Subpoena sought final appraisals prepared, supervised, or signed by the three individuals who signed the 2015 appraisal. The request was limited to appraisals prepared during the period January 1, 2012 to December 31, 2015 in the Downtown Office Market of Manhattan (the geographic market for 40 Wall Street). These appraisals would establish whether the change in valuation of 40 Wall Street between 2012 and 2015 was consistent with other valuations prepared by those appraisers. The documents would also establish whether the assumptions contained in the 2015 40 Wall Street appraisal were consistent with the other appraisals prepared by those individuals.

45. After discussion with Cushman, OAG agreed to accept a preliminary production limited to appraisals signed by two of the individuals, 63 documents in total. *See* Ex. 607, Email from Austin Thompson, dated March 14, 2022.

46. For Seven Springs, Request 5 of the February 2022 Subpoena sought final appraisals prepared, supervised, or signed by one of the two appraisers who signed the Seven Springs appraisal. The request was limited to subdivision sell-out appraisals prepared during the period January 1, 2012 to December 31, 2017. These appraisals would allow OAG to assess whether the assumptions contained in the Seven Springs appraisal were consistent with the other valuations prepared by the appraiser.

47. After discussion with Cushman, OAG agreed to accept an initial production of appraisals signed by the appraiser, apparently 282 documents in total. Ex. 607.

48. For Trump Golf LA, Request 6 of the February 2022 Subpoena sought final appraisals prepared, supervised, or signed by one of the two appraisers who signed the Trump Golf-LA appraisal. The request was limited to subdivision sell-out appraisals prepared during the

period January 1, 2012 to December 31, 2017. These appraisals would allow OAG to assess whether the assumptions contained in the Trump Golf-LA appraisal were consistent with the other valuations prepared by the appraiser.

49. After discussion with Cushman, OAG agreed to accept an initial production of appraisals signed by the appraiser, apparently 69 documents in total. Ex. 607.

50. On February 23, 2022, the original return date for the February 2022 Subpoena, Cushman did not produce any documents or even make an offer of production, but instead sent a letter raising a series of objections. Ex. 608. Among those objections was an assertion that Requests 1-3 “do not appear to have any relevance, much less materiality, to OAG’s Trump Investigation.” *Id.*

51. The letter also asserted that Request 5 and 6 called for “documents wholly irrelevant and immaterial to any known inquiry by your office.” *Id.*

52. By letter dated March 3, 2022, OAG responded to those objections and noted that “sending a letter with objections and a refusal to produce documents on the date of compliance for a lawfully issued subpoena constitutes non-compliance. Indeed, neither advice of counsel nor hardship excuse an obligation to respond to a subpoena. *See, e.g. People v. Forsyth*, 109 Misc.2d 234, 236 (Sup. Ct. N.Y. Cty. 1981) (Upholding misdemeanor conviction for failure to comply with Martin Act subpoena without reasonable cause.)” Ex. 609.

53. As to the relevance objections for Requests 1-3, OAG noted that it was “also investigating whether any other parties may have engaged in fraudulent or misleading practices in connection with certain commercial transactions involving the Trump Organization.” *Id.*

54. As to the relevance objections for Requests 5 and 6, OAG explained that “there are significant issues concerning the assumptions included in the appraisals for both Seven Springs

and Trump National Golf Club – Los Angeles (‘TNGC-LA’). Our request is limited to subdivision sell-out appraisals by only two of the four individuals who prepared those appraisals. Comparing their assumptions in those other appraisals is relevant to determine whether their reports were false or misleading. We are not seeking information about specific clients, but rather are investigating the work of two Cushman appraisers.” Ex. 609.

55. Cushman made a partial production of documents responsive to Request 4 in the February 2022 Subpoena on March 11, 2022.

56. But after several meet and confer conferences, on March 23, 2022, Cushman ultimately took the position that it would not comply with February 2022 Subpoena. Ex. 610.

57. A few days after refusing to comply with the February 2022 Subpoena, Cushman sent OAG a letter on March 28, 2022 indicating that “its response to the non-objectionable portions of OAG’s [September 2021] Subpoena is complete,” and asked OAG to “consider withdrawing” or limiting requests that are now more than six months old. Ex. 611.

58. The March 28 letter raised objections similar to those offered in response to the February 2022 Subpoena.

59. None of those objections excuse a failure to comply with the September 2021 Subpoena.

60. The September 2021 Subpoena seeks documents relating to the work Cushman performed either for the Trump Organization or concerning property owned by the Trump Organization. Such documents are self-evidently relevant to OAG’s ongoing investigation of the Trump Organization.

61. In addition, those documents are also relevant to whether Cushman’s appraisals were themselves misleading or fraudulent.

62. Information concerning the work Cushman performed for the Trump Organization and the total revenue generated by the Trump Organization is relevant to a determination of whether Cushman maintained its independence as required by USPAP.

63. Information concerning compliance with internal policies is relevant to a determination of whether Cushman was engaged in fraudulent or misleading practices in providing services to the Trump Organization.

64. The February 2022 Subpoena seeks documents relating to five appraisers who performed valuations in connection with properties and transactions central to this transaction. The February 2022 Subpoena seeks information on valuations closely related to those performed on Trump Organization properties. Those documents relevant to determine whether the assumptions contained in the Trump valuations were reasonable and consistent with the other work performed by the individual appraisers.

65. In addition, those documents are also relevant to whether Cushman's appraisals were themselves misleading or fraudulent.

66. The failure to provide these relevant documents in a timely manner has unnecessarily slowed and otherwise impeded OAG's investigation.

67. Based on the foregoing, we made a good faith effort to resolve the issues in dispute concerning Cushman's subpoena compliance and thus judicial intervention is necessary.

CLAIM FOR RELIEF

Compelling Subpoena Compliance—CPLR § 2308

68. The Attorney General repeats and realleges the preceding paragraphs as though fully set forth herein.

69. OAG's subpoenas to Cushman dated September 30, 2021 and February 16, 2022, were issued pursuant to a legally-authorized investigation for which there is a factual basis, and

the requests in the subpoena are reasonably related to that investigation.

70. Cushman and the Trump Organization have not identified any legally cognizable basis for withholding from OAG any testimony, documents, or other communications responsive to OAG's subpoenas.

71. Expedited briefing and resolution of OAG's application to compel is necessary to prevent further unnecessary delay and interference with OAG's investigation.

WHEREFORE, Petitioner respectfully requests that the Court grant this Second Supplemental Verified Petition in all respects and that a judgment and order be entered:

- A. Compelling Cushman to comply in full with OAG's subpoenas *duces tecum*, including by immediately disclosing all responsive documents; and
- B. Granting such other and further relief as is just and proper.

DATED: April 8, 2022

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: /s/ Kevin Wallace

Kevin C. Wallace

Andrew Amer

Colleen K. Faherty

Alex Finkelstein

Wil Handley

Eric R. Haren

Louis M. Solomon

Austin Thompson

Stephanie Torre

Office of the New York State Attorney General

28 Liberty Street

New York, NY 10005

Phone: (212) 416-6376

kevin.wallace@ag.ny.gov

Attorneys for the People of the State of New York

VERIFICATION

Kevin C. Wallace, an Attorney admitted to the Bar of this State, hereby affirms and certifies that:

I am an attorney in the Office of Letitia James, Attorney General of the State of New York, who appears on behalf of the People of the State of New York as Petitioner in this proceeding. I am duly authorized to make this verification.

I have read the annexed second supplemental verified petition, know the contents thereof, and state that the same are true to my knowledge, except for those matters alleged to be upon information and belief, and as to those matters I believe them to be true.

Dated: New York, New York
April 8, 2022



KEVIN C. WALLACE