FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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ROY DEN HOLLANDER,

Petitioner,

-against-

ALINA SHIPILINA,

Respondent.

Docket No. O-03570/02

AFFIRMATION IN SUPPORT

Assigned to
Judge Jody Adams

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NICHOLAS J. MUNDY, ESQ., an attorney duly admitted to practice before the Courts of the State of New York, affirms the truth if the following matters:

1. I am associated with the law firm of KUBA, MUNDY & ASSOCIATES, attorneys for the Respondent, and as such am fully familiar with the facts and circumstances herein.

2. I make this affirmation in support of the Respondent's motion for a protective order, pursuant to CPLR § 3103.

3. Pursuant to Uniform Rule § 202.17, I have attempted in good faith to resolve the issues raised in this motion without judicial intervention. However, at this time it has become clear that judicial intervention is required.

4. The Petitioner ROY DEN HOLLANDER commenced this action against the Respondent to obtain a permanent order of protection. Petitioner alleges Respondent engaged in conduct that was intended to threaten and harass the Petitioner, and that he received a harassing telephone call from a male caller in which he heard the Respondent's voice in the background. A copy of the Petition is

annexed as Exhibit A.

5. The Respondent vehemently deny the Petitioner's allegations.

6. The Petitioner has served demands for discovery and inspection, together with a first and second set of interrogatories. He has also served Subpoenas upon the Verizon and the Federal Bureau of Investigation (FBI). Copies of Petitioners various discovery demands and subpoenas are annexed hereto as Exhibit B.

7. From the outset, it has appeared to your affiant's firm that the Petitioner's demands were outrageous in the context of this litigation, and were objectionable in many ways.

8. Nonetheless, the Respondent, uninterested in protracted litigation and continuing legal fees, advised the undersigned that she preferred to resolve the instant proceeding forthwith by consenting to a one year order of protection by stipulation. Thus, Petitioner's outrageous discovery demands became mute.

9. However, on July 2, 2002, before the Honorable Jody Adams, the Petitioner refused to accept a Stipulation granting him the very one year order of protection which he seeks, and demanded a full merits hearing. Thus, the instant motion for a protective order became necessary.

10. It is apparent that this Court should issue an order, pursuant to CPLR § 3103, protecting the Respondents from Petitioner's improper demands.

11. The protective order is the Court's perpetual guard against discovery abuses." D. Siegel, New York Practice § 353 (2nd

Ed., 1991).

12. On its own or on motion of any party or witness, the Court may, at any time, make a protective order denying, limiting, conditioning, or regulating the use of any disclosure device. The order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts. CPLR § 3103(a).

13. The broad terms of CPLR § 3103(a) indicate that the Court has discretion to make whatever protective order is appropriate under the particular circumstances.

14. No time limit is provided for in CPLR § 3103 for making a motion to obtain a protective order. CPLR § 3103 states that the motion may be made "at any time". The exception is that as to certain items demanded (i.e., notices for discovery and inspection and physical exams, etc.) to which the motion should be made within ten days. CPLR § 3122.

15. Nevertheless, the Courts have allowed the motion to be made at any time where the discovery demanded is palpably improper. See: e.g., *Wood v. Sardi's Restaurant*, 47 AD2d 870, 366 NYS2d 150 (1975).

16. On July 2, 2002, Respondent had every reason to believe that the instant proceeding was to be settled in it's entirety. The Petitioner's unreasonable refusal to stipulate to settlement wherein Respondent has agreed to a one year order of protection is additional evidence of the fact that Petitioner seeks only to harass and annoy the Respondent with continued litigation, and is the sole reason that this instant motion became necessary.

17. In light of the foregoing, the motion should be entertained as to all discovery demanded by Petitioner. Furthermore, the mere making of the motion herein by Respondent has served to suspend disclosure of the matters in dispute. CPLR § 3103.

18. The Respondent's position is that ALL of the Petitioner's demands are objectionable. While this may appear at first glance to be an unreasonable position, even a cursory review of the Petitioner's demands make it clear that this is indeed, a fact. His discovery demands are not only unduly burdensome and objectionable, they are offensive to the Respondent, and should be offensive to the Court. There can hardly be a greater example of discovery abuse before this Court.

19. As an example of the blatant impropriety of the Petitioner's discovery demands and interrogatories the court should note that Petitioner has demanded, *inter alia*:

- *State what notice Respondent has of any United States Immigration and Naturalization investigations or proceedings concerning the Respondent, the nature of the investigations or proceedings and when notified about them.*

- *State whether Respondent ha sever associated with any criminals in Russia, Cyprus, Italy, Mexico or America and when, where and with whom associated.*

20. Clearly, these demands are irrelevant, overbroad and unduly burdensome, and as previously stated herein, offensive. It would be waste of time to reproduce the objectionable demands made by the Petitioner in this motion, because as previously stated,

EVERY REQUEST MADE BY THE PETITIONER IS OUTRAGEOUS AND OBJECTIONABLE.

21. The information demanded and the tactics employed by the Petitioner amount to nothing more than harassment, and are thus improper. Indeed, they appear calculated to do nothing more than embarrass, annoy and harass the Respondent. Petitioner's demand for personal information that is irrelevant to these proceedings is actually shocking.

22. The Petitioner has demanded, *inter alia*: ***copies of passports, police complaint reports filed by the Respondent, " model photo cards" , work schedules, credit card statements, " list of customers or clients for whom she engaged or engages in prostitution"*** .

23. Obviously, the Court can read through the demands, interrogatories and the notices and can see that they are palpably improper. They utilize the use of the words "any and all" and call for extraneous and unnecessary personal information. The are filled with innuendo and insult intended to embarrass the offend the Respondent in a public forum, such as naming her a prostitute.

24. Much of the information demanded is so outrageous and palpably irrelevant as to constitute grounds for sanctions. Nevertheless, Respondents are not requesting sanctions, but rather are seeking to stop the harassment a this time.

25. It is well established that proper procedure requires that a party first ascertain whether the requested materials exist and if so, whether they are arguably pertinent. Thereafter, the party serve a notice for discovery and inspection calling for the

production of specifically identified documents. Only at such time can the right to discover and inspect such documents be intelligently adjudicated. [See: *Ribs v. Donovan*, 21 AD2d 409, 413-414, 250 NYS2d 818, 822-823, (1st Dept., 1984); *Wood v. Sardi's Restaurant*, 47 AD2d 870, 366 NYS2d 150 (1975); *Agricultural v. Chemical*, 462 NYS2d 667, 94 AD2d 671;

26. This Court is vested with the authority to "regulate" the use of disclosure devices pursuant to the explicit wording of CPLR § 3103. See also, *Barouh v. IBM*, 76 AD2d 873, 429 NYS2d 33 (2nd Dept., 1980). The court should do so, particularly where as here, substantial abuse would otherwise take place, and parties will be unduly burdened (in all likelihood for no reason).

27. Simply put, the Petitioner's demands are without sufficient basis and are overbroad and unduly burdensome. They are offensive, and in many instances, shockingly outrageous and abusive.

28. The Court can plainly see how onerous the demands are. They ask for information of such a personal nature, that there can be no doubt that they were simply drafted as a harassment tactic by the Petitioner.

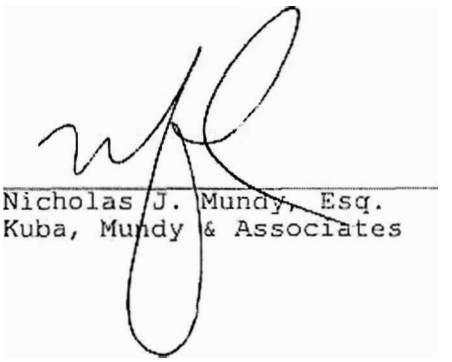
29. Burdensome, oppressive, and in many parts inappropriate interrogatories and requests for documents warrant a vacation of the interrogatories and requests, rather than pruning them. *Aeron v. Chemco Intern.*, 498 NYS2d 49, 117 AD2d 573 (AD, 2nd Dept., 1986); *Spancrete Northeast v. Elite Associates*, 539 NYS2d 441, 148 AD2d 694 (AD, 2nd Dept., 1989); .

30. No previous request for the relief prayed for herein has

been made.

31. Wherefore, for all the foregoing reasons, the Respondent's motion should be granted in its entirety. The Petitioner's discovery demands should be stricken in their entirety as per the CPLR, and the completion of discovery should take place in accordance with the Court's direction in its order.

Dated: July 11, 2002
New York, New York



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