

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,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., WAYNE LAPIERRE, WILSON
PHILIPS, JOHN FRAZER, and JOSHUA POWELL,

Defendants.

Index No. 451625/2020

**SPECIAL MASTER
REPORT ON THE
JUNE 16, 2022
HEARING**

On June 16, 2022, the parties appeared before the Special Master for a hearing on (i) open issues from the April 21, 2022 conference; (ii) the Office of the Attorney General’s (“OAG”) May 6 and June 3, 2022 applications for protective orders regarding notices of deposition; (iii) the National Rifle Association’s (“NRA”) and Mr. LaPierre’s requests to compel Plaintiff to comply with Rule 11 of the Rules of the Commercial Division; (iv) the OAG’s application for a protective order regarding the NRA’s Notice to Admit (“NTA”) and Third Request for Production (“RFP”); (v) the parties’ joint request to take three depositions after the June 29, 2022 discovery deadline; and (vi) unresolved matters from the March 10, 2022 conference and resulting Report of March 23, 2022.

Open Issues from April 21, 2022 Conference

There were four open issues from the April 21, 2022 Conference. According to the parties, progress has been made on documents to be produced, including the W-2s, 1099s, and billing information. There are remaining issues with information from Susan LaPierre’s cell phone. The parties will meet and confer, and then inform the Special Master if any of those disputes remain.

The parties are working on open privilege issues and will inform the Special Master if there are issues for him to resolve.

OAG's Application for Protective Orders Regarding Deposition Notices

On May 6, 2022, the OAG made an application for a protective order regarding deposition notices for four non-attorney staff members of the OAG. The Special Master granted the protective order as it is governed by the same legal principles discussed in the ruling made on March 10, 2022, regarding deposition notices for OAG staff attorneys. If the attorney work product applies, it also applies to non-attorney staff assisting attorneys. *See, e.g., People v. Volkswagon*, 41 AD 2nd 827(1st Dept 1973); *SEC v. Rosenfeld*, 1997 WL 576021 at *2 (SDNY 1997). Non-attorney OAG staff members do not possess non-privileged, unique information about alleged NRA violations of New York law. Whatever information they have was obtained from the OAG investigation.

On June 3, 2022, the OAG made an application for a protective order regarding deposition notices for a representative of the OAG and the Chief of the Charities Bureau. The Special Master granted the protective order as to the Chief on the same grounds as the May 6 application.

With regard to the notice of deposition of a designated representative of the OAG, the NRA and the individual defendants (preferably jointly) will submit short, written submissions on the issue by June 23, 2022, and the OAG will respond by June 30, 2022.

The NRA's and Wayne LaPierre's Request for Rule 11 Disclosure

The NRA and Mr. LaPierre requested that the Special Master compel the Plaintiff to submit a document regarding the issues in the action, the elements of each claim, and the facts necessary to prove each element pursuant to Rule 11(a) and (b) of the Rules of the Commercial Division.

The Special Master noted that a Rule 11 order falls within the Court's discretion and could be useful at the start of an action. As this action has been pending for two years and is nearing the end of discovery, the Special Master declined to grant the defendants' request.

OAG's Application for a Protective Order Regarding the NTA and RFP

On May 31, 2022, the OAG made an application for a protective order regarding the NRA's NTA, which contained 83 individual requests regarding internal OAG processes and work performed by identified OAG staff members. In a RFP, which requests billing information, the NRA argues that such information would be relevant should the OAG seek legal fees. The complaint does not contain a request for an award of attorney fees.

The Special Master granted the protective order on the grounds that the information sought has no relevance at this stage of the litigation and little if any of the information being sought would be relevant at any stage of the case. Should the Plaintiff prevail and seek legal fees in the future, the NRA may renew these demands, albeit in a much more tailored fashion.

Joint Request to Take Three Depositions after June 29, 2022

The Special Master granted the parties' request to take three depositions after the close of fact discovery scheduled for June 29, 2022.

Deferred Issues from the March 23, 2022 Special Master Report

The parties will meet and confer to see if there are any issues remaining, particularly in light of the Court's order granting the Plaintiff's motion to dismiss the NRA's counterclaims.

If there are any issues, the NRA shall inform the Special Master in writing by June 30, 2022.

Dated: New York, New York
June 16, 2022

A handwritten signature in black ink, appearing to read "O. P. Sherwood", written over a horizontal line.

Hon. O. Peter Sherwood
Special Master