

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER: CIVIL TERM

-----X
ALLAN KASSENOFF,

Plaintiff, : Index No.:
: 58217-2019
Virtual
-against- : Proceeding

CATHERINE KASSENOFF,

Defendant. :
-----X

WESTCHESTER COUNTY COURTHOUSE
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601
VIRTUAL PROCEEDING
December 18, 2020

B E F O R E:

HONORABLE NANCY QUINN KOBA
Justice of the Supreme Court

A P P E A R A N C E S:

FOR THE PLAINTIFF:

DIMOPOULOS BRUGGEMANN, P.C.
73 Main Street
Tuckahoe, New York 10707
BY: GUS DIMOPOULOS, ESQ.
MICHAEL CHIARAMONTE, ESQ.

FOR THE DEFENDANT:

LAW OFFICE OF MARCIA E. KUSNETZ, P.C.
Two International Drive, Suite 170
Rye Brook, New York 10573
BY: MARCIA E. KUSNETZ, ESQ.

SANCTUARY FOR FAMILIES
BY: LISA VARA, ESQ.
RUCHMA L. COHEN, ESQ.

ATTORNEY FOR THE CHILDREN:
CAROL MOST, ESQ.

ANN M. DEL VECCHIO-KLINGEBIEL, RPR, CRR
SENIOR COURT REPORTER

V I R T U A L P R O C E E D I N G S

1 COURT ATTORNEY REFEREE IRENE RATNER: This is the
2 matter of Kassenoff versus Kassenoff, 58217 of '19.

3 Let's have appearances.

4 Mr. Dimopoulos, do you want to go first? You're
5 plaintiff.

6 MR. DIMOPOULOS: Dimopoulos Bruggemann by
7 Gus Dimopoulos and Michael Chiaramonte on behalf of the
8 plaintiff, Allan Kassenoff, who has joined us on this call.

9 Thank you, Referee Ratner.

10 COURT ATTORNEY REFEREE IRENE RATNER: You're
11 welcome.

12 MS. KUSNETZ: Marcia Kusnetz -- the Law Office of
13 Marcia E. Kusnetz -- Two International Drive, Suite 170,
14 Rye Brook, New York -- for the defendant,
15 Catherine Kassenoff.

16 I believe co-counsel, Ruchama Cohen is on.
17 Lisa Vara is supposed to be on. And my client is on by
18 telephone, Catherine Kassenoff.

19 MS. VARA: And also co-counsel for
20 Catherine Kassenoff, myself and Ruchama Cohen from
21 Sanctuary for Families.

22 Thank you.

23 MS. MOST: Carol Most, attorney for the children.

24 COURT ATTORNEY REFEREE IRENE RATNER: I note your
25 objection on the record to this being a compliance

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1 conference.

2 What I will say is --

3 MS. KUSNETZ: I would like to speak.

4 COURT ATTORNEY REFEREE IRENE RATNER: Let me
5 finish. Let me finish.

6 The preliminary conference in this matter was
7 held on July 9, 2019, by John Collins. There was a
8 notation -- there was a direction in that preliminary
9 conference that all discovery is to be completed within six
10 months. It said to be determined, but that the case was to
11 be trial ready within six months.

12 We are way past that six-month time. There have
13 been over 30 conferences in this case. There has not been
14 a court reporter for each of those conferences. There is
15 no such thing as a report regarding discovery -- regarding
16 discovery that has or has not been completed.

17 I have never done them. I don't do them. I
18 really don't know what you're referring to. So, that has
19 nothing to do with it.

20 We dealt with the issue of discovery numerous
21 times. The only issue that was outstanding, and the only
22 reason this case has not been scheduled for trial was that
23 the report of the appraiser -- the evaluator, Scott DeMarco
24 not been completed yet.

25 There were issues regarding a confidentiality

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1 agreement, and those issues with Ms. Spielberg and
2 Mr. Dimopoulos were resolved with Judge Koba a number of
3 months ago. There is an interim report that I understand
4 Mr. DeMarco has rendered.

5 He is to render a final report.

6 Has he been told, Counsel, that we need a final
7 report?

8 MS. KUSNETZ: Excuse me. Can I respond?

9 Before we go in to the issue of the forensic
10 evaluator -- because we did have a conversation with him
11 yesterday. Before we go into that, I would like to place
12 my objection on the record as to why this is a trial ready
13 conference because actually, the law provides that you must
14 have a compliance conference at least 20 days before a
15 court order to close to discovery.

16 There is no court order to close to discovery.
17 The PC conference order says to be determined in exactly
18 the spot that says when is discovery to be completed, when
19 is a note of issue to be filed. It says, to be determined.

20 It is not correct that there has been a court
21 ordered completion of discovery order in this case.

22 We are entitled, Judge, as a matter of law, to a
23 compliance conference, which is defined in the Westchester
24 Supreme Court matrimonial part rules.

25 And if you look at the e-courts, which

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1 Mr. Dimopoulos pulled up, there are a number of status
2 conferences that were held in this case, Court Attorney
3 Referee, but --

4 COURT ATTORNEY REFEREE IRENE RATNER: But
5 not before me.

6 MS. KUSNETZ: Excuse me. Excuse me.

7 COURT ATTORNEY REFEREE IRENE RATNER: Not before
8 me.

9 MS. KUSNETZ: Excuse me. Excuse me. Let me
10 please finish.

11 But no discovery compliance conference.

12 If you look at the PC order, it is defined in the
13 PC order. It is supposed to deal exclusively with the
14 discovery issues and a completion of discovery.

15 There is supposed to be a determination, Your
16 Honor, as to the completion of discovery and what is
17 outstanding, and then, at least --

18 THE COURT: Excuse me. Let me just respond.

19 Excuse me, Ms. Kusnetz, I will respond to that.

20 In addition to whatever the conferences that
21 you've held before Referee Ratner, I have held multiple
22 conferences in which it was determined that the only
23 discovery that remained to be conducted --

24 MS. KUSNETZ: I can't hear you.

25 THE COURT: Excuse me.

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1 The only discovery that was remained to be
2 conducted was the evaluation --

3 MS. KUSNETZ: I can't hear you. I'm sorry,
4 Judge.

5 COURT ATTORNEY REFEREE IRENE RATNER: I hear her
6 fine.

7 Is anyone else having a problem?

8 MRS. CATHERINE KASSENOFF: Yes.

9 THE COURT: Well, I don't understand. My mic is
10 on. I have volume.

11 MS. KUSNETZ: Yes. It's breaking up. I heard
12 every other word, Judge. I'm sorry. I didn't hear you.

13 THE COURT: Well, then everybody needs to shut
14 their cameras off, except for Ms. Kusnetz with whom I'm
15 speaking.

16 I've had multiple conferences myself where we
17 discussed outstanding discovery issues. The only issue
18 that's been outstanding, since the depositions of the
19 parties were concluded in the June, were getting the
20 documents from Greenberg Traurig, which were delayed
21 because there was a negotiation as to which documents there
22 would be, and then there was a delay because Mrs. Kassenoff
23 did not sign the confidentiality stipulation. That is the
24 only issue that is outstanding at this point in time.

25 The fact that she has now retained new counsel

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1 does not require us to re-litigate this case. This case is
2 going on the trial calendar. The trial readiness
3 conference is today.

4 MS. KUSNETZ: Let me just briefly address that.

5 So, before a trial readiness conference can be
6 held, your expert reports have to be filed. You cannot
7 conduct a trial ready conference or issue a trial ready
8 order when you have outstanding expert reports.

9 Justice Lubell just ruled on that in another case
10 that I had that Referee Ratner came in on as a second
11 referee where he said there are no carve outs. All expert
12 reports must be completed before a trial ready order is
13 issued.

14 You have two outstanding expert reports,
15 Your Honor. You have not only Dr. Abrams' report -- which
16 is not supposed to be due in February -- and he sent a
17 little email that said he's not even going to look at this
18 until the end of December.

19 Then you have the expert report that was -- a
20 draft that was circulated by Mr. DeMarco, an outstanding
21 discovery that was demanded by Mr. DeMarco, which we dealt
22 with yesterday, and I will accurately report what he said
23 as to the need for relevant information with regard to the
24 components of an excess earnings analysis for the
25 plaintiff's interest in Greenberg Traurig.

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1 THE COURT: First of all --

2 MS. KUSNETZ: We have the --

3 THE COURT: First of all, I'm the judge on this
4 matter, and it's my discretion as to what discovery will
5 and will not go forward from this point. My discretion.

6 MS. KUSNETZ: Not without the expert reports.

7 THE COURT: It's my discretion.

8 MS. KUSNETZ: I'm sorry, but with all due
9 respect --

10 THE COURT: Excuse me, Ms. Kusnetz, I'm talking.
11 I'm talking.

12 MS. KUSNETZ: I hear you.

13 THE COURT: Dr. Abrams' report has already been
14 done and was already used at a hearing. He is merely doing
15 a supplemental report, which again has been delayed by
16 objections from your client and again delayed because of
17 her failure to pay his portion of the fee.

18 MS. KUSNETZ: Not at all. Not at all, Judge.
19 That is not correct.

20 First of all --

21 THE COURT: When did she pay it?

22 MS. KUSNETZ: He said he's not getting to the
23 report until the end of December. We have that email. She
24 doesn't have --

25 THE COURT: When did she pay her share of the

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1 fee?

2 MRS. CATHERINE KASSENOFF: With what money?

3 MS. KUSNETZ: She does not have the money yet.
4 She will get it by the -- she will get it with the next
5 paycheck, Judge.

6 She does not have 20 per cent of his fee. She
7 doesn't have the 30-something-thousand dollars for the
8 attorney for the children. She doesn't have \$2,000 to pay
9 a court stenographer -- excuse me -- a stenographer for the
10 second day of the plaintiff's transcript. She doesn't have
11 the \$34,000 to pay Ms. Zeiderman, so we cannot get the
12 non-party subpoenaed documents which are not
13 Ms. Zeiderman's work product and are not being turned over.

14 She doesn't have that money. She pays all of her
15 income to supervision.

16 THE COURT: My question was very simple: Did she
17 pay the fee for Dr. Abrams? And the answer to that
18 question is no?

19 MS. KUSNETZ: Not yet is the answer. Not yet.

20 And he said -- he said he's not getting to the
21 report. He said it's -- he thinks it's just a rubber
22 stamp, Judge. One day of interviews and he's not getting
23 to it until the end of December, and we have that email.

24 And I might add, it's inappropriate for
25 plaintiff's counsel to have any conversation with him at

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1 all.

2 If the forensic wants to reach out to the judge,
3 he can, but this little back and forth with plaintiff's
4 counsel is completely improper.

5 And frankly, I didn't know that plaintiff's
6 counsel paid --

7 COURT ATTORNEY REFEREE IRENE RATNER: She froze.

8 MR. DIMOPOULOS: That's unfortunate.

9 COURT ATTORNEY REFEREE IRENE RATNER: Yes, she
10 froze.

11 MS. KUSNETZ: -- or I'll have to file another
12 Order to Show Cause because she doesn't have the money to
13 do it. She doesn't have the money to do it.

14 THE COURT: Ms. Kusnetz, you froze there for a
15 little bit.

16 I don't know what you're talking about in terms
17 of --

18 MS. KUSNETZ: Your Honor, she's not --

19 THE COURT: Excuse me. Excuse me. Stop.

20 I don't know what you are talking about in terms
21 of communications between Mr. Dimopoulos' office and
22 Dr. Abrams. Dr. Abrams notified the Court that he had not
23 been paid.

24 So, let's move on.

25 MS. KUSNETZ: No. Mr. Dimopoulos wrote to

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1 Dr. Abrams. He wrote to him. He wrote to him. He wrote
2 to him first. He should not be contacting --

3 MR. DIMOPOULOS: Your Honor, she's a hundred per
4 cent --

5 THE COURT: Stop. One person at a time.

6 COURT ATTORNEY REFEREE IRENE RATNER:

7 Ms. Kusnetz, stop.

8 THE COURT: Ms. Kusnetz, I'm going to start
9 muting you. When I tell you to stop talking, stop talking.

10 Mr. Dimopoulos.

11 MR. DIMOPOULOS: Your Honor, there's absolutely
12 no order of this Court or anything else prohibiting me from
13 reaching out to Dr. Abrams to learn about ministerial
14 matters such as scheduling and payment.

15 I asked him in an email -- that I copied to all
16 parties -- have you received your retainer yet? That was
17 my question.

18 MRS. CATHERINE KASSENOFF: You could have asked
19 us, Mr. Dimopoulos. You could have asked us instead, but
20 you decided to go to the forensic evaluator.

21 THE COURT: Who's talking?

22 COURT ATTORNEY REFEREE IRENE RATNER: Who is
23 that?

24 MRS. CATHERINE KASSENOFF: It's Mrs. Kassenoff,
25 Judge.

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1 COURT ATTORNEY REFEREE IRENE RATNER: No.

2 THE COURT: Mrs. Kassenoff, you're not -- one
3 person is talking. One person at a time.

4 COURT ATTORNEY REFEREE IRENE RATNER: She has
5 four lawyers.

6 THE COURT: It's not an ex-parte communication if
7 everybody is copied on the communication.

8 So, let's move on.

9 Go ahead, Referee Ratner, regarding discovery.

10 COURT ATTORNEY REFEREE IRENE RATNER: Well, the
11 issue of the discovery, and Ms. Kusnetz served the
12 deficiency notice three days ago.

13 MR. DIMOPOULOS: I'm happy to discuss that
14 deficiency notice, if you'd like, Referee Ratner.

15 COURT ATTORNEY REFEREE IRENE RATNER: Yes. I
16 would like it discussed.

17 MR. DIMOPOULOS: Okay.

18 What Her Honor is referring to, in a conference
19 where discovery was limited to the sole issue, she's
20 talking about a conference that she presided over that
21 Ms. Spielberg and I were on, when the Court specifically
22 asked about discovery.

23 What Ms. Spielberg said was that they were
24 waiting for Mr. DeMarco's report, and they were waiting --
25 they wanted to take Mr. Kassenoff's deposition regarding

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1 the report when it happened. There were no other
2 deficiencies alleged or questions asked or problems. Okay.

3 Here's where I have a problem, and I said this in
4 my letter, and it seems that the Court has read everything.

5 Ms. Kusnetz is not accepting the position of the
6 case that she was retained on and all of her prior
7 counsels' positions, which is inappropriate.

8 Ms. Spielberg didn't think there was a discovery
9 dispute. Her client didn't have a dispute at that time.
10 So, to raise disputes now is inappropriate.

11 If I could be specific? Okay? They're so
12 ridiculous, the deficiency demands. It's almost as if
13 they're trying to find something to hang their hat on,
14 which I don't even think the Court should pay attention to
15 the deficiency considering prior counsel said there were
16 none.

17 Just because you asked me, the first item on the
18 list is K1s. I think that -- from Mr. Kassenoff from
19 Greenberg Traurig. I think it has been said now, at least
20 five times, by various people, he doesn't receive a K1 from
21 Greenberg Traurig. That last point was made by
22 Frederick Warder, counsel for Greenberg Traurig, just
23 yesterday in an email. There are no K1s.

24 The second thing she claims a deficiency for is a
25 2006 -- 14-year-ago tax return that was joint, that she has

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1 equal access to. That's not a deficiency. She can get her
2 own tax return, to the extent you can track down the
3 accountant that filed it 14 years ago. My client does not
4 have it.

5 The next item is information regarding his
6 Northwestern account. Okay?

7 Now, Ms. Zeiderman subpoenaed Northwestern half a
8 year ago. I have a copy of the subpoena. I do not have
9 any information on whether it was complied with or not.

10 Based upon what Ms. Kusnetz just said, it seems
11 as though Ms. Zeiderman is withholding some documents from
12 her. That falls under the category of not my client's
13 problem. Okay? We don't have any control of that. But
14 the documents, if they exist, are with Ms. Zeiderman.

15 The partnership documents is the next item.
16 Okay? And she says that our position that we will not
17 produce anything above and beyond what Greenberg Traurig
18 has authorized us to produce and has produced is,
19 quote/unquote, rejected.

20 Well, sorry. It's not rejected. Greenberg
21 Traurig has responded to the subpoena. They've given all
22 the documents. The documents were reviewed by
23 Ms. Spielberg, when she was representing Ms. Kassenoff,
24 without any objection made. Everyone's had them.
25 Mr. DeMarco's has had them. This can't stand as a

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1 reasonable basis to have a deficiency.

2 The other documents -- there's only a couple
3 more.

4 She wants copies of lease agreements with the
5 tenants that she signed. They've been exchanged. We're
6 not giving them to her again.

7 See, what happens here is the case went from
8 Mr. Lieberman. Then it went to Ms. Zeiderman. Then it
9 went from Ms. Zeiderman to Mr. Nissman. Then it went from
10 Mr. Nissman to Ms. Zeiderman. Then Ms. Zeiderman to
11 Ms. Spielberg.

12 Things got lost, I'm sure of it, but it is not my
13 client's problem to pay me \$650 an hour to track down
14 documents that I've produced multiple times to multiple
15 attorneys.

16 The next document are deeds and mortgage
17 statements. These are jointly owned properties, and the
18 mortgage is in both names. Why should my client have to
19 produce these? You can go to the Westchester County clerk
20 and pull a copy of the deed in five seconds, not to mention
21 the mortgage statements were produced.

22 Bank accounts, all produced. All previously
23 produced. She wants an update through July 2020. That's a
24 trial issue. We will update all our records through the
25 date of trial if we've previously produced them. That's

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1 not a deficiency. It doesn't stop the trial from getting
2 assigned.

3 Capital contributions. All produced by Greenberg
4 Traurig, or they refused to produce them. Okay? One or
5 the other.

6 Any other business interest that he may have. He
7 doesn't have any. We've said that multiple times.

8 Transfers. We haven't produced any information
9 about transfers. Yes, we have. We produced all of the
10 brokerage statements. We've produced all of the various
11 separate property accounts. We produced a ledger kept by
12 my client's father and himself regarding all of the stocks
13 and the transactions.

14 Perhaps Ms. Kusnetz doesn't have them because
15 Ms. Spielberg or Ms. Zeiderman are laying dominion to them,
16 but we have produced them.

17 Legal invoices and payments to private
18 investigator. I produced my bills to three different law
19 firms. To the extent I need to update them through the
20 date of today, I will do so. But they've been produced.
21 They're not a deficiency.

22 Now, the last thing, and I really -- she wants
23 copies of the rent checks that the tenant has paid. Okay.

24 So, the bigger problem, Referee Ratner, is
25 Mr. DeMarco. And I'm sure that Ms. Kusnetz and I won't see

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1 eye to eye on this. But let me just explain to you,
2 because I was the only one that was actually there the
3 first time we spoke to him.

4 Your Honor was newly assigned on the case. We
5 went into court with Ms. Spielberg -- Ms. Spielberg -- I'm
6 sorry. Ms. Zeiderman. Ms. Zeiderman raised the issue that
7 we had yet to provide Mr. DeMarco with copies of the
8 Greenberg Traurig documents.

9 We explained to Her Honor -- on the first
10 appearance before her in either December or January -- that
11 we couldn't and that only GT could provide them.

12 Your Honor asked Ms. Zeiderman, why haven't you
13 subpoenaed them? Ms. Zeiderman said, I was trying to avoid
14 it. And we said, sorry. You're going to have to do it
15 because we can't give them to you. So, to the extent it
16 would otherwise infuriate us, we understand you have to do
17 it.

18 She didn't do it. Neither did Ms. Spielberg when
19 she was retained for the first three or four or five months
20 of being her lawyer. It wasn't until months later that the
21 documents were finally subpoenaed, in August.

22 Mr. Warder from Patterson Belknap was appointed
23 Greenberg Traurig's lawyers. He got involved and he had a
24 meet and confer process with Ms. Spielberg for August,
25 September and October. They went back and forth about what

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1 documents could be produced, would be produced and what
2 would not. I was on all of those telephone calls.

3 We went through a list. We had a conversation --
4 the third conversation with him. Finally, on my
5 suggestion, Ms. Spielberg and I broke from the meet and
6 confer to talk to Mr. DeMarco to see whether or not all of
7 the documents that Greenberg Traurig was willing to provide
8 would be sufficient for him to render his report.

9 We had a call with Mr. DeMarco. He then said to
10 us that it would be enough. We went back to Mr. Warder.
11 Mr. Warder said, that's terrific. He wrote her a letter,
12 provided all the documents. I then provided the documents
13 to Mr. DeMarco and then Mr. DeMarco rendered his draft
14 report.

15 I said to Mr. DeMarco, why do you have to do a
16 draft report? Why can't it just be final? And he said,
17 that's just the way I do things. I give people an
18 opportunity to comment and then I finalize. Which is when
19 I realized it would be impossible then to get a final
20 report. So, I set forth a proposed order for him to
21 finalize it.

22 Then what happened is Mr. Kusnetz and I scheduled
23 a phone call with him yesterday. My interpretation of the
24 conversation -- I'm sure she'll have an opportunity to say
25 it -- she started attacking him, cross-examining him on his

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1 report and why he didn't do what is known as a Rubino
2 analysis.

3 The Rubino analysis would have looked toward his
4 firm originations and his clients to bolster the goodwill
5 portion of the value of his interest. Greenberg Traurig
6 refused to provide that. Mr. DeMarco said, I don't think a
7 Rubino analysis is necessary here. As I understand, from
8 talking to everyone, his Samsung and all these humungous
9 corporations that Greenberg Traurig represents are not
10 Mr. Kassenoff's clients, they are not his originations.

11 He is a 500 level, middle-of-the-road partner in
12 Greenberg Traurig. He does not originate Samsung. He does
13 not originate LG -- some of the largest corporations in the
14 world. Okay?

15 He said, on the call yesterday -- and I wrote the
16 best of my notes as possible. One is the big issue is that
17 they redacted his shareholder agreement. And I wrote
18 down -- my notes on what he said is, there really isn't an
19 issue with the shareholders' agreement in terms of my
20 understanding it. This is the second I've valued Greenberg
21 Traurig. It's fine.

22 The second thing he said about the production of
23 documents is that he reiterated the meeting with
24 Ms. Spielberg. He reiterated the -- his word -- agreement
25 that Ms. Spielberg and I made with Mr. Warder in Greenberg

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1 Traurig, and he said, my understanding was I was asked --
2 and I wrote, if they produced those documents and I do a
3 report, would I feel comfortable? And yes, I feel
4 comfortable. Obviously, I rendered the report. Okay?

5 So, Ms. Kusnetz then kept questioning him and
6 questioning him about whether or not it would be helpful to
7 have more, should he have more, would he have more.

8 The bottom line on this, and then I'm done
9 talking, Your Honor, because I have handled the Rubino
10 analysis in goodwill in various litigation, and the way it
11 boils down is when there is an interest and the goodwill
12 portion of it is presumed to be low, it is the role of a
13 rebuttal report or cross-examination -- Ms. Kusnetz would
14 cross-examine Mr. DeMarco about why he didn't do that, but
15 if he, as a professional, said, I felt comfortable
16 rendering this report without it, then that's that. It's
17 her job to make him look like a bad evaluator on the stand
18 during cross-examination.

19 This is yet another issue not to prohibit
20 declaring this matter trial ready.

21 Thank you.

22 THE COURT: Go ahead, Ms. Kusnetz.

23 Well, hold on a second. Let me let you in.

24 Ms. Kusnetz, you can unmute.

25 Oh, I lost you. Oh, here you are. Hold on.

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1 MS. KUSNETZ: Can you hear me now?

2 THE COURT: Yes. Go ahead.

3 MS. KUSNETZ: I'm going to start -- you know,
4 I've never had another attorney misrepresent what I said in
5 a notice of deficiency that summarizes where they've just
6 said we're not producing documents. But I'm going to get
7 to the most important issue first, which is Mr. DeMarco.

8 I had two other attorneys on the phone taking
9 notes, and in fact, I have explicitly what he said. I just
10 find it to be unethical not to report exactly what he said,
11 which he said he would be happy to speak to Your Honor
12 about it. And I don't want anything off the record, but he
13 said he'd speak to the referee. He just wasn't available
14 for this conference today to tell you what he deems to be
15 relevant.

16 So, what he deems relevant are all the documents
17 necessary for a Rubino evaluation. I took him through the
18 various categories of an excess earning analysis, which in
19 his draft he says he is applying to this case.

20 The only reason why he couldn't exactly apply it
21 and relies it solely on statistical evidence not related
22 specifically to Greenberg Traurig is because Greenberg
23 Traurig refused to produce it, produce a 25-page objection,
24 which I put in my reply affirmation, and it is a matter of
25 a record, objecting to every aspect of the prior subpoena

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1 that was served on them for accounts receivable, his
2 percentage of bills, billings, work in progress.

3 Everything that the Second Department said in
4 Rubino is necessary to value a partner's interest in an
5 ongoing concern and to determine goodwill.

6 I went through the goodwill number with --

7 COURT ATTORNEY REFEREE IRENE RATNER: I'm just
8 going to clarify one thing.

9 MS. KUSNETZ: Why are you -- why are you
10 interrupting me?

11 COURT ATTORNEY REFEREE IRENE RATNER: Because
12 you're talking about --

13 MS. KUSNETZ: You did not speak once, Referee,
14 when --

15 COURT ATTORNEY REFEREE IRENE RATNER: Because
16 you're talking about a partnership interest that --

17 THE COURT: Referee Ratner, hold on.

18 MS. KUSNETZ: He was not interrupted.

19 THE COURT: Ms. Ratner, hold on.

20 Ms. Kusnetz, let me just make something perfectly
21 clear here: This is a court proceeding. No one speaks
22 that disrespectfully to an employee of this court. She's a
23 referee. You speak with respect to which she's entitled to
24 that position.

25 COURT ATTORNEY REFEREE IRENE RATNER: I was

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1 simply trying to clarify.

2 Ms. Kusnetz is talking about a partnership
3 interest. Mr. Kassenoff does not have a partnership
4 interest. He has a shareholder interest.

5 MS. KUSNETZ: So, thank you, Referee, because
6 actually, Mr. Dimopoulos just used the word partnership
7 himself. He used that word.

8 I know what Mr. Kassenoff's interest in this law
9 firm is. Many law firms have converted partnership
10 interest to shareholder interest just for this issue alone,
11 to try to shield their owners. He is an owner of an
12 interest in an ongoing concern, Referee, and sorry, but
13 Mr. Dimopoulos used that word.

14 You didn't interrupt him.

15 COURT ATTORNEY REFEREE IRENE RATNER: I did not
16 hear it. He did not say that.

17 THE COURT: Excuse me.

18 We have a finite period of time. Arguing with my
19 referee is not useful.

20 MS. KUSNETZ: He just said it.

21 THE COURT: Respond to what Mr. Dimopoulos said
22 about Mr. DeMarco, please.

23 MS. KUSNETZ: So, Mr. DeMarco -- as we went
24 through the components of an excess earning analysis --
25 let's take for an example reasonable compensation.

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1 I said, Mr. DeMarco, did you have any information
2 from the law firm as to non-ownership interest of basically
3 senior associates in the patent department? And he said,
4 no. I have no information from the law firm. I had to use
5 statistical information.

6 Well, Judge, if your reasonable compensation
7 number is 100,000, let's say, too high, we're talking about
8 a \$400,000 difference in a valuation. It is not pennies.

9 I said, would you deem -- and this is the
10 information he demanded. The information you requested
11 with regard to reasonable compensation from the firm.

12 Is it relevant to your valuation? And he said,
13 yes, it is. Would you welcome that information? Yes, I
14 would. If I can get you that information, will you
15 incorporate it in your report? Yes, I will.

16 Then we talked about goodwill.

17 Sir, did you ever get the information about the
18 percentage of the revenues that Mr. Kassenoff is generating
19 for the law firm? And didn't you request that information?
20 Yes, I did request it. Did you get it from the law firm?
21 No, I didn't. They objected to it. Would that be helpful
22 to your valuation? Yes, it would. Is that because you're
23 using statistical information? Yes, I am.

24 He is using complete statistics to determine a
25 valuation of this plaintiff's interests in a law firm. It

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1 is outrageous to me.

2 I have done this many times, and I've represented
3 many people who have interests in professional
4 organizations, law firms and such, the same as
5 Mr. Dimopoulos, and excess earning analysis without
6 receivables, work in progress, percentage of revenues
7 issued to the gross.

8 He is a big producer. And yes, he does have the
9 five top clients in the firm. Samsung. He traveled to
10 Korea all the time during his marriage. He is their guy.
11 That is a portion of goodwill.

12 He looked surprised when I said Samsung on the
13 phone yesterday. He looked surprised completely.

14 Now, not only that, but the plaintiff himself
15 gets at least two performance reviews during a year. And
16 what do they analyze? Your billings, your percentage of
17 income to the firm, your worth to the firm. That's how
18 bonuses are decided. He has a huge bonus component to his
19 income. This guy earns over \$850,000 a year.

20 We have no information -- I said to the forensic,
21 do you have any information as to how it's computed from
22 the firm? No, I don't. Would that be helpful to you, sir,
23 and certainly relevant to the valuation? Yes, it would.

24 Then I said to him, you know, talking about the
25 capitalization rate. I said, if you don't have an

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1 understanding, factually, as to the value of this guy, of
2 the plaintiff, to the law firm, you cannot determine
3 goodwill. You cannot determine risk.

4 A capitalization rate is the risk. The risk of
5 whether or not he's going to continue there at this law
6 firm, which he has for a long period of time, with a
7 continuing increase in earnings and distributions.

8 So, I said that to him, would that be helpful to
9 you? And he said, absolutely. I said, you gave me a low
10 capitalization number. Why? Where is the risk to this
11 guy? Where is the risk?

12 He doesn't have the information. Every question
13 I asked him, Your Honor, whether the information he himself
14 asked for is relevant to his valuation, he said he would
15 welcome it, he would incorporate it into his report, and
16 that's what we should do here.

17 MR. DIMOPOULOS: May I say something?

18 MS. KUSNETZ: No. Excuse me.

19 Not a valuation that is based exclusively on
20 statistical evidence having nothing to do with this law
21 firm. This is not equity here, Judge.

22 And let me talk about this prior agreement.

23 I asked Ms. Spielberg about it, and she said,
24 there's no agreement. We didn't want to have to face
25 motions to quash, which is what opposing counsel

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1 recognizes, all Patterson Belknap has to say is I'm moving
2 to quash. That's what he said to me yesterday in an email.
3 I'm moving to quash. Go ahead. Because it's relevant
4 information, and months were spent --

5 THE COURT: Ms. Kusnetz.

6 MS. KUSNETZ: I want to call him --

7 THE COURT: Unless you have a new point, we get
8 that point.

9 MR. DIMOPOULOS: May I just respond?

10 MS. KUSNETZ: I want to talk about my deficiency
11 notice because he went through it and with a complete
12 misrepresentation of the important issues here.

13 First of all, Mr. Kassenoff has not updated his
14 over-a-year-old statement of net worth. That's supposed to
15 be done, Referee, prior to a trial readiness conference and
16 prior to the close of discovery.

17 COURT ATTORNEY REFEREE IRENE RATNER: No. That's
18 not true.

19 MR. DIMOPOULOS: What are you talking about now?
20 I've had enough of this.

21 THE COURT: Stop.

22 MS. KUSNETZ: Can I finish, please?

23 THE COURT: No. Stop. Everybody, stop.

24 Referee Ratner, do you want to respond to the
25 statement regarding the statement of net worth?

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1 COURT ATTORNEY REFEREE IRENE RATNER: Updated
2 statements of net worth are submitted after the trial ready
3 order is issued, when the case is going to trial; not
4 before. Ever.

5 And by the way, I just want to note that the
6 trial ready order does state that discovery is complete.

7 If there is a carve out, we put it in there --
8 specifically put in there that subject to the deposition of
9 X to take place on or submission of certain documents.

10 But the trial ready order is what declares
11 discovery -- where you have an order. You were talking
12 about an order. Is the order stating that discovery is
13 complete.

14 THE COURT: Okay.

15 MR. DIMOPOULOS: Your Honor, can I just address
16 the points very briefly?

17 THE COURT: Wait.

18 She didn't finish her statement regarding the
19 deficiency notice.

20 MR. DIMOPOULOS: Okay.

21 THE COURT: Ms. Kusnetz, you can unmute yourself.
22 All right. Finish responding to the deficiency notice
23 issue.

24 MS. KUSNETZ: Thank you.

25 So, with regard to the notice of deficiency,

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1 Your Honor, there's a few things. The reason why, you
2 know, there's a problem is many of the financial documents
3 are located in the Larchmont residence, and they pertain to
4 the acquisition of the New Rochelle residence.

5 It's very important because all the closing
6 binders in Redwelds with regard to the previous purchases
7 and sale of two Brooklyn properties that were my client's
8 separate property, the disposition of those properties
9 were, you know, contributions to the down payment for
10 New Rochelle, and I need the closing binders. That's easy.
11 It's in the marital residence.

12 I don't think that there -- she should be able
13 to --

14 THE COURT: Can't you just get it from the
15 attorney -- the closing attorney?

16 MS. KUSNETZ: No.

17 She called the closing attorney. We made those
18 efforts. She does not have the complete binders anymore.
19 It was a long time ago; but my client does, and they are
20 kept in the marital residence. They belong to her. Those
21 financials belong to her.

22 The same thing with the 2006 tax return. It's
23 because it relates to the separate property issue.

24 So, that's all I'm saying. That is why we asked
25 for that. She said, all of the tax returns are at the

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1 house. So, we asked for those things. I don't think that
2 that should be a problem.

3 With regard to the paystubs --

4 THE COURT: Hold on one second. Hold on. Hold
5 on.

6 Mr. Dimopoulos?

7 MR. DIMOPOULOS: Yes, Your Honor.

8 THE COURT: You can speak on the income tax
9 return.

10 MR. DIMOPOULOS: Your Honor, when she gets those
11 documents, I would appreciate a copy of them as well
12 because I have asked my client to provide them to me and he
13 doesn't have them, and they are not in the residence.

14 MS. KUSNETZ: That's not true. All of the
15 documents are there. They're all there in Redwelds.

16 MR. DIMOPOULOS: How do you know that?

17 THE COURT: Stop.

18 MS. KUSNETZ: Because she knows exactly where
19 they are.

20 THE COURT: Stop, stop, stop.

21 Ms. Kusnetz, where are you saying the documents
22 are?

23 MS. KUSNETZ: Catherine?

24 Oh, maybe she's muted, Judge. I don't know.

25 THE COURT: Hold on. Let me unmute.

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1 COURT ATTORNEY REFEREE IRENE RATNER: Is she 347?

2 THE COURT: Yes. Can you unmute her?

3 COURT ATTORNEY REFEREE IRENE RATNER: I see her
4 there. I can't unmute her.

5 THE COURT: Hold on. Hold on.

6 COURT ATTORNEY REFEREE IRENE RATNER: It's not
7 allowing me to unmute it. We didn't mute her. She muted
8 herself.

9 THE COURT: No. I muted her. Now I can't get to
10 the microphone. Hold on.

11 MS. KUSNETZ: Catherine?

12 I lost you, Judge.

13 THE COURT: I'm back. Go ahead. I'll try to
14 figure this out.

15 MS. KUSNETZ: Okay.

16 So, she told me where they are. They're located
17 on the third floor of the house. They're in Redwelds.
18 They're organized. They deal with all of the acquisition
19 closings of two Brooklyn properties, and they are at the
20 house.

21 She said all of the tax returns are at the house.
22 The 2006 tax return is at the house. She said, you know,
23 he may not know where they are. They are on the third
24 floor of the house, and she knows where they are. That's
25 what she told me and that's what I put in my statement.

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1 With regard to the perks of Mister --

2 Oh, and I just want to say this.

3 Mr. Dimopoulos said that he forward GT documents
4 directly to the forensic, not until the end of October.
5 October 29th is when these documents came through. We
6 don't have them.

7 I asked Mr. Dimopoulos to send me a link of
8 whatever the plaintiff provided to the forensic, which was
9 basically some paystubs and recent personal tax returns.
10 Nothing related to the valuation in this case.

11 I'm telling you, Mr. Dimopoulos forward documents
12 from GT to the forensic, but he didn't send them to
13 Ms. Spielberg. She doesn't have them. Okay? And
14 certainly, I don't have them. So, I haven't even seen what
15 was sent October 29th to Mr. DeMarco.

16 Mr. DeMarco said yesterday, he said, oh, there is
17 a portal of those documents, and I will make them available
18 to you. Still, I don't have access to the portal. But
19 guess what? Mr. Dimopoulos has those documents, not us.
20 That's improper.

21 With regard to the employer rate -- related
22 benefits. So, he has an HR department. He gets all of his
23 information with all of his perquisites, of his disability
24 insurance, health insurance, life insurance. We don't have
25 the information with regard to that. Certainly with regard

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1 to life insurance coverage, whatever the firm pays for,
2 those are perks, they're added to income, certainly for
3 maintenance purposes. I don't have that.

4 He can just produce that. I don't see why that's
5 a problem. And in every one of these responses,
6 Mr. Dimopoulos says, oh, we can't produce his insurance
7 benefits because the firm won't let us? What was the
8 purpose of the confidentiality order that you signed,
9 Judge?

10 And I just want to say, my client didn't hold up
11 the confidentiality stip. She signed it all the way in
12 December of 2019. Mr. Dimopoulos and Ms. Spielberg didn't
13 sign it until June 2020, which is when Your Honor signed
14 it. She didn't hold it up. I saw the date of her
15 signature.

16 With regard -- and there are post-EBT demands.
17 Mr. Dimopoulos says there aren't. But Ms. Spielberg did
18 serve post-EBT demands on the plaintiff, and we think that
19 those post-EBT demands -- she told me that they are still
20 outstanding. She never waived them. She thinks that they
21 should be followed up on.

22 With regard to that, Mr. Dimopoulos agreed that
23 there was supposed to be a continued deposition. I
24 understand that there was like a day of deposition of
25 Mr. Kassenoff and it went for an hour the next day. I

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1 don't have it because my client can't afford to pay for
2 that. But with regard to the first day we had the EBT
3 demands and that there was an agreement to continue the
4 deposition.

5 Mr. Dimopoulos is saying, oh, I'm deciding to
6 limit that only to the valuation. No. Ms. Spielberg said
7 that that is not correct. It was to continue his
8 deposition, and with regard to the post-EBT demand --

9 THE COURT: Hold on. Hold on one second.

10 Mr. Dimopoulos, did you get a post-deposition
11 demand from Ms. Spielberg?

12 MR. DIMOPOULOS: Absolutely not.

13 MS. KUSNETZ: I have it referred to in my -- it
14 is a letter. I have it referred to in the notice of
15 deficiency. It is post-EBT demand number eight. It was
16 absolutely sent to Mr. Dimopoulos and is referred to in my
17 notice of deficiency, and Ms. Spielberg sent it. It's a
18 letter.

19 MR. DIMOPOULOS: Why don't you -- why don't
20 you -- why don't you get a copy of the email allegedly
21 transmitting it to me? That would seem to solve the
22 problem.

23 THE COURT: I'm not going back and forth.

24 If Ms. Spielberg served a notice for deficiency
25 after a deposition or a deposition notice, and it was

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1 served, then that's entitled to a response.

2 MR. DIMOPOULOS: Your Honor, the problem is that
3 it was --

4 MS. KUSNETZ: It was served with the EBT demands.

5 MR. DIMOPOULOS: The problem is, Your Honor, it
6 was never served.

7 I think what's going on here is that
8 Ms. Kusnetz -- in the same attitude that she's coming to
9 the Court with -- is challenging Ms. Spielberg on her
10 conduct, and perhaps --

11 MS. KUSNETZ: No, I'm not.

12 THE COURT: Let's stop.

13 We have a finite period of time. My reporter
14 needs to go to lunch.

15 Referee Ratner, why don't you weigh in on this
16 issue?

17 COURT ATTORNEY REFEREE IRENE RATNER: I think
18 what you said is service. Let Ms. Kusnetz or Ms. Spielberg
19 provide the transmission letter or the email -- presumably
20 it was by email. Just provide the date it was emailed to
21 Mr. Dimopoulos.

22 MR. DIMOPOULOS: What's the date it was allegedly
23 served?

24 THE COURT: So, send the demand with proof of
25 service and then they'll respond.

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1 MS. KUSNETZ: Okay.

2 MR. DIMOPOULOS: Can you just give me the date,
3 Ms. Kusnetz?

4 THE COURT: Do you have the date on the letter?

5 MS. KUSNETZ: You know what? I did have it, but
6 I have a mirage of letters here. I had it when I prepared
7 the deficiency notice.

8 THE COURT: So, send the demand -- whether it's
9 letter form or not -- with proof of service to
10 Mr. Dimopoulos and he will respond, because that would have
11 been served, you know, post-deposition.

12 COURT ATTORNEY REFEREE IRENE RATNER: Even by
13 email. It doesn't to have to be --

14 MR. DIMOPOULOS: If I received it by email, I
15 would have responded to it. Yes.

16 THE COURT: We have a few minutes before the
17 court reporter needs to leave.

18 MS. KUSNETZ: Can I finish, Your Honor?

19 THE COURT: Yes.

20 MS. KUSNETZ: With regard to --

21 So, again, Mr. Kassenoff, although he has
22 absolute access to his performance at his law firm, refused
23 to produce those evaluations because -- even with the
24 confidentiality stip.

25 So, what was the purpose of months and months of

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1 negotiation of a confidentiality stip that you ordered if
2 he's saying, oh, no? It's proprietary. I can't -- I can't
3 produce it.

4 THE COURT: What does that have to do with his
5 employer? Is that not correct, Mr. Dimopoulos?

6 MR. DIMOPOULOS: Your Honor, Your Honor --

7 THE COURT: Hold on. Hold on.

8 MS. KUSNETZ: Oh.

9 THE COURT: Hold on.

10 Mr. Dimopoulos?

11 MR. DIMOPOULOS: Your Honor, this is the problem
12 with incoming attorneys. They weren't on the call with
13 Mr. DeMarco when my client explained that there's firm
14 proprietary information that he does not receive.

15 Employees don't get their own performance reviews
16 and internal documents like that. He told them he doesn't
17 get them.

18 THE COURT: Most firms, to get a copy of your
19 performance review, you have to sign off on it.

20 MR. DIMOPOULOS: It's not a performance review.

21 What she's asking for, Your Honor, is not you've
22 been doing a good job.

23 THE COURT: Just the numbers?

24 MR. DIMOPOULOS: She's asking for the internal
25 analysis the firm uses to compute his bonuses.

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1 THE COURT: Okay.

2 MS. KUSNETZ: No, no, no, no. That's different,
3 Judge.

4 I don't know if I'm muted.

5 That's different.

6 What Your Honor is saying is absolutely correct
7 because my client knows because he got a performance report
8 one year and he disagreed with the numbers and he
9 challenged it and won to show that he actually produced
10 more than what they thought he produced, and he had access
11 to those numbers.

12 So, you're right. They are two separate things.

13 MR. DIMOPOULOS: That's completely inaccurate.

14 MS. KUSNETZ: There is the internal analysis --
15 Excuse me.

16 MR. DIMOPOULOS: Ms. Kusnetz, you make things up
17 as you go along.

18 THE COURT: Hold on. Hold on.

19 This is what we're going to do: You served a
20 notice to Greenberg Traurig or an updated subpoena?

21 MS. KUSNETZ: Yes.

22 THE COURT: Referee Ratner and I discussed this.

23 So, my understanding is Mr. Dimopoulos is
24 requesting a Rule E to quash the subpoena; is that correct?

25 MR. DIMOPOULOS: Your Honor, I have no standing

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1 to quash the subpoena against Greenberg Traurig, but they
2 will. They've said so much.

3 THE COURT: So, then that's going to be the
4 subject of the motion to quash.

5 Let's move on.

6 I'm concerned about the Zoom calls.

7 COURT ATTORNEY REFEREE IRENE RATNER: Right.

8 One of the things that I will say --

9 THE COURT: Hold on.

10 COURT ATTORNEY REFEREE IRENE RATNER: Marcia --
11 Ms. Kusnetz had said that Jill said that she never agreed
12 that the subsequent EBT, after Scott DeMarco rendered his
13 written report, would be only regarding valuation.

14 I think Judge Koba and I discussed this. We both
15 remember that that was what the EBT was limited to.

16 Am I incorrect, Judge?

17 THE COURT: No. That's my recollection as well.

18 MS. KUSNETZ: She didn't. She had a number of
19 post-EBT demands, they're also on the transcript, and she
20 told me, Marcia, no. It is not. That's not her
21 understanding that it was just limited to the valuation.

22 And first of all, I don't even have a complete
23 valuation. How am I supposed to take his deposition
24 without, you know, this information getting to Mr. DeMarco?
25 This needs to get to him as soon as possible.

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1 THE COURT: Here's the problem. Okay?

2 MS. KUSNETZ: Yes.

3 THE COURT: I have Mr. Dimopoulos telling me that
4 a negotiated resolution of the subpoena was with Greenberg
5 Traurig, and that Mr. DeMarco said that the information
6 provided was sufficient for him to do a valuation.

7 Your interpretation of your conversation with
8 Mr. DeMarco is that it was not, and you apparently served
9 another subpoena. Is that correct?

10 MS. KUSNETZ: My interpretation is that he was
11 not part of that. That was supposedly something that the
12 plaintiff is reporting that an agreement was made. There
13 was no --

14 THE COURT: Hold on.

15 MS. KUSNETZ: They're not saying that to me.

16 THE COURT: Hold on.

17 My question was: You served another subpoena
18 upon Greenberg Traurig?

19 MS. KUSNETZ: Yes, and for deposition, which was
20 not done before.

21 THE COURT: So, we all can anticipate that
22 Greenberg Traurig is going to file a motion to quash. Then
23 it comes before the Court and everybody has an opportunity
24 to put in the motion papers the reasons why you need the
25 documents or you don't need the documents, and they can do

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1 that. So, let that go.

2 Greenberg Traurig can move to quash and then
3 everybody can weigh in on that, and ultimately, the Court
4 can decide where we're going with that. Okay?

5 So, that takes care of that. They're going to
6 have their motion.

7 MS. KUSNETZ: Okay.

8 THE COURT: You're going to send to
9 Mr. Dimopoulos a copy of Ms. Spielberg's letter, with proof
10 of service, about the post-deposition demands that she
11 served.

12 Upon receipt of that, Mr. Dimopoulos will respond
13 to the post-deposition demands.

14 Now, what I'm concerned about -- again, my court
15 reporter has to leave -- are the Zoom calls.

16 Now, Mr. Dimopoulos, were you able to send that
17 to me?

18 MR. DIMOPOULOS: Your Honor, it's too large of a
19 file.

20 THE COURT: Okay.

21 MR. DIMOPOULOS: Once we get off the call, I'll
22 call whoever can do it and get it done.

23 THE COURT: You're going to need to download that
24 and send it to me and we'll have to have another conference
25 regarding the Zoom call, because I am concerned about the

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1 content -- of what's been alleged to be the content of the
2 Zoom calls between Mrs. Kassenoff and the children.

3 So, it's not fair to have a discussion about that
4 until I've actually had a chance to review the Zoom calls
5 in totality. So, we can discuss that.

6 COURT ATTORNEY REFEREE IRENE RATNER: The other
7 issue that has to be discussed --

8 THE COURT: Referee Ratner is speaking right now.
9 Hold on.

10 COURT ATTORNEY REFEREE IRENE RATNER: The issue
11 of the broker and the listing of the house in New Rochelle.

12 MR. DIMOPOULOS: Well, Ms. Kassenoff has already
13 taken care of that, Your Honor.

14 MS. KUSNETZ: I sent a letter to the Court -- I
15 sent a letter to the Court on December 11th from
16 Sotheby's -- from Julia Fee Sotheby's, the preeminent
17 broker in all of Westchester, if not New York State.

18 COURT ATTORNEY REFEREE IRENE RATNER: Excuse me.
19 Excuse me. Excuse me.

20 Mr. Dimopoulos, are you consenting to change
21 brokers?

22 MR. DIMOPOULOS: No.

23 COURT ATTORNEY REFEREE IRENE RATNER: Okay.
24 Husband is not consenting.

25 The parties -- I note the stipulation that states

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1 the name that the parties entered into, and it named the
2 two people who were the brokers; therefore, they must
3 continue.

4 My understanding is --

5 MS. KUSNETZ: No. That's not true. That is not
6 in the order, Referee. That is absolutely not true.

7 Their agreement ended after six months. We do
8 not agree to continue with them. They are going to just
9 give this house away. They won't re-stage it. They are
10 not agreeing to put any money in doing that.

11 Sotheby's did an incredible presentation, which I
12 sent to Your Honor and I circulated all around.

13 They will stage the house. They will see that
14 they can present this in a different manner, and they are
15 also a different rank of a broker here.

16 And no, there is no order at all, in this court,
17 to continue with Houlihan Lawrence.

18 And excuse me, but that agreement to sell was
19 limited to that six-month listing agreement, and there is
20 no order of this Court that --

21 COURT ATTORNEY REFEREE IRENE RATNER: I did
22 not --

23 MR. DIMOPOULOS: Can I ask a question? Can I ask
24 a question?

25 COURT ATTORNEY REFEREE IRENE RATNER: Judge, I

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1 can't do this.

2 I do not recollect that that stipulation which
3 was so-ordered was limited to only one listing and to six
4 months.

5 My recollection is -- and I should have printed
6 it out -- is that they were named the brokers for this
7 house. It was six months -- they are the only ones named
8 in there who can continue the listing.

9 Mr. Dimopoulos, do you have the agreement in
10 front -- the stipulation in front of you?

11 MR. DIMOPOULOS: Yes, I do.

12 And I just want to know, for my position to be
13 heard, do I have to scream and holler? Because I can't get
14 a word in edgewise, and it's literally so many factually
15 incorrect things are being said.

16 It's now apparent to me that she doesn't even
17 have the file.

18 COURT ATTORNEY REFEREE IRENE RATNER: Right.

19 MR. DIMOPOULOS: You know, it's mesmerizing. The
20 agreement -- the New Rochelle sale --

21 THE COURT: I just want to say something here.

22 I don't have time to have this go back and forth
23 and sarcastic comments in moving on. Everybody's heard.

24 My recollection of the agreement is it does not
25 limit it to time and space, but we will take a look at

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1 that.

2 MR. DIMOPOULOS: I can read it right now,
3 Your Honor.

4 It's docket entry 541. I will read it.

5 Ordered, that by the close of business on the day
6 this Court enters this order, both parties shall execute
7 and deliver an exclusive right to sell agreement with
8 Cini Palmer and Cindy Frasier of Houlihan Lawrence for the
9 purposes of listing the New Rochelle home for the sale of
10 the initial offering price of a million fifty.

11 Here's the problem -- and I mentioned this in my
12 letter. These are the only brokers that my client is going
13 to consent to. They have worked for six months. They have
14 put in their time, their money, their resources. They've
15 dealt with countless emails, threats.

16 To say to them, to kick them to the curb right
17 now is just the most morally reprehensible thing to do.
18 They're not to blame for why this house hasn't sold at all.
19 That's number one.

20 Number two is, Your Honor, quite frankly, you can
21 pick any broker you want. It doesn't matter. She's not
22 going to allow the house to get shown.

23 I sent six or seven different declination emails.
24 Do you understand? She just wants it to look like it's
25 going to sell. And you know what? My client said to me,

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1 Gus, I'm going to pay you \$25,000 to make a motion that's
2 going to change the broker, pick this broker, pick that
3 broker. As long as she's in the house, it's never going to
4 sell.

5 THE COURT: Well then, if you switch to her
6 broker that she selects, and it doesn't sell, then what
7 difference does it make?

8 MR. DIMOPOULOS: Because at the end of the day,
9 Your Honor, we're spinning our wheels. And the reality on
10 the ground is that my client is paying for everything as
11 this goes on. So, the longer this case goes on, the longer
12 this litigation lasts --

13 THE COURT: Listen. I don't want the case to go
14 on forever. Okay? I've had more conferences on this case
15 then basically all of my entire caseload combined.

16 COURT ATTORNEY REFEREE IRENE RATNER: Right.
17 Right.

18 MR. DIMOPOULOS: I was mesmerized when I --

19 THE COURT: It's not here nor there.

20 If they cannot agree on a broker, if you cannot
21 agree on a listing, there's a stipulation. So, it's not
22 unusual, when a house does not sell with one broker, to
23 switch brokers.

24 MR. DIMOPOULOS: Here's the problem. Here's the
25 problem --

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1 THE COURT: If you cannot agree to do that, the
2 house needs to be delisted with the current brokers then.

3 MS. KUSNETZ: No.

4 MR. DIMOPOULOS: She's already ordered them --
5 she's already --

6 MS. KUSNETZ: Judge, may I please say --

7 MR. DIMOPOULOS: I'm sorry. I'm still talking.

8 COURT ATTORNEY REFEREE IRENE RATNER: No.

9 THE COURT: I'm not waisting any more of the
10 Court's time on this issue.

11 There's an order of the Court already directing
12 what to do with the sale of the house, based upon both
13 parties agreeing to sell the house. That is the order that
14 remains in effect and continues in effect. Both parties
15 are expected to comply with that order.

16 MS. KUSNETZ: We have --

17 THE COURT: If each party --

18 MR. DIMOPOULOS: Your Honor, Your Honor --

19 THE COURT: -- does not comply with the order,
20 then you can contact Referee Ratner and we will give a
21 motion -- somebody -- whoever wants to enforce it or is not
22 enforcing it can file a motion.

23 MR. DIMOPOULOS: Your Honor, if I can just make
24 one last --

25 MS. KUSNETZ: Would be happy to --

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1 THE COURT: No. We're done. My court reporter
2 cannot take both people at a time.

3 Let me explain something to you: Yelling and
4 screaming at me does not work. Yelling and screaming at
5 Referee Ratner does not work. It gives a cloudy record,
6 and showing disrespect for the Court is not acceptable and
7 subjects the party showing disrespect for a potential
8 contempt finding.

9 This is a court proceeding. Both sides have to
10 start to act that way. We're not going to resolve the
11 issue of the broker here.

12 There is an order in effect. Parties are to
13 follow the order, and if one party doesn't follow the
14 order, the other party has a right to take whatever action
15 they deem appropriate, and in accordance with the
16 matrimonial rules, to enforce the order.

17 MR. DIMOPOULOS: Your Honor, can I just say one
18 thing?

19 The problem with that is I can't get a Rule E.
20 So, that's been my problem. She's already violated it.
21 Your Honor signed --

22 MS. KUSNETZ: My client hasn't violated anything.

23 MR. DIMOPOULOS: Your Honor signed an order to
24 reduce the price to 899.

25 COURT ATTORNEY REFEREE IRENE RATNER: So, you

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1 have a Rule E.

2 MS. KUSNETZ: She hasn't violated anything.

3 COURT ATTORNEY REFEREE IRENE RATNER: I'm sorry.
4 I'm listening to Judge Koba, not Ms. Kusnetz.

5 What was that you were saying, Judge?

6 MS. KUSNETZ: You know, I have to say --

7 THE COURT: You can have a Rule E with respect to
8 the listing broker and an enforcement of the order of the
9 Court.

10 Ms. Kusnetz, you can respond to the motion and
11 set forth your position that you don't believe the order
12 previously issued by the Court is controlling after the
13 lapse of the initial listing agreement.

14 COURT ATTORNEY REFEREE IRENE RATNER:
15 Mr. Dimopoulos, when do you want to file your motion?

16 MR. DIMOPOULOS: 12/31.

17 MS. KUSNETZ: He has nothing to loose by signing
18 with Sotheby's. Nothing to loose.

19 COURT ATTORNEY REFEREE IRENE RATNER:

20 Ms. Kusnetz, you have one week to respond.

21 He has until the 31st because there's Christmas.
22 I'm going to give you a date. January 8th.

23 Do you need a reply, Mr. Dimopoulos?

24 MR. DIMOPOULOS: I really -- I really don't think
25 so, Your Honor.

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1 COURT ATTORNEY REFEREE IRENE RATNER: Okay.

2 MR. DIMOPOULOS: I think we'll just let it go at
3 that.

4 COURT ATTORNEY REFEREE IRENE RATNER: Okay.

5 Thank you.

6 You can continue, Judge Koba.

7 THE COURT: The other issue is we need to pick a
8 date next week to have a call regarding the Zoom
9 conferences, once the Court has an opportunity to review
10 the tape.

11 So, what are people's availability on Monday,
12 Tuesday or Wednesday of next week?

13 COURT ATTORNEY REFEREE IRENE RATNER: I actually
14 have this on for a conference on Monday also.

15 THE COURT: Oh, perfect. What time?

16 COURT ATTORNEY REFEREE IRENE RATNER: I think
17 eleven o'clock.

18 THE COURT: Let me check my schedule.

19 COURT ATTORNEY REFEREE IRENE RATNER: Let me see.

20 MR. DIMOPOULOS: I have that as well, but I have
21 it at 9:30.

22 COURT ATTORNEY REFEREE IRENE RATNER: Let me just
23 check.

24 MS. KUSNETZ: I have 9:30 as well.

25 COURT ATTORNEY REFEREE IRENE RATNER: Let me see.

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1 Oh, Monday. That's next week? 9:30.

2 THE COURT: Oh, 9:30 works for me, if that's what
3 time you have it on for.

4 COURT ATTORNEY REFEREE IRENE RATNER: Yes, 9:30.

5 MR. DIMOPOULOS: Can we just add it to the agenda
6 for the issue of the grievance against my client and the
7 consolidation of the lawsuit that she filed against me
8 personally and Mr. Kassenoff?

9 THE COURT: I can tell you that I'm not
10 consolidating the lawsuit in Brooklyn. I would suggest
11 your client make a -- respond to it whichever way they deem
12 appropriate.

13 I don't know what you expect to me to do with the
14 grievance that is currently pending before the Grievance
15 Committee.

16 MR. DIMOPOULOS: I think the issue --

17 THE COURT: I have no authority over the
18 Grievance Committee and I don't get involved in any
19 grievances.

20 MR. DIMOPOULOS: I understand that, Your Honor.
21 I put that in my letter that you can't get involved.

22 The issue is that my client is now litigating
23 this case on three different fronts. He's got to litigate
24 in Brooklyn against a claim that is squarely in this
25 litigation. He had to hire a grievance -- he had to hire

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1 ethics counsel to represent him in that.

2 I think it's high time that the Court address --
3 with all due respect -- address these issues, especially
4 coming up to trial -- some type of equalization with
5 fees --

6 THE COURT: I do not have authority to direct
7 somebody not to file a grievance.

8 MR. DIMOPOULOS: That's not what I asked.

9 THE COURT: And that's what she's entitled to do.

10 If she has filed an action in Brooklyn, that your
11 client deems to be frivolous, then there are consequences
12 and actions that can be taken under the law. I'm not
13 bringing anymore litigation into this divorce action.
14 That's it.

15 MS. KUSNETZ: Your Honor, I filed -- I filed -- I
16 filed a request for Rule E permission to get the documents
17 that were produced pursuant to non-party subpoenas. That
18 is not Ms. Zeiderman's work product, and I don't believe
19 that she can claim a lien with regard to non-party
20 documents. It's not work product, and I need those
21 documents.

22 I think it would also affect, you know, our
23 readiness for trial, and it is a situation where it would
24 be unduly prejudicial for her not to have the documents
25 produced pursuant to non-party subpoenas. I need those

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1 documents.

2 I have asked for a Rule E, and I also asked for a
3 Rule E with regard to, you know, a maintenance -- an
4 interim maintenance.

5 I certainly would not have maintenance take
6 effect until the New Rochelle home is sold. I'm going to
7 counter Mr. Dimopoulos' statement that she is delaying the
8 sale. She has had every showing. She's appeared for every
9 showing.

10 THE COURT: I am not going --

11 MS. KUSNETZ: She has followed every --

12 THE COURT: I am not going into the broker issue
13 again. I'm not going into the broker issue again.

14 MS. KUSNETZ: Okay.

15 THE COURT: That has been resolved.

16 You can have a Rule E -- Referee Ratner and I
17 discussed this -- a Rule E with respect to whether or not
18 Ms. Zeiderman's firm needs to exchange or give to you the
19 non-party productions that were received pursuant to
20 subpoena.

21 MS. KUSNETZ: Thank you.

22 MR. DIMOPOULOS: Your Honor, on that issue, can
23 you just put that out a little bit?

24 I'm going to call Ms. Zeiderman myself and see if
25 I can broker some type of a deal to avoid motion practice.

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1 MS. KUSNETZ: I spoke to her already,
2 Mr. Dimopoulos.

3 THE COURT: Well, Ms. Kusnetz, let him see if he
4 can --

5 MR. DIMOPOULOS: Somehow I think --

6 THE COURT: Let him see if he can --

7 MR. DIMOPOULOS: Somehow I think she might be
8 more responsive to me.

9 THE COURT: I'm shutting this down now. I don't
10 have time for this cross-talk. I really don't have time
11 for it. Okay?

12 You have the rule -- the motion. You probably
13 have to serve Ms. Zeiderman with it once you put that Rule
14 E out there. We can extend that time a little bit given
15 the holidays.

16 If Mr. Dimopoulos is successful in getting her to
17 agree to sending them over, and your client doesn't have to
18 pay for a motion, that only benefits your client.

19 So, pick some dates, Ms. Ratner, with your
20 schedule.

21 COURT ATTORNEY REFEREE IRENE RATNER: Well, when
22 does --

23 MS. KUSNETZ: Also, Mr. Dimopoulos --

24 COURT ATTORNEY REFEREE IRENE RATNER: No, no. I
25 need a date for filing a motion.

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1 MR. DIMOPOULOS: I won't oppose it. I won't
2 oppose it.

3 COURT ATTORNEY REFEREE IRENE RATNER: When do you
4 want to file your motion?

5 Ms. Kusnetz, when do you want?

6 MS. KUSNETZ: A week.

7 COURT ATTORNEY REFEREE IRENE RATNER: The court's
8 closed.

9 MS. KUSNETZ: Okay.

10 THE COURT: So, pick a date the first week in
11 January.

12 COURT ATTORNEY REFEREE IRENE RATNER: The court
13 is closed next Friday.

14 MS. KUSNETZ: Okay. The first week in January,
15 Referee.

16 COURT ATTORNEY REFEREE IRENE RATNER: Give me a
17 date.

18 THE COURT: January 8th.

19 MS. KUSNETZ: That's fine.

20 COURT ATTORNEY REFEREE IRENE RATNER:
21 Mr. Dimopoulos, are you waiving an answer?

22 MR. DIMOPOULOS: I have no skin in that game.

23 THE COURT: Right.

24 COURT ATTORNEY REFEREE IRENE RATNER: Well, I
25 have to --

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1 MR. DIMOPOULOS: Yes, I waive. I waive anyhow.

2 COURT ATTORNEY REFEREE IRENE RATNER:

3 Ms. Zeiderman needs time to answer.

4 THE COURT: Right. Ms. Zeiderman needs to be
5 noticed.

6 COURT ATTORNEY REFEREE IRENE RATNER: Right.

7 So, the 8th is what day of the week?

8 THE COURT: I think it's a Friday or Thursday.

9 COURT ATTORNEY REFEREE IRENE RATNER: It's a
10 Friday.

11 Let's say the 20th. 1/20, and reply 1/27.

12 Okay.

13 THE COURT: So, Mr. Dimopoulos, if you're able to
14 secure the files, obviously without a need for motion
15 practice, the Court would be appreciative of your efforts
16 in that regard.

17 MR. DIMOPOULOS: Can I just ask one final
18 question?

19 THE COURT: Hold on, Ms. Kusnetz.

20 Go ahead, Mr. Dimopoulos, because I have to let
21 my court reporter go and I have another conference.

22 MR. DIMOPOULOS: Will the Court be issuing a
23 trial readiness order with carve outs?

24 COURT ATTORNEY REFEREE IRENE RATNER: Okay. We
25 discussed that, Mr. Dimopoulos, and we are going to wait

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1 until the end of January to issue the trial ready
2 conference -- trial ready order.

3 And Mr. DeMarco is to be -- can have one email
4 from all counsel on that email, requesting that he issue a
5 final report.

6 If he has a problem with that, if he can't do it,
7 he has to --

8 MS. KUSNETZ: I can't hear. I didn't hear.

9 COURT ATTORNEY REFEREE IRENE RATNER: I said, an
10 email --

11 Judge Koba, do you want me to send him an email
12 asking him to --

13 THE COURT: This is what she said --

14 Because you're starting to fade in and out,
15 Referee.

16 MS. KUSNETZ: I didn't hear any of that, Judge.

17 THE COURT: This is what we're doing.

18 Referee Ratner and I had discussed --

19 MS. KUSNETZ: What about the documents from the
20 law firm?

21 THE COURT: You're going to make a motion to
22 quash, but that's not going to -- the third-party
23 discovery -- the non-party discovery is not going to stop
24 it.

25 We're pushing this out until the end of January.

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1 MR. DIMOPOULOS: Your Honor, also, I asked
2 Mr. DeMarco --

3 MS. KUSNETZ: Wait.

4 So, if we don't get the documents from Greenberg
5 Traurig, you're going to direct him to issue a final report
6 without the documents even though they bring a motion to
7 quash?

8 COURT ATTORNEY REFEREE IRENE RATNER: If he has a
9 problem issuing the report --

10 MS. KUSNETZ: How?

11 COURT ATTORNEY REFEREE IRENE RATNER: -- the
12 final report --

13 MS. KUSNETZ: How does that work?

14 COURT ATTORNEY REFEREE IRENE RATNER: If he has a
15 problem issuing the final report, then he will notify the
16 Court.

17 MR. DIMOPOULOS: Your Honor, I asked Mr. DeMarco,
18 point blank yesterday, I said, would you object to having a
19 conversation directly with the Judge on this issue. And he
20 said, no.

21 My client would be more than willing -- so that
22 you don't have to believe my side of the story or
23 Ms. Kusnetz's side of the story.

24 He is a court's expert. He's a neutral. There's
25 nothing prohibiting Your Honor from giving him a call and

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1 finding out directly from him and then proceeding
2 accordingly.

3 COURT ATTORNEY REFEREE IRENE RATNER: Do you want
4 to have him on the call on Monday morning at 9:30?

5 THE COURT: Yes. Let's do that.

6 MR. DIMOPOULOS: Yes.

7 Monday at 9:30?

8 COURT ATTORNEY REFEREE IRENE RATNER: Yes.

9 CC everyone, Mr. Dimopoulos. Just notify him and
10 we will -- I will have Lucy, the clerk, send him a link. I
11 hope we have his information.

12 THE COURT: Okay.

13 MR. DIMOPOULOS: I'll get it.

14 COURT ATTORNEY REFEREE IRENE RATNER: Email
15 address.

16 (Continued on next page to include certification
17 page.)

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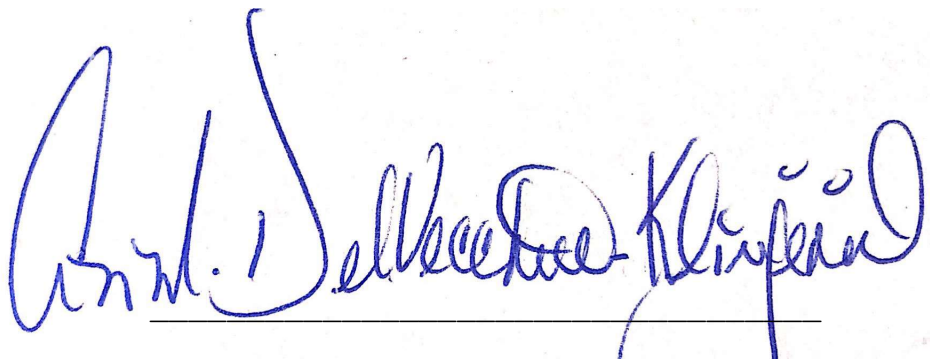
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THE COURT: I'm going to jump out.

Ann, you can close the record at this point.

* * * * *

This is hereby certified to be a true and accurate record of the above proceedings.



ANN M. DEL VECCHIO-KLINGEBIEL, RPR, CRR
Senior Court Reporter

	8th [3] 49/22 55/18 56/7	allegedly [2] 34/20 35/22
COURT ATTORNEY REFEREE	9	allow [1] 45/22
IRENE RATNER: [69]	9:30 [5] 50/21 51/1 51/4 59/4 59/7	allowing [1] 31/7
MR. DIMOPOULOS: [65]	9:30 as [1] 50/24	almost [1] 13/12
MRS. CATHERINE KASSENOFF: [4]	9:30 works [1] 51/2	alone [1] 23/10
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