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

In the Matter of the Application of JAMES TUFENKIAN, Holder of a 50% Membership Interest, Petitioner, For the Dissolution of, and Appointment of a Receiver or Liquidating Trustee for, Harvest Song Ventures, LLC, Pursuant to §§702 and 703 of the Limited Liability Company Law, -against- SYLVIA TIRAKIAN, Respondent.	Index No. 652875/2015 Hon. Andrew S. Borrok Part 53 Motion Seq. No. 7 *Electronically filed*

PETITIONER'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT'S MOTION FOR THE APPOINTMENT OF A RECEIVER OR LIQUIDATING TRUSTEE AND TO ENFORCE THE COURT'S 11/17/16 DISSOLUTION ORDER

On the Brief:

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Petitioner and Counterclaim Defendant James Tufenkian ("Petitioner") submits this memorandum of law in opposition to Respondent and Counterclaim Plaintiff Sylvia Tirakian's ("Respondent") motion seeking the appointment of a receiver or liquidating trustee and enforcement of the Court's prior dissolution order. (*See* notice of motion, dkt. 156.)

I. SUMMARY OF THE ARGUMENT

Respondents motion should be denied for several reasons:

— Respondent's accusation (Resp. br. 1) that Petitioner made misrepresentations to the Court in order to obtain a dissolution order, failed to dissolve Harvest Song Ventures, LLC ("HSV"), and concealed an ongoing operation of the sale of Harvest Song ("HS") product, is false. Since August 2018 at the latest, Respondent has had possession of *all* financial information and documentation needed to demonstrate that HSV had in fact almost completely wound up its business operations (except for the disposition of its brand name and related intellectual property) by about the end of the third quarter of 2016.

— HSV sales dropped off a cliff after the third quarter of 2016, with *de minimis* operations totaling about $20,000 from the fourth quarter of 2016 through mid-2018, as shown in detail in an accompanying chart (which is discussed in greater detail below). *See* Affidavit of Eric Jacobson, Ex. A. There is no activity by HSV for a receiver to manage: HSV has been irremediably insolvent since the discovery in 2012 that Respondent's mismanagement had blown up the company, and would not be capable of resuming business without a major capital contribution from the two members of HSV (which neither of them agreed to make).

— From late 2015, as HSV wound up, Tufenkian Import Export Ventures, Inc. ("TIEV") produced and sold HS-brand products on a small scale (never more than a fraction of HSV's prior activity). Contrary to Respondent, this was TIEV business, not "ongoing operations" by HSV (which was insolvent and could not carry out such activity). Petitioner, without expending HSV funds, strove to maintain HS-brand shelf space with retailers in order, to the extent possible, to prop up the value of the brand name so that, in connection with the dissolution proceeding, the brand could be sold by HSV to the highest bidder. As also shown in the accompanying chart, the licensing activity created minimal profits for either TIEV or HS, declined steadily, and ended in 2018. *See* Jacobson Aff., Ex. A. The facts concerning this brand activity as well were fully disclosed to Respondent.

— Instead of examining and taking account of the available information (including all information underlying the accompanying chart), Respondent recklessly comes to Court with serious accusations of concerted concealment by Petitioner, which combine uninformed allegations about HSV and TIEV with speculation about wholly extraneous discovery matters. This fits a pattern of conduct by Respondent's counsel that was condemned by the prior justice who presided over this case over three years, Justice Ramos (including a prior motion by Respondent that he condemned as "frivolous and

malicious"), perhaps in the belief such conduct can now be repeated in front of a new and not yet fully informed Court.

— Respondent's discussion of Petitioner's subpoena, which relates to Judiciary Law §470, is not only misleading but wholly irrelevant to the merits of appointing a receiver. The Court should address this issue in due course, when Petitioner either seeks to enforce the subpoena or moves the Court to nullify Respondent's pleadings pursuant to §470.

II. FACTUAL AND PROCEDURAL BACKGROUND

As the purported basis for this motion, Respondent offers conjecture and posturing about several (largely unrelated) subjects, including TIEV's business activity after HSV was dissolved, HSV's pre-dissolution balance sheets, discovery delays, and a subpoena that Petitioner served. Facts concerning these disparate subjects are summarized below.

A. TIEV's business activity involving HS product

1. Background

As a result of Respondent's fraud and/or mismanagement, HSV was already insolvent when Petitioner took over from her as manager of HSV in 2014. Respondent testified that she never performed a physical count of the inventory (Mayes Aff., Ex. 1 at 70:6-25), and when it was discovered in 2012 that HSV inventory had been overstated (by approximately $800,000), it wiped out the company's earnings. Am. Pet. (dkt. 51), ¶ 41. Prior to this discovery, Respondent had already enjoyed about $1 million in compensation from HSV, while Petitioner had outstanding loans to HSV of approximately $800,000.[1] *Id.* at ¶¶ 4, 10, 43.

Because it was insolvent, HSV ceased ordering new product after 2014. Jacobson Aff., ¶ 2. HSV also shifted its operations to TIEV facilities to the extent possible, for example making use of TIEV's staff, and storing HSV's unsold inventory at TIEV's warehouse rather than in a warehouse leased from a third party (the resulting management fee charged by TIEV was

[1] Subsequently, Respondent never even repaid the $122,500 distribution that was improperly made to each partner when the books incorrectly showed a profit (while Petitioner paid his distribution back to HSV).

approximately half the monthly expense HSV incurred when Respondent was managing the company in the months leading up to the shift). *Id.* These actions were taken by Petitioner, with Respondent's knowledge and assistance, in an effort to salvage the company. Nevertheless, it became clear that HSV's insolvency could not be remedied without additional capital, which neither partner was willing to contribute to HSV. Respondent quit as an officer of HSV in early 2015, and Petitioner filed this action in August 2015. Dissolution of the insolvent company was granted by the Court in late 2016. *See* Order, dkt. 83.

2. TIEV's consignment and licensing arrangements with HSV

As manager of HSV, Petitioner recognized that the HS brand might have some value, which would suffer if a minimum of shelf-space was not continually maintained in retail outlets. Jacobson Aff., ¶ 3. Because HSV was no longer able to fund new product purchases, however, retail shelves were inevitably set to empty as HSV sold off its remaining inventory. *Id.* (HSV had already run out of stock in some popular product flavors during 2015.) Rather than simply let the HS brand lose value when HSV ran out of inventory—before the accounting that both parties sought could be conducted and a possible sale of the brand by HSV could be effectuated in connection with its liquidation—Petitioner made arrangements for TIEV, using its own funds, to order product from suppliers, on a small scale, for the purpose of maintaining shelf space. *Id.*

Initially, TIEV funded new product orders which HSV then sold on a consignment basis (*i.e.,* HSV held the product owned by TIEV and, only if HSV could sell the product, HSV would receive a small consignment fee). Jacobson Aff., ¶ 4. HSV conducted these consignment sales beginning in approximately October 2015, in parallel with its continuing sell-off of its own remaining inventory. *Id.* By the end of 2016, however, with its own inventory exhausted, HSV ceased sales activity altogether. Beginning in August 2016, therefore, TIEV sold HS product directly, under license arrangement with HSV. *Id.* TIEV made these sales, at rapidly declining

levels, until September 2018 (when TIEV booked its last $255 in HS sales and paid a license fee to HSV). *Id.*

TIEV's business activity involving HS-brand products, including both consignment and licensing activity, was never more than small in scale—peaking during 2016 at only a fraction of HSV's earlier sales levels before its insolvency (as evidenced by the financial documentation in the possession of Respondent). Jacobson Aff., ¶ 5. HS activity proved only barely profitable for TIEV. *Id.* A summary historical income statement showing a breakdown of these business activities from 2015, for both HSV and TIEV, is attached as Ex. A to the Jacobson Affidavit.[2]

3. Mischaracterization of TIEV's activity by Respondent

HS brand operations by TIEV were not a diversion of an HSV opportunity: HSV was insolvent (due to Respondent's earlier mismanagement) and could not operate further on its own. Jacobson Aff., ¶ 6. Petitioner had no obligation to devote TIEV resources to preserve HSV's brand. The operations were a business arrangement that potentially benefitted both companies: HSV benefited from the potential preservation of brand value (as well as from some small licensing revenue for business it could no longer afford to conduct itself), while TIEV hoped to benefit from modest additional sales revenue (although in fact the activity proved scarcely profitable). *Id.*

Nor was there ever any commingling of funds or conversion of HSV property. Jacobson Aff., ¶ 7. No inventory ordered by HSV was ever transferred to TIEV; rather, it was sold off by HSV itself (substantially all by the end of 2016). *Id.* HSV received licensing revenue from TIEV for all direct sales that the latter made of HS products. *Id.* (Indeed, during 2017-2018, HSV's only remaining activity was the receipt of licensing revenue from TIEV.) *Id.* And HSV's only

[2] Because of the schedule constraints that Petitioner's counsel noted in his unsuccessful application to briefly adjourn this motion (dkt. 181), Petitioner has not had sufficient time to finally confirm the specific numbers presented, and reserves his right to correct them.

payments to TIEV were for product, funded and owned by TIEV, that HSV was able to sell on consignment, plus management fees (covering use of TIEV's warehouse, personnel expense, etc.) for consignment business at the same rate that TIEV previously charged HSV with Respondent's knowledge. *Id.* HSV naturally did not pay TIEV any fees in relation to TIEV's licensed product activity. *Id.*

4. TIEV's activity in this action was fully disclosed to Respondent

TIEV's activity involving the HS brand was was fully disclosed to Respondent, in Eric Jacobson's document production (of over 900 pages) and deposition testimony on June 21, 2018, and in the follow-up document production (of almost 3,000 pages) made in July and August 2018 in response to document demands by Respondent. *See* Jacobson Aff., ¶ 8; Mayes Aff., Exs. 2-3.

In particular, all of the accounting information underlying the summary income statement (referenced above) concerning these activities was available to Respondent from the database produced on a flash drive at Jacobson's deposition and other documents produced in Summer 2018. Jacobson Aff., ¶ 9. The follow-up document production included:

— Support for all HS and TIEV sales of HS product;[3]

— All checks received for HS products (by HSV or TIEV);

— Supplier invoices and packing lists of all HS product purchased directly by TIEV from Armenian suppliers; and

[3] Including the HSV "Quickbooks" accounting software data through September 2015; all HSV invoices for 2015 (both HSV QuickBooks and HSV "SBT" accounting software); the HSV SBT Product Sales Report listing all invoices from HSV to customers for all sales; and the TIEV SBT Product Sales Report listing all invoices for HS product, whether sold on consignment or directly to end customers. Subsequent to the period documented, there was approximately an additional $17,434 in sales from June through September 2018 for which documents not yet been produced; beyond that, no further HS product sales were made. Jacobson Aff., ¶ 11.

— Accounting ledger entries of the licensing fees credited to HSV by TIEV.[4]

Jacobson Aff., ¶ 10.

5. The relation of TIEV's activity to the HSV dissolution order

Although Petitioner originally sought a receiver to wind up HSV when he commenced this action in 2015, by the Court's order in November 2016, wind-up was largely done. HSV had already sold its inventory and ceased both sales and purchase activity, and a receiver was no longer cost effective or necessary. The Court accordingly permitted Petitioner to withdraw this claim. *See* Order, dkt. 100.

The continuation of the licensing arrangement during 2017-2018 was part of TIEV's business and not, as Respondents characterize it, a covert, continued operation of HSV. HSV's insolvency had long since rendered it incapable of carrying out any further business (apart from consignment and licensing arrangements). The only effect of the continued licensing arrangement on HSV was the attempted preservation of the value of its brandname, and a modicum of licensing revenue after it had otherwise wound up. Since the licensing arrangement ceased, HSV has no material remaining business activity of any kind to wind up, other than the disposition of its brand name.

Prior to this motion, Respondent did not at any time pursue her claim for a receiver, either before the Court's order; in reaction to Petitioner's withdrawal of his claim for a receiver after it was initially granted; or in June 2018, when documents and testimony made available by Petitioner disclosed the licensing arrangement between HSV and TIEV. It is disingenuous for Respondent to now assert that there is a great exigency for the appointment of a receiver, since her own conduct belies any exigency.

[4] In addition, correspondence between counsel advised Respondent about the shift of operations and inventory from HSV to TIEV and the resulting savings in monthly expense. Mayes Aff., Ex. 6-7 (correspondence).

B. HSV balance sheets prior to dissolution

Respondent's motion also relies on the superficial observation that the asset value shown on HSV balance sheets fell by approximately $500,000 between the initial petition and oral argument in 2016, and that the loans made to HSV by Petitioner have been partly paid down. *See* Resp. MOL 15. Both the sale of HSV's remaining inventory, however, and the repayment of HSV's creditors (of whom Petitioner is, by far, the largest), were properly and necessarily part of winding up the company.[5] *See* LLC Law §§ 703(b), 704. This wind-up activity naturally caused its asset value to fall. Disclosure of accounting and other information pertaining to this activity was complete in 2017, though unreferenced by Respondent.

C. Petitioner's purported discovery delay

It is disingenuous for Respondent to seek relief based on delay in scheduling Petitioner's deposition when it is Respondent who delayed it. Respondent cancelled Petitioner's scheduled deposition of September 10, 2018, on the grounds that (although her lawyer presumably was available to carry out the deposition) Respondent herself wanted to be there but was travelling with her daughter. And in Respondent's opposition this month to a two-week extension for Petitioner to respond to the instant motion, she cancelled the depositions of the two accountants scheduled for later this month.

Respondent on numerous occasions in her brief refers to two missed scheduling conferences in this case. The subject of these conferences was raised by Respondent's counsel at a December 13, 2018 conference with Justice Ramos' clerk, and Petitioner's counsel explained the circumstances of those missed conferences. Justice Ramos' clerk listened to the explanation, took no action in respect of those prior conferences, and moved on to the next subject. While

[5] Indeed, prior to her resignation from HSV, Respondent was in favor of repaying Petitioner's loans as quickly as HSV operations made such repayment possible.

Respondent's counsel perhaps was not required to do so, a telephone call to Petitioner's counsel—with offices within a 10-minute walk of the courthouse—would have resulted in attendance at those conferences. No other conferences or court appearances or filing deadlines have been missed in this case; Respondent can't say the same, having caused a motion to be adjourned by filing responsive papers late,[6] as well as other delays resulting from discovery violations.[7]

D. Petitioner's subpoena concerning the New York office of Respondent's counsel

The Judiciary Law prohibits non-resident attorneys from practicing in New York courts unless, in addition to being regularly admitted, they maintain an "office for the transaction of law business… within the state[.]" Judiciary Law § 470. New York courts are clear that this obligation is substantive, and not merely a *pro forma* requirement.[8] In the First Department, §470 is enforced by striking as a "nullity" any pleadings filed by non-compliant attorneys.[9]

Based on a preliminary investigation by Petitioner's counsel of the local office purportedly maintained by Respondent's counsel, Geragos & Geragos, APC, Petitioner has good faith grounds to believe that Respondent's counsel may have failed to comply with §470. *See* Mayes Aff., ¶¶ 9-14. On January 14, 2019, Petitioner served a subpoena on Respondent's

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[6] *See* Mayes Aff., Ex 4 at 17:17-21 (concerning Mot. Seq. No. 5).

[7] Respondent violated Part 53 rules by serving 93 interrogatories instead of the maximum allowed 25, then served new interrogatories which were noncompliant as well, asking blunderbuss questions instead of questions tailored to the three permitted subjects.

[8] For example, the Appellate Term recently stated:

> The term 'office' as contained in section 470 implies more than just an address or an agent appointed to receive process... [a]nd the statutory language that modifies 'office'—'for the transaction of law business'—may further narrow the scope of permissible constructions.

Law Office of Angela Barker, LLC v Broxton, 78 N.Y.S.3d 624, 626 (App. Term, 1st Dept. 2018) (internal quote marks omitted) (quoting *Schoenefeld v State of N.Y.*, 25 N.Y.3d 22, 27 (2015)).

[9] *E.g., Arrowhead Capital Fin., Ltd. v. Cheyne Specialty Fin. Fund LP,* 154 A.D.3d 523, 524 (1st Dept. 2017).

counsel[10] seeking an inspection of the office and related documentary information, to which Respondent has objected. Petitioner expects to seek enforcement of the subpoena, and (depending on the resulting disclosure and the completion of Petitioner's investigation) to make an eventual motion under §470 in due course.

Respondent's conjecture notwithstanding, the entire §470 issue clearly has nothing to do with any possible grounds to appoint a receiver. The principal connection is more likely that Respondent filed the instant motion (the timing of which is otherwise untethered to any particular event in the case) in preemptive retaliation for Petitioner's contemplated challenge to her counsel's compliance with §470. Respondent's counsel has previously engaged in such retaliatory motion practice, as when Respondent filed a motion to disqualify Petitioner's counsel O'Hare Parnagian LLP—a motion the Court described in oral argument as "frivolous and malicious"[11]—after the O'Hare firm sought a ruling (granted in the same oral argument)[12] that Respondent's document production had waived attorney-client privilege.

E. Respondent's present motion is the continuation of a pattern of "frivolous and malicious" litigation tactics for which Justice Ramos, the prior jurist in the instant litigation, has sanctioned and harshly criticized the Geragos firm on at least two occasions

Separate and apart from whether the Geragos firm has complied with § 470 of the New York Judiciary law, the Geragos firm has flaunted and violated simple rules and conventions in this Court for which it was harshly criticized and sanctioned a monetary penalty by Justice Ramos. Two egregious examples involve repeated violations of the discovery rules in connection

[10] Respondent contends that the subpoena was not served on her, but it was Respondent's counsel who were served as the agent of the building LLC to which the subpoena was directed.

[11] *See* Mayes Aff., Ex. 4 at 21:26-22:7 (hrg. tr. Jan. 16, 2018).

[12] *See* Mayes Aff., Ex.4 at 27:16-26 (hrg. tr. Feb. 20, 2018).

with producing documents for which they were sanctioned $2,500 and a motion to disqualify Petitioner's initial counsel, O'Hare Parnagian, based on a phony conflict of interest.

In the first example, Respondent's counsel repeatedly and improperly produced numerous irrelevant documents. In a February 20, 2018 court appearance, Justice Ramos found and held against the Geragos firm (page 31 of the transcript):

> When you litigate in the Commercial Division, we really don't expect this kind of a production. These were two document dumps over 10,000 pages each. And, now, we know that 80% were entirely withdrawn and I have no idea what that 3,000 pages look like now. So $2,500 in sanctions is payable to the petitioner. I don't want to see a discovery dispute on this case again. . . .

Mayes Aff., Ex. 5 at 31:13-23.

In the second example, the Geragos firm sought, in a significant and burdensome motion, to disqualify Petitioner's counsel Chris Parnagian (and his entire firm) simply because of a brief encounter and exchange of pleasantries between him and the Respondent at a large party at someone's house and because he previously represented Petitioner in connection with an amendment to the HSV operating agreement. Justice Ramos was scathing in his criticism of Tina Glandian of the Geragos firm. He remarked:

> Believe me, this motion is frivolous. This motion to disqualify is the kind of nastiness I do not like to see in litigation. I'm not going to issue sanctions on this, but you're coming so close it's almost the line between the two, sanctions and non-sanctions, is transparent. Don't ever do this again. This is a perfect example of a frivolous and malicious motion.
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> * * *
>
> I don't want to see a motion like this again. This is a terrible motion to bring on this kind of context. And this diminishes your own credibility.

Mayes Aff., Ex. 4 at 21:26-22:7 (hrg. tr. Jan. 16, 2018).

The instant motion for a receiver with extraneous and unsubstantiated attacks regarding discovery disputes, requests for sanctions and attorneys' fees is the same kind of "frivolous and

malicious" tactics for which the Geragos firm has already been found to have committed in this very litigation. This Court should take note of this prior, wrongful conduct.

III. ARGUMENT

A. Respondent fails to establish factual or legal grounds to appoint a receiver, who would have no practical function to carry out at this stage of the litigation.

The appointment of a receiver is "a provisional remedy to maintain the *status quo* while resolving a dispute, and is discretionary to [the] Court." *Rodriguez v. Estevez,* 2008 BL 73630, 26 (Sup. Ct. Mar. 11, 2008). It is "a drastic remedy that will be granted only if the applicant has made a clear showing of necessity to conserve the property and protect the interest of the litigants." *At the Airport v. Isata, LLC,* 841 N.Y.S.2d 818, 2007 BL 30463, 4 (Sup. Ct. Jun. 6, 2007) (under CPLR 6401(a)); *cf. Matter of Swett,* 2005 BL 71755, 8 (Sup. Ct. Nov. 22, 2005) (same under LLC Law §703(a)). Moreover, "[a]ppointing a receiver in compliance with the guidelines and requirements of the Office of Court Administration is a slow process," and "the presence of a temporary receiver… may raise additional issues to be litigated." *Rodriguez, supra,* 2008 BL 73630 at 26.

In this action, the fundamental rationale for appointing a receiver—*i.e.,* "to maintain the *status quo* while resolving a dispute," *Rodriguez, supra*—is missing. The wind-up of HSV's business long ago concluded, and there is consequently no longer any *status quo* to maintain that could affect Respondent's interests. HSV wound up its ordinary business operations (the purchase and sale of HS products) over two years ago, by the end of 2016. All that was left during 2017-2018 was simple licensing activity, and even that was wound up over four months ago (by September 2018), leaving a receiver with nothing in HSV to administer.

Generally, "[a] temporary receiver will not be appointed if the relief being sought is money damages." *At the Airport, supra,* 2007 BL 30463 at 4. Petitioner's purported misdeeds relating to TIEV's licensing and consignment of HS products will be, and can only be, resolved

by this Court's decisions on the parties' claims and counterclaims, and by the accounting demanded by both parties. "[A]llegations of corporate wrongdoing such as mismanagement or self-dealing are insufficient to warrant the appointment of a temporary receiver where such harms can be remedied by a monetary award at the conclusion of a dissolution action." *Rutigliano v. Locantro*, 2017 BL 74203, 7 (Sup. Ct. Mar. 3, 2017). In proceedings on the dissolution of a close corporation, the First Department affirmed that grounds to appoint a receiver were not established where "any inequity created resulting from the disputed payments would be properly addressed in the final accounting[.]" *In re Harrison Realty Corp.*, 295 A.D.2d 220, 220-21 (1st Dep't 2002).

Respondent misleadingly cites cases in which licensing, dilatory conduct and delayed proceedings formed part of the basis for appointing receivers, but these cases all involved ongoing activities, in which the challenged conduct consequently threatened irreparable harm to the movant's interests. For example, in *Meagher v. Doscher*, also cited in Resp. br. at 14, a receiver was appointed to control an LLC after an LLC partner was found to be a principal of an entity litigating against the LLC in a federal trademark action, who was also simultaneously licensing the LLC's trademark to its opponent in the federal action, creating deadlock in the LLC that would cause it to default in that action, and using LLC funds to pay the opposing entity's legal costs (which the court described as "somewhat bold"). 2015 BL 490550, 3-5 (Sup. Ct. Feb. 19, 2015), *aff'd* 157 A.D.3d 880, 2018 BL 23574 (2d Dep't 2018). In contrast, the purported misbehavior by Petitioner that Respondent relies on in this motion represents—at most—a disagreement over past consignment or licensing fee rates, and a series of discovery disputes between the parties, and bears little resemblance to the situations that have been found to require a receiver.

B. Petitioner's subpoena concerning Judiciary Law §470 should be addressed when a pertinent motion is made, not as a free-floating request for attorney's fees tacked onto an unrelated motion.

The merits of Petitioner's subpoena, which was served less than a month ago, have yet to be tested by pertinent motion practice: Respondent has not sought to quash it, and Petitioner has not yet sought to enforce it. Moreover, the issues that the subpoena raises, concerning Judiciary Law §470, are wholly extraneous to the instant motion, which concerns Respondent's demand to appoint a receiver. Respondent provides no authority for her extraordinary application for sanctions before the underlying merits of the matter have even come before the Court. Since any merit in the subpoena would bar sanctions, Respondent plainly should have first sought to establish a lack of merit by quashing it as a necessary precursor for this sanctions application.

Skipping the underlying merits, Respondent instead seeks sanctions on the basis of three implausible conjectures on matters of which she cannot possibly have knowledge: (1) that Petitioner's investigation "did not conduct an adequate investigation" before serving the subpoena (Resp. br. 17); (2) that Petitioner's true motive for the subpoena was purely dilatory (Resp. br. 18); and (3) that the subpoena was part of a dilatory scheme that also encompassed (inadvertent) absences from two status conferences (Resp. br. 18). It is doubtful these allegations would support sanctions even if they were true, but in fact, Respondent's conjectures are wrong, as discussed above. Accordingly, the application for sanctions, including attorney's fees or other costs and expenses, should be denied.

Petitioner's information suggests that Respondent's counsel assembled various expedients to approximate the services and facilities of a conventional law office (*i.e.,* Los Angeles-based telephone service; a New York space for work or meetings when non-resident attorneys were in town; and receiving deliveries at that location by appointment, using messengers to take receipt and dispatch the material onward to the attorneys' actual locations).

Courts interpreting § 470 of the Judiciary Law have been hostile to such workarounds. *E.g., Barker, supra,* 78 N.Y.S.3d 624, 626 ("virtual office" at a New York address failed to satisfy § 470).[13] Although Respondent's supporting affirmation incidentally sets forth miscellaneous information about the history of her counsel's local office, it fails to clearly address key facts relevant to compliance with §470, which may consequently affect the validity of her pleadings (such as whether, at the time the pleadings were made, her counsel's local office was operational and staffed even when non-resident attorneys were not in New York to use it). The matter should be addressed when it is properly raised before the Court, either by a motion to enforce or quash the subpoena, or (after pertinent discovery is completed by the parties) on a motion by Petitioner based on §470 itself.

IV. CONCLUSION

Respondent's motion should be denied.

Dated: February 13, 2019 By: s/ John Halebian

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[13] Leased but unstaffed office space in New York has been held insufficient to satisfy § 470. *Platinum Rapid Funding Grp., Ltd. v. H D W of Raleigh, Inc.,* 2017 BL 467279, 2-3 (Sup. Ct. Nassau Cty. Dec. 20, 2017). An attorney who had a potentially compliant local office (at the City Bar Association), but who in actual practice used his out-of-state telephone number and directed correspondence to his out-of-state office, also failed to satisfy § 470. *Marina Dist. Dev. Co. v. Toledano,* 2018 BL 218016, 2 (Sup. Ct. N.Y. Cty. Jun. 18, 2018).