

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of

Index No. 4134-14

DONALD J. TRUMP, individually and on behalf of
THE TRUMP ORGANIZATION,

Petitioners,

For a Judgment Under Article 78 of the CPLR,

NEW YORK STATE JOINT COMMISSION ON
PUBLIC ETHICS,

Respondent.

**AFFIRMATION OF
MONICA J. STAMM
IN OPPOSITION TO
PETITION FOR RELIEF
PURSUANT TO CPLR
ARTICLE 78**

MONICA J. STAMM, an attorney duly admitted to practice law before the Courts of this State, states that the following is true to the best of my knowledge, and as to those matters stated upon information and belief, I believe them to be true.

1. I am the Chief of Staff and Deputy Counsel for respondent, New York State Joint Commission on Public Ethics ("Commission"). I submit this affirmation in opposition to the petition, brought by DONALD J. TRUMP, individually and on behalf of THE TRUMP ORGANIZATION ("Trump Parties"), for Article 78 relief in the form of mandamus. For the reasons discussed below and explained in greater detail in the accompanying Memorandum of Law, the petition cannot be sustained as a matter of law and should be dismissed.

2. According to the petition, on December 3, 2013 the Trump Parties filed a complaint with the Commission in which the Trump Parties alleged that New York State Attorney General Eric T. Schneiderman ("Mr. Schneiderman") solicited campaign contributions

and other considerations from the Trump Parties while the Office of the Attorney General was investigating and prosecuting a civil fraud action against the Trump Parties and related entities. According to the Trump Parties' complaint, Mr. Schneiderman's conduct violated Public Officers Law §74, which generally proscribes state officials and employees from acting where conflicts of interest exist. The Trump Parties now cite Executive Law § 94(13)(a) in an attempt to compel the Commission to vote on whether it should commence a "substantial basis" investigation of their complaint and to notify the Trump Parties of the result of the vote.

3. The petition should be denied. First, an Article 78 petition which, as here, seeks relief in the form of mandamus, can seek to compel only actions which are "purely ministerial" in nature. An act is "ministerial" when it is made in accordance with a governing rule or standard with a compulsory result with no exercise of discretion.

4. A vote by the Commission to commence a substantial basis investigation is not ministerial. Such a vote requires the Commission to exercise discretion to determine a course of conduct based on its considered judgment in light of the particular circumstances before it as to both the substance and timing of the vote. The Commission must determine, for example, whether sufficient information is available, whether the subject of a complaint requires, or should be granted, more time to respond to allegations before a vote is taken, and whether a subject's response creates a need for further fact gathering or legal analysis. The Commission must evaluate evidence in light of applicable law, and ensure that Commission procedures have been conducted fully and fairly. A vote by the Commission to commence a substantial basis investigation is far removed from a "ministerial" act.

5. Additionally, mandamus may be granted only upon proof that the petitioner has a

“clear legal right” to the relief. The Trump Parties do not have a clear legal right to compel the vote and notification they seek. The statute grants no right to a claimant to compel the Commission to vote on whether to commence a substantial basis investigation, or to notify a claimant when and if such a vote is taken or not taken.

6. As discussed in the accompanying Memorandum of Law, the Legislature created a statutory framework outlining the operations of the Commission. Moreover, the Legislature was careful to ensure that the actions and proceedings of the Commission are confidential. The filer of a complaint with the Commission is statutorily entitled to notification from the Commission only when and if the Commission reaches an official determination that no ethical violation occurred. Furthermore, in accordance with Executive Law §94, the Commission can only make public the fact of an investigation if and when it finds, by a vote of the Commission, that there is a substantial basis to conclude that a violation of law has occurred and issues a report of its findings and conclusions. The Court should defer to the Legislature, and decline to extend a complaint’s entitlement to information beyond that provided by the Legislature.

7. Therefore, Article 78 relief is not available to the Trump Parties in this case. Article 78 is not a vehicle to compel the Commission to vote on whether to commence a substantial basis investigation into alleged ethical violations by a state officer. Such a vote is the epitome of a discretionary act which requires the exercise of judgment based on a multitude of factors in the particular circumstances. Moreover, the Trump Parties are not statutorily entitled to any notice beyond that specified in the statute.

8. Finally, the Court should not disturb the Legislature’s determination that the Commission’s proceedings and investigations are to be confidential except under very specific

circumstances. Pursuant to the confidentiality provisions of Executive Law §§94(9)(a)-(c) and 94(13), all Commission members and staff, including myself, are prohibited from disclosing or confirming any information related to the matters asserted in the Trump Parties' petition and complaint. As discussed in the accompanying Memorandum of Law, this confidentiality furthers important public interests.

9. In light of these confidentiality provisions, to date the Commission has not disclosed, and cannot disclose, any nonpublic factual information relevant to the Trump Parties' complaint. Therefore, the Trump Parties do not and cannot allege as a matter of fact that the Commission has not voted on the Trump Parties' complaint.

10. In summary, the Trump Parties, as any other person who files a complaint with the Commission, have no "clear legal right" to compel the Commission to take any action with respect to a possible investigation.

11. I have reviewed the Commission's Memorandum of Law in opposition to the petition, and all information contained in the Commission's Memorandum of Law is true and accurate to my knowledge, information, and belief.

WHEREFORE, it is respectfully requested that the petition by DONALD J. TRUMP, individually and on behalf of THE TRUMP ORGANIZATION be denied and dismissed in its entirety

Dated: New York, New York
October 8, 2014



Monica J. Stamm