

Follman v Gruber

2024 NY Slip Op 32334(U)

July 3, 2024

Supreme Court, Kings County

Docket Number: Index No. 508865/2023

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 3rd day of JULY, 2024

P R E S E N T:
HON. RICHARD VELASQUEZ

Justice.

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AHRON N. FOLLMAN AS TRUSTEE AND BENEFICIARY OF THE LAZAR FOLLMAN 2011 FAMILY TRUST,
AHRON N. FOLLMAN AS TRUSTEE AND BENEFICIARY OF THE ESTHER FOLLMAN 2011 FAMILY TRUST,

Plaintiff,

-against-

Index No.: 508865/2023
Decision and Order
Mot. Seq. No. 1 & 5

EUGENE GRUBER AS TRUSTEE OF THE LAZAR FOLLMAN 2011 FAMILY TRUST, EUGENE GRUBER AS TRUSTEE OF THE ESTHER FOLLMAN 2011 FAMILY TRUST, AVRAHAM MEIR FOLLMAN AS TRUSTEE OF THE LAZAR FOLLMAN 2011 FAMILY TRUST, AVRAHAM MEIR FOLLMAN AS TRUSTEE OF THE ESTHER FOLLMAN 2011 FAMILY TRUST, AVRAHAM MEIR FOLLMAN AS TRUSTEE OF THE LAZAR FOLLMAN 2017 FAMILY TRUST, AVRAHAM MEIR FOLLMAN AS TRUSTEE OF THE ESTHER FOLLMAN 2017 FAMILY TRUST, MELTZER, LIPPE, GOLDSTEIN & BREITSTONE, LLP,

Defendants,

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The following papers NYSCEF Doc #'s 6 to 171 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	6-22; 71; 166-170
Opposing Affidavits (Affirmations) _____	23-41; 171
Reply Affidavits _____	

After having come before the Court on JANUARY 17, 2024 and the court having heard oral argument and upon review of the forgoing the court finds as follows:

Accordingly, the motion for a stay (MS#5) is hereby granted as follows: The summary judgment motion (MS#1) is hereby adjourned to this courts general calendar for September 11, 2024.

Defendant to produce the following discovery within 30 days from the date of this order (August 3, 2024). Pursuant to Hon Ruchelsman order dated November 20, 2023 Melzter shall produce the information requested in number 1-12, 6-19, 23-25, 33, 35, 38-45, 47-49, 56-64, 66, 67-73, 80 and 106 contained in NYSCEF Doc No. 71.

So as to avoid any confusion the following specifically must be produced;

1. All Documents relating to any instructions given by the Follmans, or on behalf of the Follmans, or by You, whether oral or in writing, concerning the administration, preservation and/or disposition of the Follmans' assets, whether relating to the Will, or relating to any prior Will and/or Codicil executed by him, or relation to the Revocable Trust, or relating to any of the Follman Family Trusts, or relating to any other trust or to any gifts made by the Follmans, or relating to any of the Entities.

2. All original, conformed, drafts, and working copies of the Will, Codicil, Trusts executed by the Follmans, and all Documents relating to any intention by the Follmans to revoke or amend a Will, Codicil, the Trusts and/or any similar instrument.

3. All notes maintained by the attorney-draftsperson of the Will concerning any Will, Codicil, Trusts, or similar instrument prepared for the Follmans.

4. All Documents created by, sent to, or received from the Follmans relating to any Communication with the Follmans regarding any disposition or proposed distribution of any property of the Follmans or regarding any content or proposed content of the Trusts, the Revocable Trust, any Will, Codicil, and/or any other trust of the Follmans or in which

the Follmans had an interest.

5. All correspondence, notes, memoranda, estate tax analysis, or other Document relating to planning or preparation of the drafting or execution of the Will, the Revocable Trust, the Follman Family Trusts, or any other trust created by the Follmans.

6. All Documents and Communications relating to engagement agreements, retainer agreements, services to be rendered, invoices, and/or similar documents between the Follmans and the attorney-draftsperson (or his/her law firm) of the Will, Revocable Trust, and/or the Follman Family Trusts, whether relating to such instruments or to any other trust created by the Follmans or to any of the Entities.

7. All Documents and Communications relating to engagement agreements, retainer agreements, services to be rendered, invoices, and/or similar documents between Avraham and the attorney-draftsperson (or his/her law firm) of the Will, Revocable Trust, and/or the Follman Family Trusts, whether relating to such instruments or to any other trust created by the Follmans or to any of the Entities.

8. All Documents and Communications relating to engagement agreements, retainer agreements, services to be rendered, invoices, and/or similar documents between the Entities and the attorney-draftsperson (or his/her law firm) of the Will, Revocable Trust, and/or the Follman Family Trusts, whether relating to such instruments or to any other trust created by the Follmans or to any of the Entities.

9. All bills, invoices, statements, or other documents sent (a) to the Follmans, or (b) to any other person for services in connection with any (i) estate planning, (ii) Will or Codicil drafting, (iii) trust drafting, or (iv) supervision of the execution of any Will or Codicil

or trust of the Follmans

10. All diary entries, time sheets, notes of counsel, memoranda, or other Documents providing details or information supplementing, supporting or explaining any Document executed by Avraham, Gruber, and/or the Follmans.

11. All Documents created by, sent to, or received from the Follmans relating to any Entities, Will, and/or Codicil and/or Trust during the period March 24, 2014 through April 19, 2018.

12. All Documents and Communications between the following persons relating to the Follmans, the Will, the Revocable Trust, the Follmans' estate plan, the Follman Family Trusts, the Entities, and/or any other Documents related to the Follmans' estate plan: (a) Avraham and the Follmans; (b) Avraham and Moishe; (c) Avraham and Spitzer; (d) Avraham and Moses; (e) Avraham and Gruber; (f) You and Gruber; (g) You and Avraham; (h) Plaintiff and the Follmans; (i) Any beneficiary under the Will and the Follmans; (j) Any beneficiary under the Revocable Trust and the Follmans; (k) Any person interested in any of the Entities and the Follmans; and (l) The Follmans and any other person, corporation and/or entity.

16. All ledgers, lists of assets, appraisals, inventories of personal property, both tangible and intangible, income and expense calculations and any other financial records made by or on behalf of the Follmans.

17. All deeds and/or mortgages to real property executed by or on behalf of and/or in the name of the Follmans, individually or jointly.

18. All appraisals of real property owned by the Follmans, either individually, jointly, as a shareholder, as a partner, or as an LLC member.

19. All Documents concerning transfers, including purchases and sales, of real

property in which the Follmans, either individually, jointly, as a shareholder, as a partner, or as an LLC member had an ownership interest.

23. All powers of attorney executed by the Follmans, and any drafts of powers of attorney prepared for the Follmans but not executed.

24. All Documents relating to any transaction performed by an attorney-in-fact on behalf of the Follmans.

25. All address books, notebooks, diary entries, telephone number lists, desk calendars, or the like, including electronic (palm pilot or blackberry) calendars, containing any reference to the Follmans.

33. All Documents relating to any trusts created by, or for the benefit of, the Follmans, including the instruments themselves, any drafts or unexecuted versions thereof, and any documents, notes, affidavits or memoranda concerning any such instruments, and bills in connection with the preparation of same.

35. All Documents relating to the assets of the Revocable Trust on the date of the Mr. Follman's death

38. All Documents concerning the Decanting Agreement 1 including, without limitation: (a) All Documents or Communications regarding the negotiation of the Decanting Agreement 1; (b) All Communications with Ahron regarding the Decanting Agreement 1; (c) All Communications with Avraham regarding the Decanting Agreement 1; (d) All Communications with Spitzer regarding the Decanting Agreement 1; (e) All Communications with Gruber regarding the Decanting Agreement 1; (f) All Communications with Moses regarding the Decanting Agreement 1; (g) All Communications with Moische regarding the Decanting Agreement 1; and (h) All

Communications with the Follmans regarding the Decanting Agreement 1;

39. All Documents concerning the Decanting Agreement 2 including, without limitation: (a) All Documents or Communications regarding the negotiation of the Decanting Agreement 2; (b) All Communications with Ahron regarding the Decanting Agreement 2; (c) All Communications with Avraham regarding the Decanting Agreement 2; (d) All Communications with Spitzer regarding the Decanting Agreement 2; (e) All Communications with Moses regarding the Decanting Agreement 2; (f) All Communications with Gruber regarding the Decanting Agreement 2; (g) All Communications with Moishe regarding the Decanting Agreement 2; and (h) All Communications with the Follmans regarding the Decanting Agreement 2;

40. Copies of the Trusts, any drafts or unexecuted versions thereof, and any documents, notes, affidavits or memoranda concerning any such instruments, and bills in connection with the preparation of same and any and all appointments and/or amendments thereto;

41. All Documents relating to the resignation, removal, or appointment of any trustee(s) of the Trusts;

42. Copies of all appraisals and valuations of the assets of the Trusts;

43. Documents relating to any tax audit (federal, State, or local) of the Follman Family Trusts, including, but not limited to, any audit relating to income tax, estate tax, gift tax, generation skipping transfer tax, real property tax, real estate tax, real property transfer tax, real property recording tax, franchise tax, and sales tax;

44. Documents relating to any tax audit (federal, State, or local) of the Revocable Trust including, but not limited to, any audit relating to income tax, estate tax, gift tax,

generation skipping transfer tax, real property tax, real estate tax, real property transfer tax, real property recording tax, franchise tax, and sales tax;

45. Copies of all financial statements, quickbook, ledger sheets and *documentation* that include payments, receipts, assets, expenses, liabilities, accounts payable, accounts receivable and balance sheets of the Trusts;

47. All Documents relating to meetings between the Trustee of any of the Follman Family Trusts and any person relating to such trust, including, but not limited to documents relating to meeting agendas, minutes or presentations;

48. All Documents relating to any bank accounts, savings accounts, checking accounts, certificates of deposits, money market accounts, or other similar accounts held by any of the Trusts, or by a Trustee, including, but not limited to, statements, deposit slips, withdrawal slips, cancelled checks, both front and back, checkbook registers, checkbook stubs, signature cards, wire transfers, including but not limited to wire transfer instructions, wire transfer confirmations, and including account names and account numbers to and from which funds were wired, and any documents relating to the creation and/or closure of such accounts;

49. All Documents relating to any investment accounts, brokerage accounts, or other similar accounts held by any of the Trusts, or by a Trustee, including, but not limited to, documents relating to statements, trade confirmations, and portfolio analysis;

56. All Documents relating to retainers, bills, invoices, and/or statements for services rendered by any investment advisors and/or financial advisors regarding the Trusts;

57. All Documents relating to retainers, bills, invoices, and/or statements for

services rendered by any attorneys regarding the Trusts;

58. All Documents relating to retainers, bills, invoices, and/or statements for services rendered by any accountants regarding the Trusts;

59. All Documents relating to the operations, organization, and holdings of any of the Trusts, including, but not limited to, organizational charts, business organizational charts, service organizational charts, management reports, real estate management reports, real property management reports, and employee evaluations;

60. Copies of all payments made to the trustees and/or beneficiaries of the Trusts from any source, person or entity whatsoever, including, but not limited to, canceled checks, wire transfers, bank checks, money orders and transfer documents;

61. All loan documentation of all loans made by the trustees of the Trusts including but not limited to promissory notes, copies of payments or transfer of asset documentation;

62. All Documents relating to transfers into or out of the Trusts by or to the Follmans, Avraham, Gruber or any other person or entity, whether in the form or a disbursement, distribution, loan or otherwise;

63. All Documents and Communications regarding any expenditures made on behalf of the Trusts;

64. All Documents and Communications relating to any assets and liabilities of the Trusts, including, but not limited to, balance sheets, financial statements (audited or unaudited), financial reports, statements of net assets, annual statements, organizational charts or other charts reflecting Trust assets, profit and loss statements, quarterly or other

periodic reports, deeds, mortgages or other security instruments, notes, bonds, bills,

pledges, and undertakings.

66. All Documents relating to policies of insurance relating to any of the Trusts, including, but not limited to, commercial general liability policies, policies of insurance for loss or liability relating to real property owned by such Trust, policies of insurance for loss or liability relating to equipment owned by such Trust, policies of insurance for loss or liability relating to automobiles owned by such Trust, policies of insurance on any person's life, and policies of insurance relating to workers compensation;

67. All Documents relating to the value of any assets of any of the Trusts, including, but not limited to, business appraisals, real property appraisals, business valuations, asset appraisals, broker opinions as to the value of real property owned by such Trust, and documents relating to any sale of assets of such Trusts;

68. All Documents reflecting the fair market value of real property owned by any of the Trusts;

69. All Documents relating to agreements to which Avraham and any of the Trusts were parties;

70. All Documents relating to agreements to which the Follmans and any of the Trusts were parties

71. All Documents relating to transactions between Avraham and any of the Trusts;

72. All Documents relating to transactions between the Follmans and any of the Trusts;

73. All Documents and Communications regarding any individuals or corporations hired to do any work on behalf of the Trusts.

80. All Documents relating to communications between and/or among any of the

members, managers or shareholders of the Entities and the Trustee of any of the Trusts;

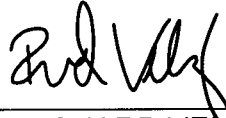
106. All Documents concerning any compensation Avraham received in his capacity as trustee and/or beneficiary of the Trusts.

It is further ordered that Plaintiff shall file opposition to the summary judgment motion on or before August 27, 2024 and reply to be filed on or before September 10, 2024. In the event defendant Meltzer fails to provide all discovery in this order the defendant shall automatically be precluded from offering any evidence or testimony at trial.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
July 3, 2024

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ

Hon. Richard Velasquez, JSC