



LETTER TO THE EDITOR

Right To Seek Appropriate Post-Judgment Discovery From a Judgment Debtor's Lawyer Is Firmly Established

Respectfully, the 'Astraea' ruling is wrong and should not be followed.

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By Bernard D'Orazio | January 13, 2023 at 11:00 AM

In a Dec. 22, 2022, column, "[Law Firms Are Not Just 'Any Person,'](#)" the authors discuss a ruling made in *Astraea N.Y. City v. Rivada Networks*, 592 F. Supp. 3d 181 (S.D.N.Y. March 22, 2022), where the District Court judge quashed a routine post-judgment information subpoena served on counsel for the judgment debtor.

The court held that although post-judgment discovery can under New York and federal law be sought from "any person," that term in its view "would not ordinarily be taken as including 'any law firm' nor does it say 'or that person's lawyers.'" The court concluded that the words "any person" [do not] overcome the force and value of the policy that the lawyer may not reveal the confidences of her client, even though the client himself may well be compelled to disclose them The prospect that after judgment is entered the successful party could discover from the losing attorney things that attorney had learned would inject uncertainty into the whole course of her representation and the trial."

Respectfully, the *Astraea* ruling is wrong and should not be followed. The right to seek appropriate post-judgment discovery from a judgment debtor's lawyer is firmly established under New York law, which the District Court in *Astraea* overlooked. (The court ruled summarily based upon letter submissions that did not cite any helpful precedent.)

A judgment creditor may serve a subpoena on "any person" who may have knowledge about the judgment debtor's assets, income, or financial condition, "who may be the judgment debtor himself, a friend or relative who may have information on the subject, a garnishee or one reasonably thought to be a garnishee, including the debtor's bank, accountant, broker, employer, etc. *Even the judgment debtor's attorney may have to reveal data about the debtor's finances.*" D. Siegel & P. Connors, *New York Civil Practice* §509, at 970 (6th ed. 2018) (emphasis added); see *ICD Group v. Israel Foreign Trade Co. (USA)*, 224 A.D.2d 293 (1st Dep't 1996) (citing Siegel); see, e.g., *Oppenheimer v. Oscar Shoes*, 111 A.D.2d 28, 29 (1st Dep't 1985) (attorney-client privilege does not bar post-judgment disclosure concerning attorney's receipt of monies from client, retainer agreements, parties represented, names of officers and directors, or addresses); *Potter v. McLean*, 75 A.D.3d 686 (3d Dep't 2010) (information regarding client's fee arrangement with his lawyer is a "collateral matter" not covered by privilege) (quoting *Matter of Priest v. Hennessey*, 51 N.Y.2d 62, 69 (1980) (privilege limited to confidential communications made to an attorney for the purpose of obtaining legal advice, not collateral matters such as source of payment of fees).

The First Department recently reaffirmed the propriety of seeking post-judgment discovery from lawyers in *Berisha v. Tosca Café*, 202 A.D.3d 531, 532 (1st Dep't 2022). There, the judgment creditor served information subpoenas on 24 lawyers who had represented the judgment debtor and affiliated entities in a variety of matters over the years. The subpoenas inquired about the sources of payments made to the lawyers and the identity of the persons who retained and guided them. The trial court's ruling denying a motion to quash was unanimously affirmed and the judgment creditor's motion to compel was granted.

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