

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, GENERAL CIVIL DIVISION

Plaintiff,

v.

CASE NO.: 50-2021-CA-008718

NATIONAL SENIOR INSURANCE, INC.,
et al.,

Defendants.

**DEFENDANTS BRIAN J. SCHWARTZ OBJECTION TO THE CORPORATE
MONITOR'S NOTICE OF PRODUCTION FROM NON-PARTY AND DEFENDANT
MARSHAL SEEMAN'S REQUEST FOR COPIES**

Defendant Brian J. Schwartz ("Mr. Schwartz"), by and through their undersigned counsel, and pursuant to Rules 1.351 of the Florida Rules of Civil Procedure, hereby files this Objection to the Corporate Monitors' Subpoenas Duces Tecum Without Deposition to JPMorgan Chase Bank, N.A. and Fifth Third Bank, N.A. which were attached to the Notices of Intent to Serve Subpoena Duces Tecum filed on January 24, 2023 (collectively, the Subpoenas") and Defendant/Requesting Party Marshal Seeman's Request for Copies filed on February 2, 2023 and states:

1. On February 22, 2023, undersigned counsel for Defendant Brian J. Schwartz reviewed the Corporate Monitor's website and specifically the section entitled "Court Documents." [Documents – Daniel J. Stermer, Corporate Monitor \(nationalseniormonitorship.com\)](https://www.nationalseniormonitorship.com) and noticed the following documents were recently filed:

- Notice of Intent to Serve Subpoenas Duces Tecum Production from Non-Party JPMorgan Chase Bank, N.A. and attached subpoena for various accounts for defendant Brian J. Schwartz filed January 24, 2023;

- Notice of Intent to Serve Subpoenas Duces Tecum Production from Non-Party Fifth Third Bank, N.A. and attached subpoena for various accounts for defendant Brian J. Schwartz filed January 24, 2023;
- Defendant/Requesting Party Marshal Seeman's Request for Copies filed on February 2, 2023;
- Subpoena Duces Tecum Without Deposition to JPMorgan Chase for various accounts for defendant Brian J. Schwartz filed February 6, 2023;
- Subpoena Duces Tecum Without Deposition to Fifth Third Bank, N.A. for various accounts for defendant Brian J. Schwartz filed February 6, 2023;

2. Undersigned counsel checked with his Firm's IT department who determined that these filings were received; however, they were inadvertently in the undersigned's "junk folder." As a result, undersigned counsel was not aware of any of the above-mentioned documents until February 22, 2023 at approximately noon.

3. The above-mentioned subpoenas seek Mr. Schwartz's personal bank information for eight years including bank statements, account records, signature cards, account applications, account closure records and communications with any agents, managers, representatives, attorneys, or others regarding the accounts.

4. The subpoenas are objectionable because they are overbroad, irrelevant, immaterial, not likely to lead to the discovery of admissible evidence, seek information that would not prove nor disprove any material fact asserted, and improperly and prematurely seek Mr. Schwartz's financial information.

5. The Florida Supreme Court has held that Art. I, Section 23 of the Florida Constitution "recognizes an individual's legitimate expectation of privacy in financial institution records." *Winfield v. Division of Pari-Mutual Wagering, Dept. of Business Regulation*, 477 So. 2d 544, 548 (Fla. 1985).

6. The Florida Constitution's safeguarding of an individual's private financial information extends to all state action, which includes court orders compelling discovery. *Berkeley v. Eisen*, 699 So. 2d 789, 790 (Fla. 4th DCA 1997).

7. Thus, the general rule in Florida is that personal financial information is discoverable only in aid of execution after a judgment has been entered. See *Friedman v. Heart Institute of Port St. Lucie, Inc.*, 863 So. 2d 189, 194 (Fla. 2003). Here, judgment has not been entered against Mr. Schwartz.

8. Accordingly, the subpoenas should not issue and if they have, the records be ordered returned to JPMorgan Chase Bank, N.A. and Fifth Third Bank, N.A. until further order of the Court.

WHEREFORE, defendant Brian J. Schwartz, respectfully requests that this Honorable Court enter an order sustaining his objections, the return of any and all records to JPMorgan Chase Bank, N.A. and Fifth Third Bank, N.A., and the Corporate Monitor not to produce copies of any of Mr. Schwartz's bank records to Defendant/Requesting Party, Marshal Seeman, and grant such other relief deemed just and proper under the circumstances.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February, 2023, I electronically filed the foregoing document with the Clerk of the Court using the Florida Courts E-Filing Portal, causing the document to be served on all counsel of record via e-mail generated by the E-Portal system.

/s/ Jeffrey H. Sloman
Jeffrey H. Sloman