

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PIOTR NOWAK

Plaintiff,

v.

MAJOR LEAGUE SOCCER, LLC AND
MAJOR LEAGUE SOCCER PLAYERS
UNION

Defendants.

Civil Action No. 2:14-cv-03503-MAM
Honorable Judge Mary A. McLaughlin

**MAJOR LEAGUE SOCCER, LLC'S MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO COMPEL NON-PARTY COMPLIANCE WITH SUBPOENA PURSUANT
TO F.R.C.P. 45**

Defendant, Major League Soccer, LLC (“MLS”), through its undersigned counsel, hereby moves this Court for an Order compelling a nonparty, Pennsylvania Professional Soccer, LLC (the “Philadelphia Union” or “Team”), to produce the American Arbitration Association (“AAA”) decision dated April 21, 2015 in relation to *Nowak v. Pennsylvania Professional Soccer, LLC*, No. 2:12-cv-04165, 2012 WL 4459775 (E.D. Pa. Sept. 26, 2012) pursuant to a Federal Rule of Civil Procedure 45 Subpoena (the “Subpoena”) that was served on Thomas G. Collins, Esq., Buchanan Ingersoll & Rooney PC, counsel to the Philadelphia Union on May 26, 2015. The Subpoena is attached hereto as “Exhibit A.”

SUMMARY OF THE ARGUMENT

MLS seeks production of the arbitration decision in relation to *Nowak v. Pennsylvania Professional Soccer, LLC*, No. 2:12-cv-04165, 2012 WL 4459775 (E.D. Pa. Sept. 26, 2012), which concerns whether the Team acted properly in terminating Plaintiff Piotr Nowak’s (“Plaintiff” or “Nowak”) Manager Employment Agreement. Accordingly, the arbitration award

also relates to Plaintiff's tortious interference with contract claims in the instant matter – specifically, whether MLS was privileged to direct such termination of his employment agreement and whether such direction was wrongful or justified under Pennsylvania law. Therefore, the arbitration decision is unquestionably relevant to Plaintiff's claims against MLS.

FACTS

Plaintiff filed this action on June 12, 2014 asserting claims against MLS for tortious interference with Plaintiff's Manager Employment Agreement with the Philadelphia Union and interference with prospective contractual relationships with other MLS teams in relation to the Philadelphia Union's termination of Plaintiff's employment under the Manager Employment Agreement. On April 20, 2015, MLS filed a Motion to Dismiss the Complaint. On May 15, 2015, Plaintiff filed an Opposition to MLS's Motion to Dismiss, which stated in relevant part that "Nowak brought an action in this court, *Piotr Nowak v. Pennsylvania Professional Sports, LLC and Keystone Sports & Entertainment LLC*, No. 2:12-cv-04165-MAM, alleging that the Team breached the terms of its contract ('Team Action')" with Nowak. (Opposition at 3). The Opposition further stated that this Court remanded the Team Action to AAA arbitration and that "[t]he AAA Arbitrator entered an award for the Team on April 21, 2015." (Opposition at 3-4).

On May 26, 2015, Defendant MLS, through its undersigned counsel, served the Subpoena on Mr. Collins via UPS Next Day Air and e-mail and served a Notice of Service of Subpoena upon Plaintiff's counsel, Clifford E. Haines. The Subpoena sought the production of the arbitration decision by May 28, 2015. By letter dated May 28, 2015, Mr. Collins objected to the Subpoena indicating that the Philadelphia Union was subject to a protective order. Mr. Collin's May 28, 2015 letter is attached hereto as "Exhibit B." Mr. Collins further indicated that he had reached out to Plaintiff's counsel, Clifford Haines, seeking his concurrence in a process to

allow for production of the arbitration award. MLS, through its undersigned counsel, conferred with Mr. Collins on several occasions in an effort to obtain the arbitration decision. On June 15, 2015, Mr. Collins informed Howard Z. Robbins, counsel for MLS, that while the Philadelphia Union is amenable to producing a copy of the decision, production of the decision would require some agreement with Plaintiff's counsel, Clifford Haines, so as to comply with the arbitrator's confidentiality order in that proceeding. Mr. Collins informed Mr. Robbins that he had reached out to Mr. Haines on several occasions after being served with the Subpoena to agree on some method to comply with the confidentiality order; however, Mr. Haines has not responded to Mr. Collins' numerous communications. *See* Affidavit of Howard Z. Robbins attached hereto as "Exhibit C." To date, the Philadelphia Union has not produced the arbitration award.

ARGUMENT

MLS served the Subpoena pursuant to Federal Rule of Civil Procedure 45. Under Rule 45, a subpoena may be issued to non-parties directing them to produce documents in the person's "possession, custody or control." Fed. R. Civ. P. 45(a)(1). The scope of a non-party subpoena under Rule 45 is as broadly construed as Federal Rule of Civil Procedure 26(b)(1), which allows discovery regarding "any matter, not privileged, that is relevant to the claim or defense of any party." *R. J. Reynolds Tobacco v. Philip Morris, Inc.*, 29 Fed. Appx. 880, 882 (3d Cir. 2002); *First Sealand Sur. v. Durkin & Devries Ins. Agency*, 918 F.Supp.2d 362, 382 (E.D. Pa. 2013); *Frank Brunckhorst Co. v. Ihm*, Case No. No. 12-0217, 2012 WL 5250399, at *3-4 (E.D. Pa. Oct. 23, 2012). The party opposing the subpoena has the burden of demonstrating that the discovery sought is privileged or subject to some other form of protection, overly broad, unduly burdensome, or not relevant. *R. J. Reynolds Tobacco*, 29 Fed. Appx. at 882; *Durkin & Devries Ins. Agency*, 918 F.Supp.2d at 383; *Frank Brunckhorst Co.*, 2012 WL 5250399, at *4.

MLS respectfully requests that this Court compel the Philadelphia Union to comply with the Subpoena. The arbitration decision related to *Nowak v. Pennsylvania Professional Soccer, LLC*, No. 2:12-cv-04165, 2012 WL 4459775 (E.D. Pa. Sept. 26, 2012) (remanding to arbitration complaint involving issue of whether the Philadelphia Union fulfilled conditions precedent to terminate Nowak's Manager Employment Agreement for cause) is directly relevant to the instant Complaint in which Plaintiff asserts claims against MLS for tortious interference with Plaintiff's Manager Employment Agreement with the Philadelphia Union and interference with prospective contractual relationships with other MLS teams in connection with his termination. Therefore, MLS's review of the award is necessary to sufficiently respond to Plaintiff's Opposition to MLS's Motion to Dismiss. Although we understand that the arbitrator issued a confidentiality order in that proceeding, any confidentiality concerns regarding disclosure of the arbitration decision (in full or in part) can be addressed through a protective order that this Court may elect to put in place (although none has been requested in the Team's response to the subpoena). *See Frank Brunckhorst Co. v. Ihm*, 2012 WL 5250399, at *7 (ordering production of documents noting documents sought in the subpoena covered by an underlying litigation were relevant and "[t]o the extent that these documents are confidential, the protective order in operation in the [other] case as well as the one to be issued by this Court are sufficient protection against the risk of harm. . ."). Furthermore, compelling the Philadelphia Union to comply with the Subpoena would not be an undue burden or expense. Accordingly, Defendant respectfully requests that this Court direct the Philadelphia Union to produce the arbitration award.

CONCLUSION

For the foregoing reasons, MLS respectfully requests that this Court grant its Motion and order the Philadelphia Union to produce the AAA arbitration decision dated April 21, 2015 in relation to *Nowak v. Pennsylvania Professional Soccer, LLC*, No. 2:12-cv-04165, 2012 WL 4459775 (E.D. Pa. Sept. 26, 2012).

Dated: June 16, 2015
New York, New York

PROSKAUER ROSE LLP

/s/ Howard Z. Robbins

Amy R. Covert
Howard Z. Robbins*
Nayirie Kuyumjian*
Eleven Times Square
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acovert@proskauer.com
hrobbins@proskauer.com
nkuyumjian@proskauer.com

Attorneys for Defendant Major League Soccer, LLC

**Admitted Pro Hac Vice*

EXHIBIT A

AO 88B (Rev 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

Piotr Nowak)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 2:14-cv-03503-MAM
Major League Soccer, LLC, et al.)	
<i>Defendant</i>)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Thomas G. Collins, Esq., Buchanan Ingersoll & Rooney PC
409 North Second Street, Harrisburg, PA 17101, thomas.collins@bipc.com

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A

Place: Proskauer Rose LLP Eleven Times Square , New York, NY 10036-8299	Date and Time: 05/28/2015 5:00 pm
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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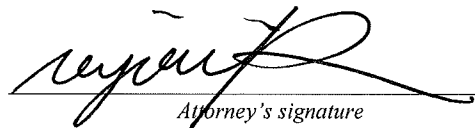
The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/26/2015

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR



Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____

Major League Soccer, LLC, who issues or requests this subpoena, are:

Howard Z. Robbins, hrobbins@proskauer.com, 212-969-3912; Nayirie Kuyumjian, nkuyumjian@proskauer.com, 212-969-3632

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 2:14-cv-03503-MAM

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* Thomas G. Collins, Esq.

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: via-email
and UPS Next Day Air

_____ on *(date)* 05/26/2015 ; or

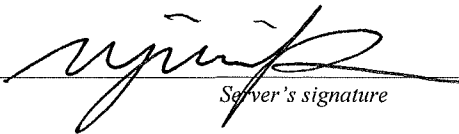
I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 05/26/2015



Server's signature

Nayirie Kuyumjian, Esq.

Printed name and title
Eleven Times Square
New York, NY 10036-8299

Server's address

Additional information regarding attempted service, etc.:

EXHIBIT A TO SUBPOENA

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Major League Soccer, LLC hereby propounds a request for the production of the following document to Thomas G. Collins, Esq., Buchanan Ingersoll & Rooney PC, counsel to Pennsylvania Professional Soccer, LLC: the AAA arbitration decision dated April 21, 2015 in relation to *Nowak v. Pennsylvania Professional Soccer, LLC*, No. 2:12-cv-04165, 2012 WL 4459775 (E.D. Pa. Sept. 26, 2012).

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows.

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person, and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply.

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c),
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has, must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT B

Buchanan Ingersoll & Rooney PC
Attorneys & Government Relations Professionals

Thomas G. Collins
717 237 4843
thomas.collins@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101

T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

May 28, 2015

VIA ELECTRONIC (nkuyumjian@proskauer.com)
AND UPS OVERNIGHT MAIL

Nayirie Kuyumjian, Esquire
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036-8299

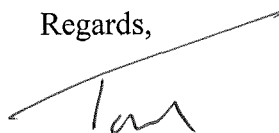
**Re: Pennsylvania Professional Soccer, LLC d/b/a the Philadelphia Union /
Major League Soccer Subpoena**

Dear Ms. Kuyumjian:

As you know, this office represents Pennsylvania Professional Soccer, LLC d/b/a the Philadelphia Union. We are in receipt of your Subpoena of May 26, 2015, seeking the Interim Award issued by Margaret R. Brogan, Esquire, on April 21, 2015 (the "Interim Award"). Unfortunately, the Philadelphia Union remains subject to a protective order and must object to your Subpoena on that basis at this juncture. We note in this regard that we have reached out to opposing counsel, Clifford Haines, and have sought his concurrence in a process that would allow production of the Interim Award to you. We have asked for Mr. Haines' prompt response and will advise as soon as we have some reaction from him.

In the interim, please call with any questions.

Regards,



Thomas G. Collins

cc: Cliff Haines, Esquire

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PIOTR NOWAK

Plaintiff,

v.

MAJOR LEAGUE SOCCER, LLC AND
MAJOR LEAGUE SOCCER PLAYERS
UNION

Defendants.

Civil Action No. 2:14-cv-03503-MAM

Honorable Judge Mary A. McLaughlin

ECF CASE

**AFFIDAVIT OF
HOWARD Z. ROBBINS**


STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Howard Z. Robbins, being duly sworn upon oath, states as follows:

1. I am a member of the law firm Proskauer Rose LLP, attorneys for Defendant, Major League Soccer, LLC (“MLS”). I make this affidavit in support of MLS’s Motion to Compel Non-Party Compliance with the Federal Rule of Civil Procedure 45 Subpoena (the “Subpoena”), which was served on Thomas G. Collins, Esq., Buchanan Ingersoll & Rooney PC, counsel to Pennsylvania Professional Soccer, LLC (the “Philadelphia Union”) on May 26, 2015 requesting the production of the American Arbitration Association decision dated April 21, 2015 in relation to *Nowak v. Pennsylvania Professional Soccer, LLC*, No. 2:12-cv-04165, 2012 WL 4459775 (E.D. Pa. Sept. 26, 2012).

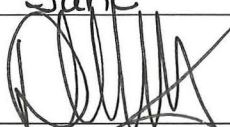
2. By letter dated May 28, 2015, Mr. Collins objected to the Subpoena indicating that the Philadelphia Union was subject to a protective order. Mr. Collins further indicated that he had reached out to Plaintiff's counsel, Clifford Haines, seeking his concurrence in a process to allow for production of the arbitration award.
3. I conferred with Mr. Collins on several occasions in an effort to obtain the arbitration decision.
4. I communicated with Mr. Collins on June 15, 2015 and he stated that while the Philadelphia Union is amenable to producing a copy of the decision, production of the decision would require some agreement with Plaintiff Piotr Nowak's counsel, Clifford Haines, so as to comply with the arbitrator's confidentiality order in that proceeding. Mr. Collins informed me that he had reached out to Mr. Haines on several occasions after being served with the Subpoena in an effort to agree on some method to comply with the confidentiality order; however, to date, Mr. Haines has not responded to Mr. Collins' numerous communications.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.



Howard Z. Robbins

Subscribed and sworn to
before me this 16th day of
June, 2015.



Notary Public

ROBIN D. CARTER
Notary Public, State of New York
No. 01CA4889955
Qualified in Bronx County
Expires April 20, 2019

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PIOTR NOWAK

Plaintiff,

v.

MAJOR LEAGUE SOCCER, LLC AND
MAJOR LEAGUE SOCCER PLAYERS
UNION

Defendants.

Civil Action No. 2:14-cv-03503-MAM
Honorable Judge Mary A. McLaughlin

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system on this 16th day of June, 2015. I also hereby certify that on this 16th day of June, 2015, I caused a true and correct copy of the foregoing document to be served on the following via UPS Next Day Air and e-mail:

Thomas G. Collins, Esq.,
Buchanan Ingersoll & Rooney PC
409 North Second Street
Harrisburg, PA 17101
thomas.collins@bipc.com
Attorney for Non-Party Pennsylvania Professional Soccer, LLC

/s/ Howard Z. Robbins
