

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

<b>CARNEGIE HILL FINANCIAL , INC.</b>	:	
<b>CARNEGIE HILL SECURITIES</b>	:	
<b>CORPORATION and</b>	:	
<b>CARNEGIE HILL ASSET</b>	:	
<b>MANAGEMENT , INC.</b>	:	
<b>Plaintiffs</b>	:	<b>No. 99-cv-2592</b>
	:	
<b>v.</b>	:	
	:	
<b>DALE B. KRIEGER</b>	:	
<b>RICHARD A. RUDERMAN</b>	:	
<b>and</b>	:	
<b>KRIEGER, RUDERMAN &amp; CO., LLC</b>	:	
<b>KR SECURITIES, LLC and</b>	:	
<b>KR FINANCIAL, LLC</b>	:	
<b>Defendants</b>	:	

**GREEN, S.J.** **January \_\_\_\_\_, 2000**  
**MEMORANDUM and ORDER**

Presently before the Court is Defendants’ Motion to Compel Production of Documents and for Reimbursement of Fees and Expenses and Plaintiffs’ response thereto. For the foregoing reasons, the Motion to Compel will be granted.

**FACTUAL AND PROCEDURAL HISTORY**

Defendant Dale Krieger was President and Chief Executive Officer of Carnegie Hill Financial Inc.(“CHFI”), Carnegie Hill Asset Management Inc. (“CHA”) and Carnegie Hill Securities Corporation (“CHS”). He was also one of two members of the Board of Directors of these companies until he resigned in February 1999. Defendant Richard Ruderman was Executive Vice President, Chief Operating Officer, Secretary and Treasurer of CHFI, CHA and CHS from their inception until January 29, 1999, when he became President, Secretary and

Treasurer of the companies. Ruderman also served as one of two members of all three of the companies' Board of Directors until he resigned in February 1999. Some time prior to August 1998, Krieger and Ruderman later formed three other companies: Krieger Ruderman & Co., LLC, KR Securities, LLC and KR Financial, LLC.

On May 20, 1999, CHFI, CHA and CHS instituted this action against Dale Krieger, Richard Ruderman and the three companies they controlled, alleging violation of the Lanham Act, breach of contract, breach of fiduciary obligations, breach of duty of loyalty, corporate waste, and tortious interference with contract. During the course of discovery, Defendants issued their First Request for Production of Documents to the Plaintiffs on July 9, 1999. Plaintiffs treated the Request for Production of Documents as though it were served on August 9, 1999 in accordance with Section 4:01 of the Court's Civil Expense and Delay Reduction Plan.<sup>1</sup> On September 8, 1999, Plaintiffs filed objections to Defendants' Request for Production of Documents.

Defendants also sought discovery from Wolf, Block, Schorr and Solis-Cohen, ("Wolf Block") counsel for CHFI, CHS and CHA, subpoenaing documents relating to its prior representation of CHFI, CHS and CHA. Upon learning of Defendants' request for documents from Wolf Block, Plaintiff instructed Wolf Block to "invoke and preserve all their privileges with respect to information and documentation relating to their representation of CHFI, CHS, and CHA." ( Defs.' M. to Compel at Ex. D). In compliance with the Plaintiffs' directive, Wolf Block

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<sup>1</sup> Pursuant to Section 4:01(b), a party may not seek discovery from any source before the date that the required self-executing disclosures are due. In this case, Defendants filed an answer to the Plaintiffs' Complaint on July 7, 1999. Therefore, Plaintiffs could not seek discovery until at least August 6, 1999.

subsequently served objections to Defendants' subpoena.

The parties then entered an agreement wherein Plaintiffs would supply Defendants with a privilege log and the non-privileged documents. Concluding that the remaining discovery disputes could not be resolved without the Court's intervention, Defendants subsequently filed this Motion to Compel, seeking the production of the documents referenced in Defendants First Set of Requests for Production of Documents and the Subpoena of documents in the possession of Wolf Block.

After Defendants filed this Motion, the parties agreed to commence production of documents on December 2, 1999. However, according to Defendants' reply brief, filed in connection with this motion, Plaintiffs "only produced twenty of the admitted forty-five boxes of documents." ( Defs.' Reply Br. at 3). In addition, Defendants assert that the Plaintiffs produced a privilege log, on December 2, 1999, detailing the documents withheld from discovery on the basis of attorney-client and work product privilege. However, Defendants argue that the assertion of attorney-client privilege for documents addressed to Defendants Krieger and Ruderman in their capacity as officers and directors of the Plaintiff corporations is inappropriate.

Accordingly, Defendants move this Court to compel the Plaintiffs to produce the remaining documents that were requested in the First Request for Production of Documents and to produce all documents addressed to or provided to the Plaintiff corporations by Wolf Block during the time in which Krieger and Ruderman served as officers and directors.

## **DISCUSSION**

### **1. Documents in Plaintiffs' Possession**

To the extent that Plaintiffs have failed to produce non-privileged documents in

their possession, I will grant Defendants motion to compel, ordering Plaintiff to produce all non-privileged documents responsive to the defendants' discovery requests within twenty days of the Court's order.

2. **Motion to Compel Documents in the Possession of Wolf, Block, Schorr and Solis-Cohen.**

In their Motion to Compel, Defendants argue that they are entitled to the Wolf Block documents because these documents contain legal advice that the Plaintiffs placed in issue when they filed their Complaint. Moreover, Defendants contend that Krieger and Ruderman's status as former Directors and Officers of the Plaintiff corporations entitles them to all documents prepared during their tenure. Thus, the issue presented by Defendants' Motion to Compel is whether former directors and executive officers of a corporation have a right to documents, which are otherwise presumably protected by the attorney-client and or work-product privileges, when the corporation asserts the privilege against the former directors and executive officers in the context of litigation brought by the corporation against the former officers.

In the instant case, it is important to note that Defendants Krieger and Ruderman were the sole officers and directors of the plaintiff corporations until they tendered their resignations in early 1999. Therefore, as former officers and directors of the corporations, they were in a position to obtain legal advice from corporate counsel for the benefit of the corporation. Moreover, the Plaintiffs assert that their cause of action is derived, in part, from the defendants' alleged conduct while utilizing the legal services of Wolf Block. See (Pls.' Compl. at ¶ 31). Based on these facts, it appears that defendants are entitled to discovery of the Wolf Block

documents.<sup>2</sup>

Therefore, I will direct Plaintiffs and Wolf Block to produce documents prepared by counsel during Messrs. Krieger and Ruderman's tenure as officers and directors of the Plaintiff corporations.

### **CONCLUSION**

For the foregoing reasons, I will grant the Defendants' motion to compel the production of documents in this case and order Plaintiffs to withdraw their objections to Wolf Block's production of the subpoenaed records at issue in this case. An appropriate order follows.

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<sup>2</sup> While there is no clear authority in this Circuit upon which to rely, I find the court's reasoning in Gottlieb v. Wiles, 143 F.R.D. 241 (D.Colo. 1992) persuasive. In Gottlieb, the Court held that an officer and director of a corporation fits squarely within the class of persons who can receive communications and work product from the corporation's legal counsel without adversely impacting the privileged or confidential nature of such material. Id. at 247. Following this reasoning, I conclude that the policy underlying attorney-client privilege and work product immunity would not be advanced by now denying former officers and directors of the corporation access to documents which are relevant to the issues tendered by Plaintiffs and which they could have seen upon request at any time.

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<b>KR FINANCIAL, LLC</b>	:	
<b>Defendants</b>	:	

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of January 2000, upon consideration of the Defendants' Motion to Compel and Plaintiffs' response thereto, **IT IS HEREBY ORDERED** that Defendants' Motion to Compel is **GRANTED**. Plaintiff shall produce responsive documents and shall withdraw any objections to the production of subpoenaed records by third party witness Wolf, Block, Schorr & Solis-Cohen within twenty (20) days of the entry of this Order.

**IT IS FURTHER ORDERED** that Defendants' request for reimbursement of fees and expenses incurred in filing the Motion to Compel is **DENIED**.

BY THE COURT,

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CLIFFORD SCOTT GREEN, S.J.