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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2096-21**

SLUMPED KITCHEN, LLC,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY,  
DIVISION OF CONSUMER  
AFFAIRS,

Defendant-Respondent.

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Submitted May 24, 2023 – Decided June 22, 2023

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey, Law  
Division, Mercer County, Docket No. L-2277-21.

Szaferman, Lakind, Blumstein & Blader, PC, attorneys  
for appellant (Daniel S. Sweetser, on the briefs).

Matthew J. Platkin, Attorney General, attorney for  
respondent (Melissa H. Raksa, Assistant Attorney  
General, of counsel; Monisha A. Kumar and Monica E.  
Finke, Deputy Attorneys General, on the brief).

PER CURIAM

Plaintiff Slumped Kitchen, LLC appeals from a February 7, 2022 order denying its motion to quash a subpoena duces tecum issued by defendant State of New Jersey, Division of Consumer Affairs (Division) and granting the Division's cross-motion to enforce the subpoena and compel the production of plaintiff's documents created prior to April 15, 2021, the date plaintiff formed as a limited liability company. We affirm.

Plaintiff is in the business of "sell[ing] and deliver[ing] groceries to customers throughout New Jersey." According to the Division, plaintiff's website revealed the company was "gifting" cannabis in connection with the sale of snacks, such as brownies and cookies, to its customers. If a customer purchased a "snack pack" or "munchie pack," plaintiff would "gift" up to twenty-eight grams of cannabis with the customer's purchased treat. The price for the snack or munchie packs depended upon whether the customer selected a fourteen-gram or twenty-eight-gram gift of cannabis with their purchased treats. Plaintiff offered a ten percent discount to consumers with valid medical marijuana cards.

Based on statements and representations on plaintiff's website and social media accounts, the Division warned plaintiff of a potential violation of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -227, by making false or

misleading statements or misrepresentations in conducting its business, N.J.S.A. 56:8-2, and engaging in unauthorized business practices, N.J.S.A. 2C:35-10(a).

On June 15, 2021, the Division served plaintiff with a subpoena seeking business records from November 1, 2020 through the return date of the subpoena, June 29, 2021. The subpoena requested plaintiff produce the following documents:

1. All [d]ocuments [c]oncerning the organizational structure of Slumped Kitchen . . . [i]ncluding [the] identity of owners, officers, directors, shareholders, managers, members and/or board members;
2. All Slumped Kitchen social media web content and the web content of <https://slumpedkitchen.com> . . . includ[ing] all messages sent to and from the Slumped Kitchen account;
3. All licenses or conditional licenses held by Slumped Kitchen as a medical cannabis dispensary, cannabis establishment or a cannabis delivery service, or that otherwise authorize Slumped Kitchen to purchase, sell, cultivate, produce, manufacture, transport, and/or deliver mari[j]uana, cannabis, cannabis items, or cannabis paraphernalia;
4. All documents and correspondence concerning all sales of merchandise by Slumped Kitchen . . . including, but not limited to: a. Date of transaction; b. Detailed description of Merchandise Sold by Slumped Kitchen, including product names and quantities; c. Sale price for transaction; d. Date of delivery; e. Delivery driver's name; f. Detailed description of any [m]ari[j]uana, cannabis, cannabis items and/or cannabis

paraphernalia provided at the time of merchandise delivery;

5. For all Sales identified in Document Request 4, provide documents sufficient to demonstrate the supplier(s) and costs of all merchandise to You (e.g., purchase records, shipping orders, inventory reports, delivery tickets, billing notices, invoices, and/or receipts) which show the prices You paid for each item offered for sale by You either individually or in combination with other products as a 'munchie pack,' 'snack pack,' or otherwise;

6. All policies concerning your age-verification procedures at the time of purchase and at the time of delivery;

7. For all sales identified in Document Request 4, provide all documents demonstrating age-verification of consumers and persons who accepted Merchandise deliveries and/or mari[j]uana, cannabis, cannabis items, or cannabis paraphernalia; and

8. All documents substantiating all representations made by Slumped Kitchen concerning the legality of its business activities.

As part of its subpoena, the Division required plaintiff submit a certification of compliance confirming its responses to the subpoena were true, accurate, and complete.

Plaintiff failed to respond to the Division's subpoena by the June 29, 2021 deadline. It retained an attorney who represented he would be gathering information to discuss the subpoena with the Division's attorney. Plaintiff's

attorney addressed with the Division's attorney his concerns regarding potential Fifth Amendment issues in responding to the subpoena. The attorneys agreed that any Fifth Amendment concerns had to be raised with specificity and that plaintiff would provide a formal response to the Division's subpoena, including specific objections, by November 2, 2021. Plaintiff failed to produce documents by the designated date.

On November 3, 2021, plaintiff filed this action as a motion to quash the Division's subpoena. After discussions between counsel, plaintiff agreed to withdraw the portion of its motion regarding documents generated after April 15, 2021, plaintiff's date of incorporation. However, plaintiff maintained that documents generated prior to April 15, 2021, while it purported to be a sole proprietorship, violated its Fifth Amendment privilege against self-incrimination. The Division filed opposition and a cross-motion to enforce the subpoena.

On February 4, 2022, the motion judge heard counsel's arguments. In a February 7, 2022 order, the judge denied plaintiff's motion to quash and granted the Division's cross-motion to enforce the subpoena. The judge found the requested information was corporate in nature and the Fifth Amendment and New Jersey privilege against self-incrimination applied to individuals and not

business entities. Specifically, the judge found "[t]he [s]ubpoena is tailored and only seeks information related to [plaintiff]'s business practices, including licenses, advertising methods, and age-verification policies" and that the responsive documents prior to the date of plaintiff's incorporation "contain[ed] information essential to the ongoing business conduct of [plaintiff]."

In rejecting plaintiff's assertion of a Fifth Amendment privilege against self-incrimination, the judge found "[t]he production of corporate records by the employees of [plaintiff] implicates no personal right." Because plaintiff was a business, the judge concluded it "may not assert a Fifth Amendment privilege against the production of business records."

The judge also rejected plaintiff's argument that the certification of compliance violated its Fifth Amendment privilege against self-incrimination. The judge found the records custodian signing the certification was not "disclos[ing] the contents of their own mind," but verifying "the responses [were] complete, no information was withheld beyond what is required, and the responses [were] 'authentic, genuine, and what they purport to be.'" The judge determined "[t]he certification process [would be] done in the custodian's official capacity and the Fifth Amendment privilege does not attach."

Regarding the Division's cross-motion to enforce the subpoena, the judge noted "[t]he [s]ubpoena was issued in conjunction with a CFA investigation into the business practices of Slumped Kitchen." Under the CFA, the judge found the State has broad investigatory powers, including the power to subpoena. In granting the cross-motion, the judge determined the Division "validly issued the [s]ubpoena pursuant to its broad authority under N.J.S.A. 56:8-4 and valid CFA investigation."

On appeal, plaintiff renews its arguments presented to the motion judge. It claims "[t]he compelled production of business records generated by a sole proprietorship violates the privilege against self-incrimination enshrined in the Fifth Amendment to the United States Constitution." Plaintiff contends that production of its business records, generated prior to April 15, 2021 while it acted as a sole proprietorship, violates its Fifth Amendment privilege against self-incrimination. We disagree.

We review a trial court's decision whether to quash a subpoena for abuse of discretion. In re Subpoena Duces Tecum on Custodian of Recs. Crim. Div. Manager, Morris Cnty., 214 N.J. 147, 162-63 (2013). "An abuse of discretion occurs by making decisions 'without a rational explanation, [that] inexplicably departed from established policies, or [that] rested on an impermissible basis.'"

State v. Chambers, 252 N.J. 561, 594-95 (2023) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

The Fifth Amendment provides: "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. In New Jersey, the privilege against self-incrimination "is deeply rooted in this State's common law and codified in both statute and an evidence rule." State v. Andrews, 243 N.J. 447, 481 (2020) (quoting State v. Muhammad, 182 N.J. 551, 567 (2005)).

The privilege against self-incrimination applies "only to natural individuals." United States v. White, 322 U.S. 694, 698 (1944). Unlike a natural person, a business entity "has no Fifth Amendment privilege against self-incrimination." Balt. City Dep't of Soc. Servs. v. Bouknight, 493 U.S. 549, 566 (1990) (Marshall, J. dissenting). Agents or records custodians, while natural persons, may not invoke the Fifth Amendment right against self-incrimination on behalf of a business entity. See Verniero v. Beverly Hills, Ltd., Inc., 316 N.J. Super. 121, 126 (App. Div. 1998) (holding that the "custodian of corporate records may not rely upon his or her personal privilege against self-incrimination as a basis for refusing to produce corporate records").



"It is firmly established that corporations may not invoke either the Fifth Amendment or the New Jersey privilege against self-incrimination." Ibid. Under New Jersey law, "the contents of business records, whether from a corporation, a partnership, or a sole proprietorship, are no longer privileged under the Fifth Amendment." In re Grand Jury Proceedings of Guarino, 104 N.J. 218, 228 (1986).

As our Court held in Guarino, "[t]he business records of a sole proprietor[ship] do not lie within that special zone of privacy that forms the core of the documents protected by Boyd<sup>1</sup> and its progeny, and that are protected by the New Jersey privilege against self-incrimination." Id. at 232. "The business records of a corporation, partnership or sole proprietor[ship] are not an extension of the more intimate aspects of one's life." Id. at 233. The Court concluded,

we do not perceive any reason why the records of a sole proprietor[ship] kept in the ordinary course of business are entitled to any greater protection than the business records of a partnership or corporation. Sole proprietor[ship]s may operate large, substantial business enterprises, in many instances more extensive than small one-person corporations or two-person partnerships. Such records are indistinguishable from business records of other business entities and would enjoy protection only because of the form of the business organization chosen by their founders. In no

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<sup>1</sup> Boyd v. United States, 116 U.S. 616 (1886) (holding an individual's papers are protected from compelled disclosure under the Fifth Amendment).

way is the privilege related to the contents of the documents. To continue to distinguish between the business records of a sole proprietorship and other business entities not only would be inequitable but might in fact offer the knowledgeable white-collar criminal a means to avoid criminal prosecution.

[Id. at 234-35.]

Here, whether the documents sought pursuant to the Division's subpoena were created when plaintiff was purportedly a sole proprietorship or some other business formation does not entitle it to protection of its business records under the Fifth Amendment. Importantly, plaintiff produced no evidence verifying its status as a sole proprietorship prior to April 15, 2021. Even if plaintiff was a sole proprietorship, the case law does not extend the Fifth Amendment right against self-incrimination to business records of a corporation, partnership, sole proprietorship, or other business venture.

Additionally, a plain reading of the subpoena supported the judge's determination that the requested documents were corporate in nature and not personal because the information related to plaintiff's "business practices, including licenses, advertising methods, and age-verification policies." The requested documents clearly related to plaintiff's business operations and did not seek any testimonial or personal documents.

We are satisfied that the documents requested by the Division related to its CFA investigation and sought only documents related to plaintiff's business, and not personal records. Because the documents sought in the Division's subpoena lacked any personal or testimonial component, the Fifth Amendment privilege against self-incrimination was inapplicable.

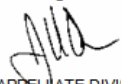
Nor do we agree that the judge was required to conduct an in camera review of the documents to decide plaintiff's motion to quash the subpoena. See Estate of Fisher v. Comm'r, 905 F.2d 645, 651 (2d Cir. 1990) ("[T]he decision whether to engage in in camera review rests in the sound discretion of the district court . . ."). When the corporate nature of documents is apparent on the face of the subpoena, the court need not conduct an in camera review. See Grand Jury Subpoena Duces Tecum Dated April 23, 1981 Witness v. United States, 657 F.2d 5, 8 (2d. Cir. 1981) (remanding for in camera review only where the nature of the contents of requested documents was not "facially apparent").

Here, the corporate nature of the documents requested in the Division's subpoena was apparent on the face of the subpoena. Plaintiff's claimed privilege rested on its status as a sole proprietorship before April 15, 2021. It never contended that the documents sought in the subpoena were not business records.

Additionally, plaintiff lacked standing to assert a Fifth Amendment privilege claim. The privilege against self-incrimination may only be asserted by a natural person. In re Grand Jury Proceedings, 838 F.2d 624, 625 (1st Cir. 1988). Plaintiff, a business entity, was served with a subpoena compelling the production of its business records. Plaintiff, which is not a "natural person," filed the motion to quash the subpoena. No individual person intervened or filed a separate action asserting a personal privilege against self-incrimination. Thus, plaintiff's application to quash the Division's subpoena was properly denied both on the merits and procedurally.

Affirmed. The stay entered by the New Jersey Supreme Court pending the decision on this appeal is vacated unless plaintiff files an emergent application for a stay with the Supreme Court. If such an application is filed, the stay shall continue during the pendency of the application before the Supreme Court or further order of that Court.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION