

## Trump's 'Canceled' Cos. Ordered To Report Status, Defaults

By **Frank G. Runyeon**

*Law360, New York (October 5, 2023, 6:59 PM EDT)* -- A New York state judge Thursday demanded a detailed update from Donald Trump's companies, ordering them to notify the independent monitor overseeing them if they receive any notice of default on their loans or other obligations as a result of the court's order revoking Trump's business licenses.

The demand for information follows Justice Arthur F. Engoron's extraordinary decision last week to cancel Trump's business certificates and move to dissolve the LLCs. The judge is currently presiding over trial testimony in the state attorney general's fraud case against Trump, his adult sons, longtime financial officers and companies.

The judge's Thursday order requires the Trump defendants to list all the companies impacted by his earlier decision and disclose whether any assets had been moved, contracts modified, or "default" declared by their partners after he placed the former president's assets in limbo.

The judge also extended until the end of the month the deadline to name receivers who will formally dissolve all of Trump's New York companies.

The information will be sent to former U.S. District Judge Barbara Jones, who has been acting as an independent monitor over the Trump Organization companies.

The judge said the attorney general should double-check Trump's accounting of every company he or the other defendants control with records from the Department of State, which oversees state corporations.

The provisions that explicitly demand Trump disclose "any modifications to existing contracts or obligations with any counterparty" or "any notice by a counterparty declaring an event of default resulting from the Sept. 26 order, including the cancellation of the certificates or the appointment of a receiver" stood out to one expert.

Ryan A. Lema, a commercial litigation specialist on the white collar defense team for Phillips Lytle LLP, noted that the cancellation of business certificates could provide an opportunity for Trump's business partners to demand accelerated or immediate repayment on loans.

"There's potentially breach of various loan covenants," Lema said, noting that he has no knowledge of the Trump companies' loan documents. "But it's a pretty standard covenant, in most loan agreements,

that the borrower is properly incorporated and authorized to do business in the jurisdictions where it operates."

With Trump's certificates canceled, Lema said, "that type of representation would no longer be true." The order appears to be the judge trying to get his arms around the practical effects of revoking the certificates, he added.

A spokesperson for the Trump Organization did not immediately respond to a request for comment Thursday.

Chris Kise, counsel for Trump on the fraud case, said he hadn't had the chance to study the order but said such a development would be unprecedented.

"There's never been any defaults," Kise told Law360 as he exited the elevator, returning from the lunch break on the fourth day of trial.

Shortly after, Kise told Justice Engoron that they are intending to appeal the judge's summary judgment ruling and a stay of the trial.

Earlier on Thursday in court, Trump's attorneys finished cross-examining longtime Mazars LLP accountant Donald Bender, who compiled Trump's statements of financial condition at issue in the fraud case.

Trump's team has explicitly said they're putting Bender "on trial" for failing to catch any misstatements, casting doubt on his claims he was unaware of how the allegedly false net worth estimates were computed.

Bender steadfastly insisted that he asked for appraisals and only later learned that the company kept some from him. Bender said he had asked longtime Trump Organization controller Jeffrey McConney for most years at issue in the case. McConney actually computed the valuation of the company assets that supported Trump's net worth on the statements of financial condition.

Attempting a few broadsides on Bender before he stepped down, Trump counsel Jesus Suarez accused him of being so forgetful in his testimony that he had a mental condition.

"In the last three days, you testified 'I don't know' or 'I don't remember' over 89 times," Suarez said. He later asked, "I have to ask you the question, is there any mental health reason why you can't testify here today?"

Bender smirked at the accusation, denying it several times.

"I have no mental health issues," he said.

Bender also denied having any concerns that admitting any of his own failures might lead to a malpractice lawsuit or regulatory action against him or his firm.

"Never really thought about that," Bender said. "It wasn't my biggest concern."

McConney took the stand in the afternoon. Andrew Amer, counsel for the attorney general, pushed him

on several clear errors in the financial statements. At one point, inquiring about how the controller valued Trump's triplex apartment, Amer pointed out that he had mistaken the square footage for the price per square foot.

"This is a \$51 million mistake for each of the two years, correct?" Amer asked.

"Yes," McConney replied, nonchalantly. But he resisted efforts by Amer to imply he was always looking to inflate Trump's assets.

"We weren't always looking for the highest price," he said, saying that he was looking for other New York City apartments comparable to Trump's palatial residence.

The judge again telegraphed wariness of Trump's central argument during a debate over whether it was proper for McConney to have used the original asking price for luxury apartments instead of the actual sales price to compute the proper estimated current value of the property for Trump's net worth.

Kise objected to Amer hammering away at McConney about whether that practice was the right way to compute the value.

"This is the whole point of the case," Kise said, his voice rising. "There is no one right way."

A moment later, the judge responded, "I think any high school student knows the right way."

The judge adjourned shortly after 4:30 p.m. McConney is expected to be the only witness on Friday, which will be a half day. Longtime Trump Chief Financial Officer Allen Weisselberg is expected to take the stand as soon as Tuesday.

The government is represented by Kevin Wallace, Andrew Amer, Colleen Faherty, Alex Finkelstein, Wil Handley, Eric R. Haren, Louis M. Solomon, Sherief Gaber, Mark Ladov and Stephanie Torre of the New York State Office of the Attorney General.

Trump and the Trump Organization are represented by Alina Habba and Michael Madaio of Habba Madaio & Associates LLP, Christopher Kise, Jesus M. Suarez and Lazaro P. Fields of Continental PLLC and Armen Morian of Morian Law PLLC.

Donald Trump Jr. and Eric Trump are represented by Clifford S. Robert and Michael Farina of Robert & Robert PLLC.

The case is New York v. Donald J. Trump et al., index number 452564/2022, in the Supreme Court of the State of New York, County of New York.

--Editing by Alex Hubbard.