

**Holdrum Invs. NV v Edelman**

2020 NY Slip Op 32629(U)

August 11, 2020

Supreme Court, New York County

Docket Number: 650950/2011

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

*Justice*

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**INDEX NO.** 650950/2011

HOLDRUM INVESTMENTS NV,  
  
Plaintiff,

**MOTION SEQ. NO.** 018

- v -

ASHER EDELMAN,  
  
Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 018) 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 294, 297, 298

were read on this motion to/for CONTEMPT.

This is a post-judgment motion by plaintiff Holdrum Investments NV seeking, inter alia, to punish defendant Asher Edelman for contempt due to his failure to comply with the orders of this Court entered June 18 and December 20, 2019. Defendant opposes the motion. After oral argument, and after consideration of the parties' papers and the relevant statutes and case law, the motion is decided as follows.

The facts of this matter are set forth in detail in the orders of this Court entered February 4, 2013 and June 18, 2019. Docs. 74 and 251, respectively. In summary, plaintiff obtained a judgment against defendant in the amount of \$231,568.15 on April 13, 2017. Doc. 209. As part of its attempt to enforce the judgment, plaintiff served restraining notices on Artemis USA, LLC ("Artemis") and Art Assure Ltd., LLC ("Art Assure"). In October 2018, plaintiff moved to charge the defendant's membership interests in Artemis and Art Assure, as well as The Edelman Family LLC ("Family"), with payment of the unsatisfied amount of the judgment, with interest, as well as to compel defendant to turn over to plaintiff his shares in Edelman Arts Inc. ("EAI") and A.B.

Edelman Management Company Inc. (“ABEM”). By order entered June 18, 2019, this Court directed defendant to turn over to plaintiff any funds held by defendant in EAI and ABEM in full or partial satisfaction of the judgment, plus statutory interest which accrued on the judgment since April 13, 2017. Doc. 251. The order further directed that defendant’s membership interests in Family, Artemis, and Art Assure were to be charged with payment of the judgment. Doc. 251.

By so-ordered stipulation entered December 20, 2019, the parties agreed, inter alia, that defendant was to turn over to plaintiff the shares of ABEM and EAI on or before December 31, 2019. Doc. 277. Defendant also agreed that, in the event plaintiff had to move to enforce the said so-ordered stipulation, the June 18, 2019 order, or any other order or judgment of this Court, plaintiff could seek attorneys’ fees. Doc. 277.

Plaintiff subsequently filed the instant order to show cause, dated February 14, 2020, in which it moved: 1) to hold defendant in contempt for failing to comply with the orders entered June 18 and December 20, 2019; 2) for costs and sanctions against defendant and his attorneys pursuant to 22 NYCRR 130-1.1; and 3) for legal fees in the sum of at least \$7,500, to be determined at a hearing. Doc. 285. Plaintiff argues that, in order to comply with the June 18, 2019 order, defendant must prepare and execute a share transfer agreement, notify the other existing shareholders of the subject corporations about the transfer, and provide plaintiff with all information necessary to facilitate the transfer of the shares. Doc. 286. Despite numerous requests by plaintiff, however, defendant has neither turned over the shares nor provided the information necessary to enforce the June 18, 2019 order. Defendant has merely turned over an unexecuted share certificate, which is worthless to plaintiff’s efforts to enforce the judgment. Additionally, defendant has failed to comply with the December 20, 2019 order insofar as it directed him to turn

over the shares of ABEM and EAI on or before December 31, 2019. Doc. 277. Defendant's inaction prompted plaintiff to file the instant application, *its fourth motion seeking to hold defendant in contempt*.

“A court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced.” Judiciary Law § 753(A). In *Matter of McCormick v. Axelrod*, 59 N.Y.2d 574 (1983), the Court of Appeals described the elements necessary to support a finding of civil contempt. First, “it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect.” Id. at 583. Second, “[i]t must appear, with reasonable certainty, that the order has been disobeyed.” Id. Third, “the party to be held in contempt must have had knowledge of the court's order.” Id. Fourth, “prejudice to the right of a party to the litigation must be demonstrated.” Id.

Here, as plaintiff asserts, the June 18, 2019 order of this Court set forth a clear mandate and, despite numerous demands, defendant has still failed to comply with the same. Doc. 251. To date, shares of the subject corporations have not been turned over, and defendant has failed to provide any details regarding the subject LLCs in accordance with the terms of the said order, thereby resulting in prejudice to plaintiff, who has been unable to collect on the judgment. Additionally, defendant failed to comply with the directive in the December 20, 2019 order that he turn over his shares of ABEM and EAI on or before December 31, 2019. Doc. 277. Since it is evident from the foregoing that defendant's conduct was calculated to, or actually did, defeat, impair, impede and/or prejudice the rights or remedies of plaintiff by preventing it from enforcing the judgment, he must be held in contempt.

Additionally, this Court “may award to any party costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney’s fees resulting from frivolous conduct.” 22 NYCRR 130-1.1. This Court may also impose financial sanctions upon an attorney or party (or both) who engages in frivolous conduct. 22 NYCRR 130-1.1. Conduct is frivolous if it is “undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another.” 22 NYCRR 130-1.1(c)(2).” Here, as plaintiff asserts, defendant’s delaying tactics date back to the time this action was commenced. Since plaintiff obtained a judgment against defendant, the latter has done nothing to assist plaintiff in satisfying the same. On the contrary, as noted above, defendant has violated the orders of this Court entered June 18 and December 20, 2019. Thus, defendant’s conduct rises to the level of frivolity and sanctions against him are warranted.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the branch of the motion by plaintiff Holdrum Investments NV seeking to punish defendant Asher Edelman by finding him to be in civil contempt of court pursuant to Judiciary Law §753 for willful violation of this Court’s orders entered June 18, 2019 and December 20, 2019 is granted; and it is further

ORDERED that the misconduct of defendant Asher Edelman was calculated to and actually did defeat, impair, impede, and prejudice the rights and remedies of plaintiff Holdrum Investments NV; and it is further

ORDERED that plaintiff is to serve a copy of this order on defendant within 7 days after this order is uploaded to NYSCEF; and it is further

ORDERED that defendant may purge his contempt within 30 days of the service upon him of a copy of this order, with notice of its entry, by complying with the June 18, 2019 order and that branch of the December 20, 2019 order directing him to turn over his shares of ABEM and EAI to plaintiff on or before December 31, 2019; and it is further

ORDERED that, should defendant so purge his contempt, he is to notify this Court immediately of this fact and provide documentation of the same; and it is further

ORDERED that in the event defendant Asher Edelman does not purge his contempt, he shall appear before this Court by videoconference on October 7, 2020 at 3:30 p.m. to receive instructions from this Court regarding the immediate commencement of a term of imprisonment, as well as a determination as to the amount of fine to be imposed; and it is further

ORDERED that defendant is hereby sanctioned by this Court for his frivolous conduct in the amount of \$5,000 pursuant to 22 NYCRR 130-1.1, and shall deposit said amount with the County Clerk (Room 141B), together with a copy of this order, for transmittal to the New York State Commissioner of Taxation and Finance; and it is further

ORDERED that written proof of the payment of this sanction shall be provided to the Clerk of Part 2 and opposing counsel within thirty (30) days after service of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that such proof of payment is not provided in a timely manner, the Clerk of the Court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such nonpayment, shall enter a judgment in favor of the Commissioner and against defendant in the aforesaid sum; and it is further

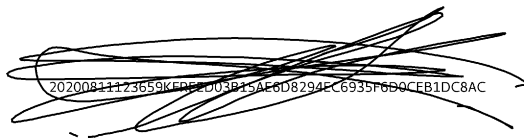
ORDERED that the branch of plaintiff's motion seeking to collect the costs and attorneys' fees incurred by plaintiff in seeking to collect on the judgment against defendant is granted, and this matter is assigned to a Special Referee for the purpose of calculating the amount of such costs and attorneys' fees to be awarded; and it is further

ORDERED that, within 30 days after entry of this order, defendant shall serve a copy of this order, with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the Motion Support Office (Room 119M), who is directed to place this Matter on the calendar of the Special Referee's Part for the earliest convenient date;

ORDERED that if defendant fails to comply with the foregoing, plaintiff may move for any appropriate additional relief; and it is further

ORDERED that this constitutes the decision and order of the court.

8/11/2020  
DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE