

<b>Shagalov v Edelman</b>
2022 NY Slip Op 30260(U)
January 21, 2022
Supreme Court, New York County
Docket Number: Index No. 655576/2017
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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ANATOLE SHAGALOV, NATURE MORTE LLC,

Plaintiffs,

- v -

ASHER EDELMAN, ARTEMUS USA LLC, EDELMAN  
ARTS INC., JOHN DOE 1-20,

Defendants.

INDEX NO. 655576/2017

MOTION DATE N/A,  
11/23/2021

MOTION SEQ. NO. 023, 025

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 023) 715, 716, 717, 718, 719, 720, 737, 738, 744, 772, 773

were read on this motion for DEFAULT JUDGMENT & PREFERENCE ON INQUEST.

The following e-filed documents, listed by NYSCEF document number (Motion 025) 758, 759, 760, 761, 774, 775, 777, 778, 779, 780, 781, 782, 783, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796

were read on this motion for RENEWAL & REARGUMENT.

Upon the foregoing documents, and for the reasons stated on the record following oral argument on January 18, 2022, it is

**ORDERED** that Defendants’/Counterclaim Plaintiffs’ motion (i) for leave to enter a default judgment for the relief demanded in its counterclaims under CPLR 3215 [a]; (ii) appointing a referee for an inquest to determine damages; (iii) directing the Clerk to enter judgment upon the result of the inquest, without further application; and (iv) granting a preference on the inquest pursuant to CPLR 3403 [a][4] (collectively, Motion Sequence No. 023) is **GRANTED**<sup>1</sup>; it is further

<sup>1</sup> Plaintiff’s impassioned plea during oral argument for another chance to remedy the most recent of his many discovery defaults, citing missteps by prior counsel, did give some pause. The Court

**ORDERED** that Plaintiffs' motion for leave to renew and reargue (i) Motion Seq. No. 021 (which was itself a motion to renew and reargue a prior motion), and (ii) Plaintiffs' Counsel's request for sanctions and damages against Defense Counsel for a purported improper filing of a CPLR 5222 notice of restraint (collectively, Motion Sequence No. 025) is **DENIED**; it is further

**ORDERED** that Defendants/Counterclaim Plaintiffs are hereby directed to proceed to an Inquest before a Special Referee who shall hear and make a recommendation to the Court as to Defendants'/Counterclaim Plaintiffs' damages, if any; it is further

**ORDERED** that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; it is further

**ORDERED** that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or [spref@courts.state.ny.us](mailto:spref@courts.state.ny.us)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh) at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

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does not relish imposing sanctions and does so very rarely. However, a review of the long and frustrating record that gave rise to the sanctions decision that is the subject of this motion (summarized generally at NYSCEF 670 39:13 – 47:4 and in greater detail in Defendants' numerous briefs on this topic during the course of this litigation), including Plaintiff's own misleading testimony under oath during an earlier hearing on discovery failings, makes plain that Plaintiff's belated offer to cure the most recent discovery lapse is unavailing. The bottom line is that this case has been significantly delayed and sidetracked, on numerous occasions and at considerable expense, owing largely to Plaintiff's dilatory conduct and disregard for Court orders. This is that rare case in which, in this Court's view, a substantial sanction was warranted.

**ORDERED** that Petitioner-Plaintiff's counsel shall serve a copy of this order with notice of entry on Respondents-Defendants within five days and that counsel for Petitioner-Plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/1jd/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; it is further

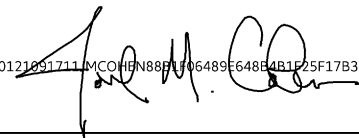
**ORDERED** that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; it is further

**ORDERED** that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion; it is further

**ORDERED** that Defendants/Counterclaim Plaintiffs' motion under CPLR 3403 [a][4] is granted, and the Special Referee shall grant Defendants/Counterclaim Plaintiffs a preference in the priority of hearing the Inquest; and it is further

**ORDERED** that the parties upload a copy of the transcript of the proceedings to NYSCEF upon receipt.

This constitutes the Decision and Order of the Court.

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1/21/2022  
DATE

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JOEL M. COHEN, 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