

<b>Finkelstein v Finkelstein</b>
2022 NY Slip Op 31353(U)
April 25, 2022
Supreme Court, New York County
Docket Number: Index No. 650559/2021
Judge: Paul A. Goetz
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. PAUL A. GOETZ **PART** **47**

*Justice*

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NACHUM FINKELSTEIN, ZLATA FRIEDMAN,  
  
Plaintiff,

**INDEX NO.** 650559/2021

**MOTION DATE** 11/05/2021

**MOTION SEQ. NO.** 009

- v -

REUVEN FINKELSTEIN, 1212 GRANT REALTY  
LLC,CRESTEF REALTY LLC,829 REALTY  
LLC,CEDARROW REALTY LLC,1180 REALTY LLC,911  
LLC,409 REALTY CORP, AKIVA FINKELSTEIN, YITZCHAK  
FINKELSTEIN, AVRAHAM FINKELSTEIN, LIBA MAGID,  
DOES 1-10,

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 210, 211, 213, 214, 217, 218, 219, 220, 221, 225, 226, 227, 228, 229, 230, 231, 232, 244, 245, 246, 247, 248, 249, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268

were read on this motion to/for CONTEMPT.

In this family dispute over the ownership of a portfolio of properties arbitrated before a Beth Din panel, petitioners seek to hold respondents in contempt for violating the June 17, 2021 judgment confirming the arbitration award. Pursuant to an interim order dated November 24, 2021, the court granted in large part the petitioners’ request for relief by appointing BPC Property Management (“BPC”) to manage the properties. Petitioners also seek an order pursuant to RPAPL Section 1521(5) and CPLR Section 5107 for an order directing the Sheriff of the City of New York to execute deeds in the name of the corporate respondents to petitioners or their designee for seven properties which, pursuant to the judgment and clarified arbitration award, were ordered to be transferred to the trusts. Petitioners’ remaining request must be denied. While there is no dispute that these properties (or a portion thereof with respect to 409 West 129 Street, New York, New York) belong to the trusts (the SF Trust and JSF Trust), petitioners’ request for

relief states that they seek a transfer of the deeds directly to petitioners or their designee, rather than the trusts or the trusts' designees as provided in the clarified arbitration award and judgment. Moreover, there is no evidence as to how title is currently held for these seven properties i.e., whether title is held in its entirety by the corporate respondents, or in some other fashion. Notably, for 409 West 129, New York, New York, the clarified arbitration award only awarded ownership of a percentage of the property, thus a deed conveying "ownership" of the property would be in contravention of the clarified award. Further, while petitioners aver in the petition that the corporate respondents are the record owners of the seven properties at issue in this motion, there is no evidence to support this contention in their papers. Thus, without evidence as to how title is held in the seven properties, this branch of the motion must be denied.

Petitioners also seek to hold respondents Reuven Finkelstein, Avraham Finkelstein and the corporate respondents in contempt based on their failure to produce accountings for all assets received from Jacob Finkelstein or the Trusts since 2010, as required by the clarified arbitration award and judgment. In order to prevail on a motion to punish a party for civil contempt, the movant must demonstrate by clear and convincing evidence "(1) that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect, (2) that the order was disobeyed and the party disobeying the order had knowledge of its terms, and (3) that the movant was prejudiced by the offending conduct." *El-Dehdan v. El-Dehdan*, 26 NY3d 19, 29 (2015). With regard to Reuven Finkelstein and Avraham Finkelstein, these respondents did not produce any of their own records and instead produced a one-page statement (NYSCEF Doc. 192) stating that they are unable to produce these accountings without first reviewing petitioners' accountings. Reuven Finkelstein and Avraham Finkelstein do not provide a reason or explanation why they need to review the records of petitioners in order to produce their own accountings. Nor does the

fact that the corporate respondents produced some records absolve Reuven Finkelstein and Avraham Finkelstein of the requirement that they provide individual accountings as required by the clarified award and judgment. Accordingly, petitioners' motion seeking an order of contempt against Reuven Finkelstein and Avraham Finkelstein must be granted. In light of this civil contempt determination, the court is required to impose a penalty that is remedial in nature and effect and that is the least possible exercise of the court's power to achieve the proposed end, compliance with its orders. *McCain v Dinkins*, 84 N.Y.2d 216, 229 (1994). An appropriate remedy under these circumstances is to order Reuven Finkelstein and Avraham Finkelstein to produce their individual accounting to petitioners or they will be obligated to pay a fine for every day they fail to do so.

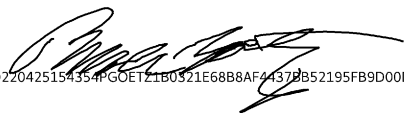
With regard to the petitioners' request to hold the corporate respondents in contempt, this branch of the motion must be denied as it is unclear, based on the motion papers what remains missing from the documentation provided by the corporate respondents or how petitioners are prejudiced by their alleged failure to produce these documents. *See El-Dehdan*, 26 N.Y.3d at 29.

Finally, in their reply papers, petitioners seek an order declaring that petitioners are the trustees of the trusts and precluding respondent Reuven Finkelstein from arguing that petitioners are not bona fide trustees. However, this relief was not sought in the order to show cause nor have the petitioners brought a claim for declaratory relief in this special proceeding to confirm the arbitration award. Thus, this request must be denied. Accordingly, it is

ORDERED that the motion is granted to the extent of appointing BPC as property manager and finding respondents Reuven Finkelstein and Avraham Finkelstein in contempt of the judgment based on their failure to produce individual accountings for all assets received from

Jacob Finkelstein or the Trusts since 2010, as required by the award and judgment; and it is further

ORDERED that respondents Reuven Finkelstein and Avraham Finkelstein shall have thirty days from service of notice of entry of this order to produce their individual accountings to petitioners as required by the clarified arbitration award and judgment, including but not limited to all individual bank records, and should they fail to do so, they will be obligated thereafter to each pay a fine of \$500 per day to the Lawyer’s Fund for Client Protection for each day they fail to comply with the clarified arbitration award and judgment.

  
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4/25/2022  
DATE

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PAUL A. GOETZ, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE