

**Ikramov v A-Life Saver Home Care Servs., Inc.**

2022 NY Slip Op 31972(U)

June 23, 2022

Supreme Court, New York County

Docket Number: Index No. 161328/2017

Judge: Frank P. Nervo

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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. FRANK NERVO PART 04**

*Justice*

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MIRZAGADAYBOY IKRAMOV, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED WHO WERE EMPLOYED BY A-LIFE SAVER HOME CARE SERVICES, INC. ALONG WITH OTHER ENTITIES AFFILIATED OR CONTROLLED BY A-LIFE SAVER HOME CARE SERVICES, INC.,

Plaintiff,

- v -

A-LIFE SAVER HOME CARE SERVICES, INC., AND/OR ANY OTHER RELATED ENTITIES,

Defendant.

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A-LIFE SAVER HOME CARE SERVICES, INC.

Plaintiff,

-against-

ALL HEART HOMECARE AGENCY, INC., STEVEN GERSHKOWITZ, ALBERT FINKELSTEIN

Defendant.

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INDEX NO. 161328/2017  
MOTION DATE 03/31/2021  
MOTION SEQ. NO. 003

**DECISION + ORDER ON MOTION**

Third-Party  
Index No. 595420/2019

The following e-filed documents, listed by NYSCEF document number (Motion 003) 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion to/for MISCELLANEOUS.

Plaintiffs seek an order, inter alia, striking third-party defendants' answer and for a default judgment against third-party defendants. Despite at least six adjournments, the motion is unopposed.

CPLR § 3126 subsection three provides that the Court may strike a pleading when it finds, inter alia, that a party has refused to obey an order for disclosure or willfully fails to disclose information that ought to have been disclosed. This remedy is drastic and should only be imposed when the movant has “clearly shown that its opponent’s nondisclosure was willful, contumacious or due to bad faith” (*Commerce & Indus. Ins. Co. v. Lib-Com Ltd.*, 266 AD2d 142 [1st Dept 1999]). A pattern of default, lateness, and failure to comply with court orders can give rise to an inference of willful and contumacious conduct (see *Merchants T & F, Inc. v. Kase & Druker*, 19 AD3d 134 [1st Dept 2005]); see also *Shah v. Oral Cancer Prevention Intl., Inc.*, 138 AD3d 722 [2d Dept 2016]). “A party that permits discovery to ‘trickl[e] in [with a] cavalier attitude should not escape adverse consequence’” (*Henderson-Jones v. City of New York*, 87 AD3d 498, 504 [1st Dept 2011] quoting *Figdor v. City of New York*, 33 AD3d 560, 561 [1st Dept 2006]).

Here, the Court’s prior Decision and Order dated November 20, 2020 directed third-party defendants provide material sought in plaintiff’s first pre-class certification set of interrogatory demands and first demand for the production of documents and things within 20 days (see Decision and Order, motion sequence 002 – NYSCEF Doc. No. 64). Nearly a year later, by

conference order dated October 21, 2021, the Court further directed that to the extent confidentiality of documents hindered compliance with the Court's prior order, the parties would submit a confidentiality agreement for so-ordering. Notwithstanding, third-party defendants continued to flout the orders of this Court compelling their responses to plaintiff's discovery demands.

“[U]pon learning that a party has repeatedly failed to comply with discovery orders, [trial courts] have an affirmative obligation to take such additional steps as are necessary to ensure future compliance” (*Figdor v. City of New York*, 33 AD3d 560, 561 [1st Dept 2006]). The Court's prior conference order of October 21, 2021 was designed to ensure future compliance with the Court's Decision and Order on motion sequence 002, compelling third-party defendants' responses. However, third-party defendants did not comply with this conference order or the underlying Decision and Order.

Given the aforementioned failure to comply with multiple orders of this Court compelling disclosure, the Court finds third-party defendants' noncompliance was willful and contumacious and designed to frustrate the completion of discovery. Further supporting a finding of willful and

contumacious conduct is third-party defendants' failure to appear on this motion (*Figiel v. Met Food*, 48 AD3d 330 [1st Dept 2008]).

Accordingly, it is

ORDERED that the motion is granted to the extent of striking the answers and affirmative defenses of ALL HEART HOMECARE AGENCY, INC.,

STEVEN GERSHKOWITZ, and ALBERT FINKELSTEIN; and it is further


ORDERED that plaintiff shall have default judgment as against ALL HEART HOMECARE AGENCY, INC., STEVEN GERSHKOWITZ, and ALBERT

FINKELSTEIN in an amount to be determined at trial; and it is further

ORDERED that ALL HEART HOMECARE AGENCY, INC., STEVEN GERSHKOWITZ, and ALBERT FINKELSTEIN shall be precluded from

offering evidence in opposition to plaintiffs' claims at the time of trial.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

<u>6/23/2022</u> DATE	 HON. FRANK P. NERVO			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	J.S.C.	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	