

**Bernstein-Deitcher v Gurwitz**

2024 NY Slip Op 30819(U)

March 11, 2024

Supreme Court, New York County

Docket Number: Index No. 652513/2020

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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ROCHEL LEAH BERNSTEIN-DEITCHER,  Plaintiff,  - v -  YEHUDA GURWITZ,  Defendant.	<table border="0"> <tr> <td style="padding-right: 10px;"><b>INDEX NO.</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">652513/2020</td> </tr> <tr> <td style="padding-right: 10px;"><b>MOTION DATE</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">N/A</td> </tr> <tr> <td style="padding-right: 10px;"><b>MOTION SEQ. NO.</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">005</td> </tr> </table> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>	<b>INDEX NO.</b>	652513/2020	<b>MOTION DATE</b>	N/A	<b>MOTION SEQ. NO.</b>	005
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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177

were read on this motion to/for CONTEMPT.

On January 15, 2021, plaintiff Rochel Leah Bernstein-Deitcher obtained a judgment in the amount of \$760,808.35 against defendant Yehuda Gurwitz. (NYSCEF Doc. No. [NYSCEF] 30, Judgment.) When defendant failed to satisfy the judgment, on December 21, 2022, the court appointed a receiver and directed defendant to turnover his shares in nonparty Charidy (Delaware), Inc. (Charidy) for sale by the receiver. (NYSCEF 128, Supplemental Order at 2-3 [mot. seq. no. 004].)

The receiver moves pursuant to Judiciary Law §§753(A) and 773 and Rules of the Chief Administrator of the Courts (22 NYCRR) §130-1.1 for civil contempt against defendant for lack of compliance with this court's Supplemental Order by failing to (i) cooperate with the receiver; (ii) to turnover defendant's shares of Charidy including "exclusive control of Defendant's Shares and any dividends issued thereon"; (iii) deliver "stock books, stock certificates, registration statements, and access to Carta,

evidencing ownership and control for all purposes of Defendant's Shares, including the

quantity thereof, and the last five (5) years of Charidy, Inc.'s K-1s and audited and unaudited Financial Statements and other statements of value of Charidy, Inc., and other statements as to value of Defendant's Shares" and (iv) deliver "to the Receiver and Plaintiff, a sworn affidavit with supporting documentation establishing his assessment as to the value of Defendant's Shares." (NYSCEF 146, Elizabeth D. Schrero aff ¶2[I][A], quoting Supplemental Order.) The receiver also moves for contempt against Charidy for failing to comply with the Supplemental Order by failing (i) to cooperate with the receiver and (ii) "to provide the Receiver exclusive control over the Defendant's shares, or to comply with the Supplemental Order's direction to 'provide' Charidy's books and records including "stock books, stock certificates, registration statements, records of shareholders, and other books and records of Charidy ... or of Defendant, and documents relating to offers to purchase Charidy, Inc. shares." (*Id.* ¶2[I][B], quoting Supplemental Order.) Finally, the receiver seeks an order directing defendant to pay the fees, costs and expenses incurred by the receiver in demanding compliance with the Supplemental Order including the fees, costs and expenses incurred in preparing this motion for contempt. (*Id.* ¶2[II]-[III].) The receiver also seeks an order directing defendant to pay an additional \$250.00 in costs authorized by Judiciary Law §773. (*Id.* ¶2[IV].)

Around the time that the judgment was issued, defendant merged Charidy, Inc., a New York corporation, into Charidy (Delaware) Inc., a Delaware corporation. (*Id.* ¶19; see NYSCEF 142, June 29, 2023 Order at 2 [amending Supplemental Order "to state that the Defendant's Shares referenced therein are shares of the Delaware corporation

Charidy Inc., a/k/a Charidy (Delaware) Inc., a/k/a Charidy, Inc. owned by Defendant”).)

There is no Delaware shareholder agreement. (NYSCEF \_\_\_, tr \_\_\_.)<sup>1</sup>

According to Charidy’s counsel, defendant is no longer in control of Charidy as president of Charidy. (NYSCEF \_\_\_, tr \_\_\_.) However, defendant continues as Charidy’s majority shareholder. (*Id.*; see NYSCEF 121, tr at 16:2-5 [mot. seq. no. 004].)

Accordingly, defendant’s objection to the receiver’s request for defendant’s valuation of Charidy because he is a layperson is unbelievable.

Defendant’s objection to the receiver’s long letters and emails is also rejected. When the receiver’s calls were not responded to, the next step was necessarily written communication to make the record that is now before the court.

The court rejects defendant’s objection to the receiver’s request for a stock certificate. The Charidy by-laws require a stock certificate for transfer of shares. (NYSCEF 152, By-laws at 7 [§5.4].) It is not the job of the receiver to educate defendant and his counsel as to Charidy’s by-laws. Defendant’s objection that it was not required to turnover the shares because the court directed defendant to “turn over” defendant’s shares to the receiver, not a stock certificate, is absurd.

Defendant denies contempt because everything that the receiver requested was either provided before or after the motion was filed. However, the receiver did not get the stock certificate until October 2023. (NYSCEF \_\_\_, tr \_\_\_.) It was due 10 days after the receiver qualified on January 12, 2023. (NYSCEF 146, Schrero aff ¶18; NYSCEF 128, Supplemental Order at 3 [mot. seq. no. 004].) The Supplemental Order directed

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<sup>1</sup> Defendant is directed to file the transcript for January 16, 2024 argument on this motion.

Charidy to put the receiver in control of the shares or issue a stock certificate. (NYSCEF 128, Supplemental Order at 2-3 [mot. seq. no. 004].) Charidy did neither. Moreover, making a notation in Carta was also useless since it could be removed by Charidy at anytime and at will. The court rejects defendant's objection that the Supplemental Order was not clear on this issue; it was crystal clear. Likewise, defendant's reliance on the electronic share book at Carta is rejected. At no time was the receiver in control. Defendant's objections are undermined by the fact that defendant understood precisely what the receiver needed to do her job to sell the shares.

The court agrees with defendant that plaintiff has no role to play in the sale of the Charidy shares. However, defendant failed to object to the receiver's proposed order. Accordingly, the court has modified the Supplemental Order which will issue separately from this decision.

The court rejects defendant's objection that the receiver is impatient. Plaintiff holds a January 2021 judgment which defendant has failed to pay. The shares should have been sold by now but for defendant's delays.

The court finds defendant in contempt and responsible for Chairdy's resistance too. The receiver's request, pursuant to Judiciary Law §773, for a \$250 fine for failure to comply with this court's December 21, 2022 Supplemental Order is granted. If defendant fails to comply with this order within 14 days of service with notice of entry delivered by email to defendant's attorney and US mail to defendant, defendant shall be fined \$250 daily. If defendant fails to cooperate with the receiver's reasonable requests

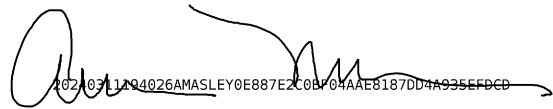
necessary to satisfy her responsibilities as receiver, defendant shall be fined an additional \$250 per day.

Accordingly,

ORDERED that defendant shall pay for renewal of the receiver’s bond within 10 days of receipt of the invoice; and it is further

ORDERD that defendant shall pay the fees and costs incurred by the receiver in making this motion. The receiver shall submit an affirmation of services within 30 days and defendant may respond within 10 days of service. The court will advise the parties if a hearing is required. Defendant shall be fined \$250 per day if he fails to pay the costs within 10 days of the order; and it is further

ORDERED that the receiver’s motion for contempt is granted and defendant shall pay the receiver a \$250 fine.



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3/11/2024  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: