

**IMP Plumbing & Heating Corp. v Conde Assoc.**

2025 NY Slip Op 33149(U)

August 22, 2025

Supreme Court, New York County

Docket Number: Index No. 151572/2024

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04**

*Justice*

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**INDEX NO.** 151572/2024

IMP PLUMBING AND HEATING CORP.,

**MOTION DATE** 03/09/2025

Petitioner,

**MOTION SEQ. NO.** 002

- v -

CONDE ASSOCIATES, C & A ENTERPRISES, INC., d/b/a  
ACCH ENTERPRISES, MICHAEL CONDE,

**DECISION + ORDER ON  
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 33, 34, 35, 36, 37, 38, 44

were read on this motion for CONTEMPT.

Petitioner moves, by order to show cause, for an order, pursuant to Judiciary Law §753 and CPLR §§ 2308(a) and 5251 to hold respondents Conde Associates, C&A Enterprises, Inc. d/b/a ACCH Enterprises (“ACCH”) and Michael Conde in contempt for their willful neglect to obey the directives in this Court’s decision and order /judgment dated July 15, 2024 and entered on December 24, 2024 (the “Order”) to comply with the Restraining Notices and respond to the Information Subpoenas and Subpoenas Duces Tecum previously served upon them (collectively, the “Subpoenas”), and for an award of attorney’s fees and costs. Petitioner’s motion is granted for the reasons set forth in the supporting affirmation of Daniela Weinstein (“Weinstein Affirmation”) and as set forth below.

On February 21, 2024, petitioner filed its initial order to show cause, seeking an order compelling respondent Michael Conde to comply with the Restraining Notice, Information Subpoena, and Subpoena Duces Tecum (collectively, the “Conde Subpoenas”) served on May 3,

2023 and to compel respondents Conde Associates and ACCH to comply with the Restraining Notice, Information Subpoena, and Subpoena Duces Tecum (collectively, the “ACCH Subpoenas”) served on May 4, 2023 (NYSCEF Doc No. 1). In a decision and order, dated July 15, 2024, this Court ordered respondents to fully and accurately respond to the Subpoenas within forty-five days of the date of that order (NYSCEF Doc No. 11, the Order).

Petitioner re-served the Subpoena Duces Tecum via personal service on respondents Conde Associates and ACCH on July 24, 2024 (NYSCEF Doc Nos. 18 and 22), with a deadline to respond by September 12, 2024. On August 7, 2024, plaintiff re-served the Subpoena Duces Tecum by personal service on respondent Michael Conde (NYSCEF Doc No. 20), with a deadline to respond by September 12, 2024. As set forth in the Weinstein Affirmation, to date, respondents have failed respond to the Subpoenas.

### DISCUSSION

Under Judiciary Law §753, “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” (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 28-29 [2015] [internal citations and quotations omitted]). However, in order to support a finding of civil contempt, the movant must establish, by clear and convincing evidence, that: (i) a lawful order of the court, clearly expressing an unequivocal mandate, was in effect; (ii) the order was disobeyed; (iii) the disobeying party had knowledge of the Court’s order; and (iv) another party to the litigation has demonstrated that it was prejudiced by such disobedience (*id.* [internal citations and quotations omitted]).

Petitioner has met this burden. This Court's Order unequivocally directed respondents to respond to the Subpoenas within forty-five days of that order. The record reflects that respondents received both the Subpoenas and the Order but have not responded to the Subpoenas. Finally, petitioner has established that respondents' nonfeasance has prevented petitioner from enforcing the Judgment. Accordingly, a finding of contempt is warranted (*Ferrari Fin. Services, Inc. v Freidman*, 2020 NY Slip Op 30193[U], 3 [Sup Ct, NY County 2020]).

Respondent Michael Conde's arguments in opposition are unavailing. The affidavit of service submitted by petitioner is sufficient to establish service of the order to show cause on respondent in the manner prescribed by the Court (*see Levitt & Kaizer v Charles* 2016 WL 10519418 [Sup Ct, NY County 2016]). Michael Conde's bare assertion that he was not served with the instant order to show cause and has "no relation whatever to addresses 15 Bartel Dr, Greenlawn, NY 11740; 12 Crooked Oak Rd, Port Jefferson, New York 11777, and 25 West 43rd Street, New York, New York 10033" is insufficient to rebut the presumption of proper service created by petitioner's affidavit of service<sup>1</sup> (*see DeLuca v Ricci*, 194 AD2d 457, 458 [1st Dept 1993]; *see also U.S. Equities Corp. v Ruiz*, 55 Misc 3d 143(A) [App Term, 1st Dept 2017]). Even setting this aside, petitioner served the instant order to show cause (as well as the prior order to show cause and information subpoena) on Michael Conde at both 12 Crooked Oak Road and 14 the Sail, East Islip, New York, and he does not deny a connection with the latter address in his affidavit. Respondents' alternative argument, that the judgment in the underlying action has not been entered, and therefore may not be enforced here, is belied by the record (NYSCEF Doc No. 2, judgments).

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<sup>1</sup> Notwithstanding his denial of receipt of the order to show cause, Michael Conde hired an attorney for the sole purpose of opposing the instant motion, including appearing for oral argument on January 8, 2025.

Finally, Michael Conde's assertion in his affidavit in opposition, that "[he] has no relationship of any kind to co-respondents Conde Associates and C&A Enterprises, Inc.," is undercut by his subsequent representation that "both [of these respondents] have been defunct for years, neither is operating and neither has any assets of any kind" (NYSCEF Doc No. 34). Ultimately, even accepting this latter claim as true, respondents' lack of assets does not excuse them from their obligation to respond to petitioner's information subpoenas.

Accordingly, it is

**ORDERED** that petitioner's motion pursuant to CPLR § 5251 to hold respondents in contempt is granted; and it is further

**ORDERED and ADJUDGED** that respondents are in contempt of the Court's July 15, 2024 decision and order directing them to comply with the Subpoenas; and it is further

**ORDERED and ADJUDGED** that respondents' contempt was calculated to and did actually defeat, impair, impede, and prejudice the rights of the judgment creditor herein, and it is further

**ORDERED** that respondents may purge their contempt by responding to each of the Subpoenas on or before October 31, 2025; and it is further

**ORDERED** that respondents' failure to respond to the Subpoenas on or before October 31, 2025, shall result in a fine of \$100.00 per day, commencing on November 1, 2025, until respondents respond to the Subpoenas; and it is further

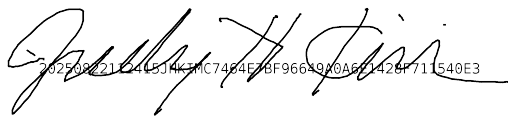
**ORDERED** that, should respondents fail to comply with this order, petitioner may, at its discretion, settle a judgment on notice with an affirmation attesting to the service of this order and respondents' failure to purge their contempt; and it is further

**ORDERED** that petitioner shall, within ten days of the date of this decision and order, serve a copy of same, with notice of entry, upon respondents via overnight mail and upon counsel for Michael Conde, John P. DeMaio, Esq., by email and by certified mail to 75 Maiden Lane, Suite 215 New York, New York 10038 within five days after such service; and it is further

**ORDERED** that proof of service of this order must be filed with the County Clerk in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-filing” page on the court's website); and it is further

**ORDERED** that counsel for respondents, John P. DeMaio, Esq., is directed to forward this decision and order to Michael Conde within five days of receipt of same.

This constitutes the decision and order of the Court.



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8/22/2025  
DATE

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HON. JUDY H. KIM, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>			<input type="checkbox"/>	FIDUCIARY APPOINTMENT