

Matter of Bernstein v Anderson

2025 NY Slip Op 34181(U)

October 28, 2025

Supreme Court, New York County

Docket Number: Index No. 654660/2023

Judge: John J. Kelley

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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In the Matter of
FRED A. BERNSTEIN,

Petitioner,

- v -

ROHAN ANDERSON and NULOOK BUILDERS, LLC,

Respondents.

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INDEX NO. 654660/2023
MOTION DATE 10/08/2025
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for ENFORCE/EXEC JUDGMENT OR ORDER.

This is a proceeding pursuant to CPLR 7510 to confirm an arbitration award. In an order and judgment dated April 3, 2024, the court granted the petition, confirmed the award, and directed the Clerk of the court to enter a money judgment in favor of the petitioner, Fred A. Bernstein, and against the respondents, Rohan Anderson and NuLook Buildings, LLC, jointly and severally, in the principal sum of \$25.215.00, with statutory interest at 9% per annum from August 7, 2023. The Clerk entered a money judgment in that amount on June 26, 2024. The petitioner now moves pursuant to CPLR 5223 and 2308(b) to compel the respondents to comply with restraining notices, subpoenas duces tecum, and information subpoenas, all dated August 11, 2025, and served upon them on August 12, 2025, in aid of enforcement of the money judgment. The motion is granted, without opposition, the respondents shall abide by the restraining notices, and they shall deliver documentary and written responses to subpoenas on or before December 5, 2025, in accordance herewith.

The petitioner has established that the respondents have yet to comply with the subpoenas served upon them, despite being duly served therewith.

CPLR 5223 provides that “[a]t any time before a judgment is satisfied or vacated, the judgment creditor may compel the disclosure of all matter relevant to the satisfaction of the judgment, by serving upon any person a subpoena.”

“This broad standard applies to the various subpoena devices detailed in CPLR 5224, including a subpoena duces tecum under CPLR 5224(a)(2) and an information subpoena under CPLR 5224(a)(3). A subpoena duces tecum accomplishes disclosure through the production of documents at a specified time and place. An information subpoena is a set of questions asked and answered by mail. It is analogous to a discovery interrogatory”

(*Knopf v Sanford*, 65 Misc 3d 463, 506-507 [Sup Ct, N.Y. County 2019]). Thus, under CPLR 5223,

“[a] judgment creditor is entitled to discovery from either the judgment debtor or a third party in order ‘to determine whether the judgment debtor [] concealed any assets or transferred any assets so as to defraud the judgment creditor or improperly prevented the collection of the underlying judgment’ [*Young v Torelli*, 135 AD2d 813, 815 (1987)]”

(*Technology Multi Sources, S.A. v Stack Global Holdings, Inc.*, 44 AD3d 931, 932 [2d Dept 2007]). In connection with judicial subpoenas (see CPLR 2308[a]), CPLR 5223 further provides that “failure to comply with the subpoena is punishable as a contempt of court.”

The definition of a “judicial subpoena” includes subpoenas that are made returnable before the court (see *Irizarry v New York City Police Dept.*, 260 AD2d 269, 271 [1st Dept 1999]; *Matter of Cambridge Packing Co, Inc. v LaJaunie*, 2019 NY Slip Op 30689[U], *3, 2019 NY Misc LEXIS 1210, *3-4 [Sup Ct, N.Y. County, Mar. 18, 2019] [Kelley, J.]; *4720 15th Ave., LLC v Jacobson*, 2017 NY Slip Op 30318[U], *3-4, 2017 NY Misc LEXIS 615, *4 [Sup Ct, N.Y. County, Feb. 17, 2017]; *Lyon Financial Services v Pinto Trading Co.*, 2009 NY Slip Op 51783[U], *2-3, 24 Misc 3d 1237[A], 2009 NY Misc LEXIS 2164, *5-6 [Sup Ct., Kings County, Aug. 17, 2009]). Although the subject subpoena was not made returnable in court, it nonetheless must be characterized as a judicial subpoena, inasmuch as the subpoena was issued by an attorney, and the definition of the term “judicial subpoena” also “embraces subpoenas issued by an officer of the court (such as an attorney) at any stage of a judicial proceeding, regardless of whether

the subpoena was specifically returnable in court” (*Cadlerock Joint Venture, L.P. v Patterson*, 199 AD3d 557, 558 [1st Dept 2021]; see *Douglas Elliman, LLC v TWP Real Estate, LLC*, 189 AD3d 614, 614 [1st Dept 2020]; see also *Matter of Ling v Sans Souci Owners Corp.*, 187 AD3d 755 [2d Dept 2020]). “Failure to comply with a subpoena issued by a judge, clerk or officer of the court shall be punishable as a contempt of court” (*Matter of Bobby D. Assoc. v Park*, 97 AD3d 815, 816 [2d Dept 2012], quoting CPLR 2308[a] [emphasis added]).¹ Although the petitioner thus could have moved to hold the respondents in contempt even at this stage of the post-judgment proceedings, he nonetheless is within his right first to seek an order compelling the respondents to comply with the subpoenas and restraining notices before seeking to hold them in civil contempt.

Accordingly, and upon the foregoing papers, it is

ORDERED that the petitioner’s motion is granted, without opposition; and it is further,

ORDERED that the respondents Rohan Anderson and NuLook Builders, LLC, be, and hereby are, immediately restrained from alienating any assets described in the restraining notices served upon them by the petitioner on August 12, 2025; and it is further,

ORDERED that, on or before December 5, 2025, the respondents Rohan Anderson and NuLook Builders, LLC, shall comply with the subpoenas duces tecum and information subpoenas served upon them by the petitioner on August 12, 2025, by producing all of the documents requested therein, and answering all of the questions set forth therein, in writing and under oath, and delivering the documents and written answers to the office of petitioner’s attorney at 488 Madison Avenue, 11th Floor, New York, NY 10022; and it is further,

¹ “A person who is served with [a] non-judicial subpoena [pursuant to CPLR 2308(b)] cannot be held in contempt for failure to comply unless and until the court has issued an order compelling compliance, which order has been disobeyed” (*Reuters, Ltd. v Dow Jones Telerate, Inc.*, 231 AD2d 337, 341 [1st Dept 1997]; see CPLR 2308[b][1]; *Dias v Consolidated Edison Co. of N.Y., Inc.*, 116 AD2d 453, 454 [1st Dept 1986]). Rather, a party “seeking enforcement of a non-judicial subpoena must first seek a court order to compel compliance with a non-judicial subpoena” (*Lyon Financial Services v Pinto Trading Co.*, 2009 NY Slip Op 51783[U], *3, 24 Misc 3d 1237[A] [Sup Ct, Kings County, Aug. 17, 2009]; see *Reuters, Ltd. v Dow Jones Telerate, Inc.*, 231 AD2d at 341; *Dias v Consolidated Edison Co. of N.Y., Inc.*, 116 AD2d at 454).


ORDERED that, on or before December 5, 2025, the respondents Rohan Anderson and NuLook Builders, LLC, the latter by Rohan Anderson, personally, shall submit an affirmation or affidavit to the court setting forth any and all transfers of property in which either respondent has an interest, made on or any time after August 12, 2025, the names of each bank or other financial institution in which the respondents, or each of them, or their immediate family members, partners, or affiliates, holds any cash, securities, or other financial assets, along with the name or names of the account holder or holders, business address, and account number or numbers for all accounts, and the whereabouts and condition of all of their other assets, including real property and vehicles; and it is further,

ORDERED that, should the respondents fail to comply with the directives set forth herein, they may be subject to punishment for civil contempt upon a proper and timely motion by the petitioner for that relief; and it is further,

ORDERED that, on or before October 31, 2025, the petitioner shall serve a copy of this order with notice of entry on the respondents Rohan Anderson and NuLook Builders, LLC, by regular and certified mail, return receipt requested.

This constitutes the Decision and Order of the court.

10/28/2025
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<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"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE