

**DiFazio Indus., LLC v Allstate Sales Group Inc.**

2026 NY Slip Op 31357(U)

April 1, 2026

Supreme Court, New York County

Docket Number: Index No. 655873/2025

Judge: Andrew Borrok

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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. ANDREW BORROK** PART 53

*Justice*

-----X

DIFAZIO INDUSTRIES, LLC

Plaintiff,

- v -

ALLSTATE SALES GROUP INC. D/B/A ASG, INC.,

Defendant.

-----X

INDEX NO. 655873/2025

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26

were read on this motion to/for MISC. SPECIAL PROCEEDINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, (i) the Plaintiff’s motion (Mtn. Seq. No. 002) for an order directing the Defendant to serve upon the Plaintiff a verified statement from trustee pursuant to Article 3-A of the Lien Law of the State of New York (the **Lien Law**) is GRANTED and (ii) the Plaintiff’s motion (Mtn. Seq. No. 003) for default judgment against the Defendant pursuant to CPLR § 3125 is GRANTED.

*A. The Motion Pursuant to Article 3-A of the Lien Law is Granted*

Reference is made to (i) a Subcontractor Statement of Work (**Randall’s Island SOW**, NYSCEF Doc. No. 5), dated March 1, 2024, by and between the Plaintiff, as subcontractor, and the Defendant, as general contractor and (ii) a Subcontractor Statement of Work (**Far Rockaway SOW**, NYSCEF Doc. No. 11), dated November 7, 2024, by and between the Plaintiff, as subcontractor, and the Defendant, as general contractor. Per the terms of the Randall’s Island

SOW and the Far Rockaway SOW (the **SOWs**), the Plaintiff performed certain renovation and restoration-related services of certain facilities in New York related to the Defendant's obligations pursuant to a contract with Verizon New York, Inc., and the Defendant received funds in connection with the Plaintiff's performance.

On October 20, 2025, the Plaintiff made a demand upon the Defendant for a verified statement pursuant to § 76 of the Lien Law (the **Demand**; NYSCEF Doc. No. 23). Although the Defendant received the Demand on October 27, 2025 (NYSCEF Doc. No. 24), the Defendant has not responded. Consequently, the Plaintiff now moves to compel the Defendant to produce a verified statement. The Defendant has not filed opposition.

According to Lien Law § 70:

[t]he funds...received by an owner for or in connection with an improvement of real property...shall constitute assets of a trust for the purposes provided in § 71...The funds received by a contractor...with respect thereto under or in connection with each contract or subcontract...shall be a separate trust and the contractor...shall be the trustee thereof.

(Lien Law §§ 70[1]-[2]). Section 71 of the Lien Law further states that:

[t]he trust assets of which a contractor...is trustee shall be held and applied for...expenditures arising out of the improvement of real property...and incurred in the performance of his contract" such as "payment of claims of subcontractors[.]

...

Persons having claims for payment of amounts for which the trustee is authorized to use trust assets...are beneficiaries of the trust whether or not they have filed or had the right to file a notice of lien...or shall have recovered a judgment therefor.

(*id.* §§ 71[2][a], [4]).

Lastly, as relevant, Article 3-A of the Lien Law directs a “trustee to keep books or records with respect to each trust” and holds that beneficiaries of a trust are entitled upon a written request, in accordance with Lien Law § 76[2], “after the expiration of thirty days from the date his trust claim became payable...to receive a verified statement setting forth the entries with respect to the trust contained in such books or records” (*id.* §§ 75[2], 76[1]). The verified statement must be furnished “within ten days after service of the” demand (*id.* § 76[4]).

Simply put, (i) the funds received by the Defendant in connection with the SOWs constitute assets of a trust, (ii) the Defendant is the trustee of such funds, and (iii) the Plaintiff is the beneficiary of trust’s assets (*see id.* §§ 70[1]-[2], 71[2][a], [4]). As the trustee, the Defendant was required to maintain the books and records, and the Plaintiff, as a beneficiary of the trust, was entitled to “receive a verified statement setting forth the entries with respect to the trust contained in such books or records” (*id.* §§ 75[2], 76[1]). The Defendant was further obligated to furnish the verified statement within ten days upon receipt of the Plaintiff’s Demand (*id.* § 76[4]). As the Defendant to date has not provided a verified statement, the Plaintiff’s motion (Mtn. Seq. No. 002) to compel the Defendant to do so is GRANTED.

*B. The Motion for Default Judgment is Granted*

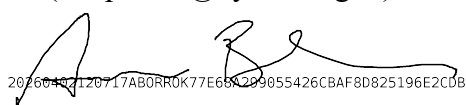
In support of their motion (Mtn. Seq. No. 003) for default judgment against the Defendant, the Plaintiff adduces (i) a Decision and Order of this Court (NYSCEF Doc. No. 27; the **Prior Decision**), dated December 9, 2025, among other things, requiring the Defendant to file an answer within 20 days of the Prior Decision, (ii) an affirmation of merit of Joseph Lobrutto,

DiFazio’s Business Director (NYSCEF Doc. No. 31), (iii) the affirmation of Akansha Chandra (NYSCEF Doc No. 45) alleging that the Notice of Entry of the Prior Decision was filed on December 10, 2025 (NYSCEF Doc. No. 29) and that the Defendant has failed to appear in this action and otherwise failed to file responsive papers within 20 days of the Prior Decision (NYSCEF Doc. No. 45 ¶¶ 3-5, (iv) affirmations of proper service (NYSCEF Doc. No. 46) and an additional mailing (NYSCEF Doc. No. 47), and (vi) the Defendant has received at least 5 days’ notice of the time and place of the motion for default judgment (NYSCEF Doc. No. 49). The Defendant has not filed opposition. Accordingly, the Plaintiff’s motion for default judgment is GRANTED.

Accordingly, it is hereby ORDERED that the Plaintiff’s motion (Mtn. Seq. No. 002) for an order directing the Defendant to serve upon the Plaintiff a verified statement from trustee pursuant to Article 3-A of the Lien Law is GRANTED; and it is further

ORDERED that the Plaintiff’s motion (Mtn. Seq. No. 003) for default judgment against the Defendant is GRANTED; and it is further

ORDERED that the Plaintiff shall submit judgment to Part 53 (sfc-part53@nycourts.gov).



4/1/2026  
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	OTHER
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: