

**Shohat v Suky**

2017 NY Slip Op 31940(U)

May 25, 2017

Supreme Court, New York County

Docket Number: 151446/14

Judge: James E. d'Auguste

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

PRESENT: HON. JAMES E. d'AUGUSTE  
Justice

PART 62

TOMAR SHOHAT  
-v-  
BENZION SUKY et al.

INDEX NO. 151446/14  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 009

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

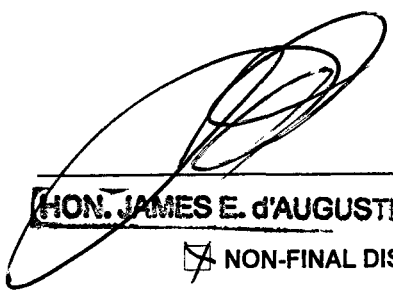
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION/ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 5/25/17

  
\_\_\_\_\_, J.S.C.  
**HON. JAMES E. d'AUGUSTE**

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 62

-----X  
TOMAR SHOCHAT,

Plaintiff,

-against-

**DECISION AND ORDER**  
Index No. 151446/14  
Mot. Seq. No. 009

BENZION SUKY, 440 WEST 41<sup>ST</sup> LLC; ERAN SUKI,  
ERIC PATINO, YOSHIYAHU YOSEF PINTO, and  
MENACHEM PINTO,

Defendants.

-----X

**Hon. James E. d'Auguste**

Plaintiff Tomar Shohat's motion for an order striking the answer of defendants Benzion Suky, 440 West 41<sup>st</sup> LLC, and Eran Suki (collectively, herein "Suky Defendants") is granted and a judgment on liability is granted in favor of Shohat against the Suky Defendants.

**Factual and Procedural Background**

Shohat served a notice for discovery and inspection dated October 7, 2016 on the Suky Defendants, to which they failed to respond. On December 5, 2016, this Court issued an order mandating the production of outstanding discovery within thirty days of the date of said order. NYSCEF Doc. No. 184. By the expiration of the thirty-day period, on January 7, 2017, the Suky Defendants failed to comply with this Court's order by supplying Shohat with the court-mandated discovery. On February 14, 2017, one month after the court-ordered discovery was due, Shohat filed the instant motion to strike their answer. After the instant motion was filed, the Suky Defendants served belated discovery responses that are annexed to their opposition papers. See NYSCEF Doc. No. 195. As Shohat notes in his reply papers, the Suky Defendants did not actually produce responsive information, but simply asserted a series of objections. See NYSCEF Doc. No. 196.

### Discussion

The Suky Defendants willfully failed to abide by their discovery obligations despite this Court's prior order, which supports the drastic remedy of striking their answer. *Seamon v. Apel*, 191 A.D.2d 406, 406 (1st Dep't 1993) (citing *Besson v. Beime*, 188 A.D.2d 330, 331 (1st Dep't 1992)); *Dauria v. City of New York*, 127 A.D.2d 459, 460 (1st Dep't 1987); see *CEMD El. Corp. v. Metrotech LLC I*, 141 A.D.3d 451, 453 (1st Dep't 2016); *Weissman v. 20 E. 9th St. Corp.*, 48 A.D.3d 242, 243 (1st Dep't 2008). Shohat submitted correspondence detailing good-faith efforts to secure the outstanding discovery. NYSCEF Doc. No. 192. Indeed, plaintiff's counsel prophesized that when a response was eventually produced, it would essentially be meaningless: "Based upon [defense counsel's] prior conduct in this case, [plaintiff's counsel] expecte[ed that the] responses, if they are ever received, will be almost meaningless, as they ha[d] been to date." *Id.* Plaintiff's counsel further indicated that he "cannot and do[es] not stipulate to extend the court order and [would] make an appropriate application to the court." *Id.*

When Shohat filed the instant motion, it had been four months since his notice for discovery and inspection was served and over two months since this Court issued the order directing the Suky Defendants' production of discovery, at which time no responses had been received by Shohat. The purported discovery response that was annexed to the Suky Defendants' response is woefully inadequate to comply with the order of this Court. Notably, this is not the first time that this Court has had to deal with the Suky Defendants' efforts to avoid complying with discovery. See NYSCEF Doc. No. 169. While a minor delay in providing responses would not be a ground for striking a pleading, the failure to produce meaningful discovery responses after being directed to do so by the Court warrants the granting of the requested relief in this instance. See *Varvitsiotes v. Pierre*, 260 A.D.2d 297, 297 (1st Dep't

1999) (“Uncontested evidence of discovery noncompliance by defendant . . . warranted the striking of his answer pursuant to CPLR 3126.”).

Accordingly, it is hereby

ORDERED that plaintiff Tomar Shohat’s motion to strike defendants Benzion Suky, 440 West 41<sup>st</sup> LLC, and Eran Suki’s answer is granted; and it is further,

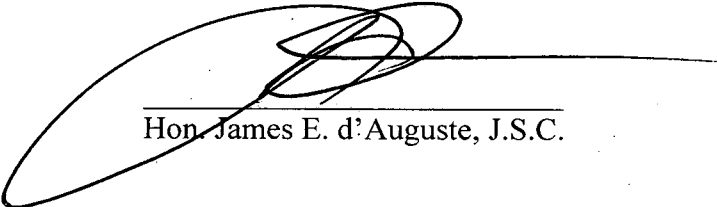
ORDERED that plaintiff Tomar Shohat is granted a judgment against defendants Benzion Suky, 440 West 41<sup>st</sup> LLC, and Eran Suki; and it is further,

ORDERED that plaintiff Tomar Shohat shall file a notice with the Clerk of the Court for an inquest together with a copy of this order with notice of entry; and it is further,

ORDERED that plaintiff Tomar Shohat shall serve and file a copy of this order with notice of entry upon the Trial Support Clerk in the General Clerk’s Office (Room 119), who is directed upon the filing of a note of issue and statement of readiness and the payment of appropriate fees, if any, to place this matter on the calendar for an inquest on damages.

This constitutes the decision and order of this Court.

Dated: May 25, 2017



Hon. James E. d’Auguste, J.S.C.