

Holdrum Invs. NV v Edelman
2020 NY Slip Op 34122(U)
December 11, 2020
Supreme Court, New York County
Docket Number: 650950/2011
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

Justice

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INDEX NO. 650950/2011

HOLDRUM INVESTMENTS NV and MUSEUM PARTNERS
LP,

Plaintiffs,

MOTION SEQ. NO. 019

- v -

ASHER EDELMAN,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 019) 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319

were read on this motion to/for CONTEMPT.

This is a post-judgment motion by plaintiff Holdrum Investments NV seeking, inter alia, to punish defendant Asher Edelman for contempt due to his failure to comply with the orders of this Court entered June 18 and December 20, 2019 and August 11, 2020. Defendant opposes the motion. After oral argument, and after consideration of the parties' papers and the relevant statutes and case law, the motion is decided as follows.

The facts of this matter are set forth in detail in the orders of this Court entered February 4, 2013, June 18 and December 20, 2019, and August 11, 2020. Docs. 74, 251, 277, and 299, respectively. In summary, plaintiff obtained a judgment against defendant in the amount of \$231,568.15 on April 13, 2017. Doc. 209. As part of its attempt to enforce the judgment, plaintiff served restraining notices on Artemis USA, LLC ("Artemis") and Art Assure Ltd., LLC ("Art Assure"). In October 2018, plaintiff moved to charge the defendant's membership interests in Artemis and Art Assure, as well as The Edelman Family LLC ("Family"), with payment of the

unsatisfied amount of the judgment, with interest, as well as to compel defendant to turn over to plaintiff his shares in Edelman Arts Inc. (“EAI”) and A.B. Edelman Management Company Inc. (“ABEM”). By order entered June 18, 2019, this Court directed defendant to turn over to plaintiff any funds held by defendant in EAI and ABEM in full or partial satisfaction of the judgment, plus statutory interest which accrued on the judgment since April 13, 2017. Doc. 251. The order further directed that defendant’s membership interests in Family, Artemis, and Art Assure were to be charged with payment of the judgment. Doc. 251.

By so-ordered stipulation entered December 20, 2019, the parties agreed, inter alia, that defendant was to turn over to plaintiff the shares of ABEM and EAI on or before December 31, 2019. Doc. 277. Defendant also agreed that, in the event plaintiff had to move to enforce the said so-ordered stipulation, the June 18, 2019 order, or any other order or judgment of this Court, plaintiff could seek attorneys’ fees. Doc. 277.

In February 2020, plaintiff filed an order to show cause seeking: 1) to hold defendant in contempt for failing to comply with the orders entered June 18 and December 20, 2019; 2) for costs and sanctions against defendant and his attorneys pursuant to 22 NYCRR 130-1.1; and 3) for legal fees in the sum of at least \$7,500, to be determined at a hearing. Doc. 285. By order entered August 11, 2020, this Court: 1) granted the branch of the motion by plaintiff seeking to hold Edelman in civil contempt of court pursuant to Judiciary Law §753 for willful violation of this Court’s orders entered June 18, 2019 and December 20, 2019; 2) directed that Edelman could purge his contempt within 30 days of the service upon him of a copy of the order, with notice of its entry, by complying with the June 18, 2019 order and that branch of the December 20, 2019 order directing him to turn over his shares of ABEM and EAI to plaintiff on or before December 31,

2019; 3) directed Edelman that, if he purged his contempt, he was to notify this Court immediately and provide documentation substantiating that the contempt had been purged; 4) directed Edelman that, if he did not purge his contempt, he was to appear before this Court by videoconference on October 7, 2020 at 3:30 p.m. to receive instructions from this Court regarding the immediate commencement of a term of imprisonment, as well as a determination as to the amount of fine to be imposed; 5) sanctioned Edelman \$5,000 for his frivolous conduct; 6) granted that branch of plaintiff's motion seeking to collect the costs and attorneys' fees it incurred in seeking to collect on the judgment against defendant, and assigned the matter to a Special Referee for the purpose of calculating the amount of such costs and attorneys' fees to be awarded; and 7) granted plaintiff leave to move to for any additional relief warranted in the event defendant failed to purge his contempt. Doc. 299.

After the issuance of the August 11, 2020 order, Edelman paid the \$5,000 sanction imposed but failed to purge his contempt by providing the documents set forth in the August 11, 2020 order.

On October 8, 2020, defendant filed the instant order to show cause seeking to hold Edelman in contempt for failing to comply with the August 11, 2020 order, for sanctions against Edelman, and for legal fees in a sum of at least \$7,500. Docs. 302 and 305. Defendant opposes the motion. Doc. 306. After several written and verbal exchanges, as well as conference with this Court, the parties were eventually able to resolve their differences. In a December 2, 2020 email, plaintiff's counsel acknowledged in an email copied to this Court that defendant was "now fully compliant" but nevertheless insisted that plaintiff be granted the relief demanded in its motion.

That branch of plaintiff's motion seeking to hold Edelman in contempt is denied as moot, since plaintiff's counsel admits that the contempt has been purged. The branch of the motion

seeking sanctions against Edelman is also denied given his compliance and the fact that he has already paid a \$5,000 sanction. However, that branch of the motion seeking attorneys' fees is granted, since plaintiff had to incur additional expenses in order to file the instant motion, which was ultimately successful in forcing Edelman's compliance.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the branch of the motion seeking to hold defendant Asher Edelman in contempt is denied as moot; and it is further

ORDERED that the branch of the motion seeking to impose sanctions against defendant Asher Edelman is denied; and it is further

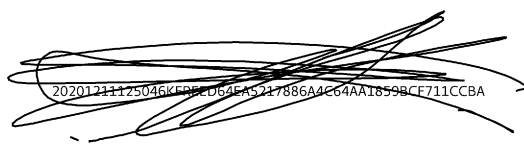
ORDERED that the branch of the motion seeking to collect from Edelman the costs and attorneys' fees incurred as a result of making this motion is granted; and it is further

ORDERED that this matter is assigned to a Special Referee for the purpose of calculating the amount of the costs and attorneys' fees to be awarded to plaintiff in connection with the filing of this motion, and said Special Referee shall determine such costs and attorneys' fees in addition to the costs and attorneys' fees the Special Referee was directed to calculate in this Court's order entered August 11, 2020; and it is further

ORDERED that, within 30 days after entry of this order, defendant shall serve a copy of this order, with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the Motion Support Office (Room 119M), who is directed to place this Matter on the calendar of the Special Referee's Part for the earliest convenient date; and it is further

ORDERED that this constitutes the decision and order of the court.

12/11/2020
DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

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

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

APPLICATION:

CHECK IF APPROPRIATE: