

**Mave Hotel Invs., LLC v ALS 100 LLC**

2020 NY Slip Op 30152(U)

January 7, 2020

Supreme Court, New York County

Docket Number: 652491/2019

Judge: Tanya R. Kennedy

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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. TANYA R. KENNEDY

PART 63

Justice

-----X  
MAVE HOTEL INVESTORS LLC,

INDEX NO. 652491/2019

Plaintiff,

MOTION SEQ.  
NO. 001

- v -

DECISION AND ORDER

ALS 100 LLC, AMELIA STEVENS, ANTHONY  
MILLER a/k/a TONY MILLER, JULIA STEVENS  
a/ka JULIE MILLER, and SAMANTHA ANNE STEVENS  
a/k/a ANNE STEVENS,

Defendants.

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Plaintiff has submitted proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the corporate defendant’s failure to answer or appear (*see* CPLR 3215(f); *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 [2003]). “Given that in default proceedings the defendant has failed to appear and the plaintiff does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists” (*id.*).

Under the Federal Service Members Civil Relief Act, 50 USC § 3931(b)(1), a party seeking a default judgment against an individual defendant must submit proof that the defendant was not in military service at the time of default.

Here, plaintiff has not presented an affidavit regarding the non-military status of the individual defendants.

Accordingly, it is

ORDERED that default judgment is granted in favor of Plaintiff and against Defendant ALS 100 LLC without opposition in the sum of \$868,011.51, plus interest from January 15, 2019, plus costs and disbursements to be taxed by the Clerk, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that default judgment as to the individual defendants is denied without prejudice to renew, upon submission of proof that the individual defendants were not in the military at the time of default; and it is further

ORDERED that counsel for plaintiff is directed to file a Note of Issue by January 24, 2020; and it is further

ORDERED that the calculation of damages due plaintiff regarding its claim for attorneys' fees is severed and shall continue, and an assessment is hereby directed on the amount of reasonable attorneys' fees to be awarded to plaintiff; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine reasonable attorneys' fees; and it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or [spref@courts.state.ny.us](mailto:spref@courts.state.ny.us)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry on defendants' counsel and that counsel for plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/1jd/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion; and it is further

ORDERED that plaintiff's counsel is directed to appear for a conference February 19, 2020 at 2:15PM in Part 63, Room 321, 60 Centre Street, New York, NY 10007 to discuss how it intends to proceed against the individual defendants.

This constitutes the Decision and Order of the Court.

*January 7, 2020*  
DAVE

*Hon. Tanya R. Kennedy*  
TANYA R. KENNEDY, J.S.C.  
HON. TANYA R. KENNEDY

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED
<input checked="" type="checkbox"/>	GRANTED
<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	DO NOT POST

DENIED

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

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE