

**City of New York Dept. of Consumer & Worker
Protection v 3 Deli Grocery Corp**

2022 NY Slip Op 31320(U)

April 14, 2022

Supreme Court, New York County

Docket Number: Index No. 452325/2021

Judge: Louis L. Nock

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

-----X

THE CITY OF NEW YORK DEPARTMENT OF
CONSUMER AND WORKER PROTECTION F/K/A THE
CITY OF NEW YORK DEPARTMENT OF CONSUMER
AFFAIRS,

Plaintiff,

- v -

3 DELI GROCERY CORP,

Defendant.

-----X

INDEX NO. 452325/2021

MOTION DATE 09/29/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

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

Upon the foregoing documents, it is hereby ordered that plaintiff's motion seeking entry of a default judgment pursuant to CPLR 3215 is granted, on default and without opposition, based upon the following memorandum decision.

Background

Plaintiff the City of New York Department of Consumer and Worker Protection ("plaintiff") seeks to enforce a decision of the Office of Administrative Trials and Hearings ("OATH"), dated February 15, 2019, in which defendant 3 Deli Grocery Corp. ("defendant"), having defaulted on appearing at a violation hearing, was found guilty of violations of two provisions of the New York City Administrative Code and ordered to pay a penalty of \$36,100.00 (NYSCEF Doc. No. 7, OATH Decision). Plaintiff also seeks to enforce a Payment Due Notice, dated April 24, 2017, pursuant to which defendant owes a \$20.00 scale inspection fee (*id.*, Payment Due Notice).

On December 26, 2018, plaintiff issued a summons to defendant for the unlicensed sale of tobacco products, and the sale or possession with intent to sell flavored tobacco products outside of a tobacco bar, in violation of NYC Admin Code §§ 20-202(a)(1) and 17-715(a), respectively (NYSCEF Doc. No. 7, Summons). The summons informed defendant that a hearing would be held before OATH at 10:30 AM on February 1, 2019 (*id.*). On the day of the hearing, defendant failed to appear, and the hearing officer issued a decision finding defendant in violation on default and ordering payment in the amount of \$36,100.00 (*id.*, OATH Decision). Plaintiff presently moves to enforce this decision, as well as an outstanding scale inspection fee (6 RCNY 3-28) that was originally to be paid by defendant by April 24, 2017, in the amount of \$20.00 (*id.*, Payment Due Notice).

Plaintiff commenced this action by filing the summons and complaint on July 13, 2021 (NYSCEF Doc. No. 1). An affidavit of service filed on August 3, 2021 attests to service on defendant via the Secretary of State pursuant to Business Corporation Law § 306 on July 22, 2021 (NYSCEF Doc. No. 3). An affidavit of mailing filed on September 29, 2021 attests to service of the additional notice required by CPLR 3215(g) on that day (NYSCEF Doc. No. 9). To date, defendant has neither answered the complaint nor otherwise appeared in this action.

Discussion

A plaintiff that seeks entry of a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them”

(*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, “CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Here, plaintiff has satisfied its burden by submission of the verified complaint (NYSCEF Doc. No. 1), the affidavits of service and additional mailing (NYSCEF Doc. Nos. 3, 9), the affirmation of its counsel, Guang Xiong Li, Esq., attesting to defendant’s default (NYSCEF Doc. No. 5, ¶¶ 3-5), and the affidavit of Rodger C. Hayes III, plaintiff’s representative, attesting to the facts supporting plaintiff’s claim (NYSCEF Doc. No. 8). As set forth in Hayes’ affidavit and the attached OATH Decision and Payment Due Notice, defendant owes an aggregate amount of \$36,120.00 in civil penalties and unpaid fees (NYSCEF Doc. Nos. 7-8).

Accordingly, it is hereby

ORDERED that that motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff the City of New York Department of Consumer and Worker Protection and against defendant 3 Deli Grocery Corp. in the amount of \$36,120.00, with interest at the statutory rate from April 24, 2017 on \$20.00, and from February 15, 2019 on \$36,100.00, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the Decision and Order of the Court.



<u>4/14/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE