

**New York City Employees' Retirement Sys.
v McKnight**

2022 NY Slip Op 34198(U)

December 8, 2022

Supreme Court, New York County

Docket Number: Index No. 451243/2022

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

-----X

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

Plaintiff,

- v -

JANICE MCKNIGHT,

Defendant.

-----X

INDEX NO. 451243/2022

MOTION DATE 01/21/2023

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, 14, 15

were read on this motion to/for JUDGMENT - DEFAULT

This is an action for recovery of overpayment of funds by plaintiff to defendant in the sum of \$339,068.47.

Kevin Grant (Grant), was a former employee of the City of New York (City), and a member of the New York City Employees' Retirement System (NYCERS). Grant passed away on January 29, 2021.

On or around January 6, 2016, plaintiff alleges defendant filled out and submitted an application for Membership for NYCERS-Eligible Employees (F103) form listing herself as the sole beneficiary of the Ordinary Death Benefit (ODB). Plaintiff alleges defendant forged, or had someone forge, the signature of Kevin Grant on the F103 form, and defendant notarized the form in violation of the NYS Notary Public License Law, which prohibits a notary from acknowledging a legal instrument to which the notary is a party in interest. Relying on the F103 form submitted by the defendant, plaintiff distributed \$40,000.00 of the death benefit by Electronic Funds Transfer to defendant, as well as \$299,068.47 of the ODB via paper check to a

JP Morgan Chase retirement account of Janice McKnight. As a result, a total of \$339,068.47, was erroneously distributed to the defendant.

Thereafter, plaintiff received a letter from Kevin Grant, Jr., as Administrator of the Estate of Kevin Grant, Sr., informing plaintiff of the frauds and errors in the F103 form submitted by the defendant. Plaintiff notified the defendant that the ODB was distributed to her in error and demanded return of the \$339,068.47 overpayment. Defendant never responded to plaintiff, nor refunded any money.

The summons and complaint were filed on April 12, 2022.

Defendant was served by substituted service, to a person of suitable age and discretion, found at her usual place of residence on June 8, 2022. A copy of the summons and complaint were mailed to that address on June 9, 2022.

Defendant has failed to appear or file an answer and the time in which to do so has not been extended.

On November 22, 2022, plaintiff moved for a default judgment pursuant to CPLR 3215(a). Defendant has failed to appear or submit opposition.

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR §3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

In support of the motion, plaintiff submits the affirmation of Marc J. Gross, Esq (NYSCEF Doc 4); a copy of the summons and complaint (NYSCEF Doc 5); nonmilitary

affidavit (NYSCE Doc 6); affidavit of Sterlyn Alexander, Deputy Director of Retirement and Pension Benefits for NYCERS (NYSCEF Doc 7); a copy of the death certificate for Grant (NYSCEF Doc 8); a copy of the F103 form (NYSCEF Doc 9); proof of payment (NYSCEF Doc 10); letter from Kevin Grant (NYSCEF Doc 12); and a demand letter (NYSCEF Doc 12).

Plaintiff has established entitlement to a default judgment in the amount of \$339,068.47 for the overpayment of funds.

Wherefore, it is hereby

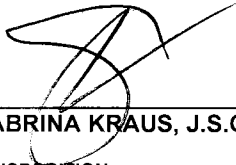
ORDERED that plaintiff's motion seeking a default judgment against Janice McKnight is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff, New York City Employees' Retirement System, with a principal place of business located at 355 Adams Street, Brooklyn, New York 11201; as against Janice McKnight, with an address of 20 Maujer Street, Apt 2A, Brooklyn, NY 11206-1021; in the sum of \$339,068.47, with interest at the statutory rate from April 12, 2022, until entry of judgment, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on defendant and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

This constitutes the decision and order of the court.

12/8/2022			
DATE			SABRINA KRAUS, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE