

New York City Campaign Fin. Bd. v Cunningham

2023 NY Slip Op 31945(U)

June 8, 2023

Supreme Court, New York County

Docket Number: Index No. 452295/2022

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

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NEW YORK CITY CAMPAIGN FINANCE BOARD,

Plaintiff,

- v -

BRIAN-CHRISTOPHER CUNNINGHAM, CUNNINGHAM
FOR NYC, and ANGELLA CUMMINGS,

Defendants.

-----X

INDEX NO. 452295/2022

MOTION DATE 04/27/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21

were read on this motion for

DEFAULT JUDGMENT

LOUIS L. NOCK, J.

Per the within memorandum, the motion by plaintiff New York City Campaign Finance Board for entry of a default judgment against defendants Brian-Christopher Cunningham, Cunningham for NYC, and Angella Cummings, is granted, on default and without opposition, and for the reasons set forth in the moving affirmation of Timothy C. Jutte, Esq. (NYSCEF Doc. No. 12), and as supported by the exhibits attached thereto.

Background¹

Defendant Brian-Christopher Cunningham, presently a member of the New York State Assembly (43rd Assembly District, Brooklyn), was a candidate for the New York City Council (40th City Council District, Brooklyn) in the 2017 primary and general elections (Verified Complaint [NYSCEF Doc. No. 2] ¶ 3). Defendant Angella Cummings served as treasurer for his

¹ The factual background derives from the allegations of the verified complaint, which was never responded to by the defendants. Those allegations are, therefore, deemed admitted (*e.g.*, *Woodson v Mendon Leasing Corp.*, 100 NY2d 62 [2003]).

campaign, defendant Cunningham for NYC (the “Campaign”). During his campaign, Mr. Cunningham agreed to join the Campaign Finance Program (the “Program”), a program which provides public matching funds to certain candidates for public office in New York City, administered by plaintiff New York City Campaign Finance Board (the “Board”) (*id.*, ¶¶ 6, 14). Participation in the Program requires compliance with a variety of limits on contributions and expenditures, as well as providing information to plaintiff and filing periodic disclosure statements (*id.*, ¶¶ 7-12). By filing certain certifications with the Board, Mr. Cunningham and Ms. Cummings agreed to be jointly and severally liable with the Campaign for any civil penalties assessed by plaintiff for any violation of Program requirements and regulations (*id.*, ¶¶ 15-16; Certification [NYSCEF Doc. No. 5]). During the election, the Campaign received \$125,120 in public matching funds (Verified Complaint [NYSCEF Doc. No. 2] ¶ 17).

On December 21, 2020, the Board sent defendants an enforcement notice alleging various violations of Program regulations and recommending certain monetary penalties and the repayment of public matching funds not used for qualified expenditures (*id.*, ¶ 18). Defendants appeared before the Board on March 15, 2021, to contest the allegations (*id.*, ¶ 21). Following the hearing, the Board issued a final determination in which it assessed penalties against defendants for several instances of failure to adequately document or report information regarding contributions and expenditures and one instance of an improper contribution. That determination also held the Campaign and Mr. Cunningham liable for the repayment of the amount of public funds received but not used on qualified expenditures (Final Determination of the Board [NYSCEF Doc. No. 6]).

The total amount assessed by the Board against the Campaign was \$158,461 (*see, id.*, at 3). That figure is comprised of \$34,765 under the penalties category (*see, id.*, at 1) plus

\$123,696 under the public funds repayment category (*see, id.*, at 3). The Board declared Mr. Cunningham and the Campaign jointly and severally liable for said \$34,765 in penalties, of which Ms. Cummings was declared jointly and severally liable to the extent of \$32,253 (*see, id.*, at 1). Of the \$123,696 assessed under the public funds repayment category, the Board declared the Campaign liable for that amount, of which Mr. Cunningham was declared jointly and severally liable to the extent of \$103,543 (*see, id.*, at 3). Consequently, Mr. Cunningham bears joint and several liability for the sum of \$138,218 (\$34,765 in penalties plus \$103,453 in public funds repayment). Ms. Cummings bears joint and several liability for the sum of \$32,253 (attributable to penalties assessed in the total sum of \$34,765). Accordingly, the verified complaint seeks a judgment against Mr. Cunningham and the Campaign in the amount of \$34,765, of which Ms. Cummings is jointly and severally liable to the extent of \$32,253; and a further judgment against the Campaign in the amount of \$123,696, of which Mr. Cunningham is jointly and severally liable to the extent of \$103,452 (*see, Verified Complaint at 16-17*).

Additional notices of enforcement dated May 19, August 31, 2021, and February 23, 2022, were sent by plaintiff to defendants prior to commencement of this action (NYSCEF Doc. Nos. 7-9).

The Board commenced this action by filing the summons and complaint on August 10, 2022 (NYSCEF Doc. Nos. 1-2). Affidavits of service, regular on their face, attest to in-hand service on Ms. Cummings on September 3, 2022 (NYSCEF Doc. No. 15), and on Mr. Cunningham on September 9, 2022 (NYSCEF Doc. No. 14), pursuant to CPLR 308(1), and on the Campaign on September 9, 2022, by service on Mr. Cunningham, its authorized agent, pursuant to CPLR 311(a)(1) (NYSCEF Doc. No. 16). To date, defendants have not responded to

the verified complaint or otherwise appeared in this action. There is also no opposition filed in connection with plaintiff's instant motion for a default judgment.

Standard of Review

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[f]). Proof of the facts may be by verified complaint or affidavit of the movant (*id.*). "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 N.Y.*, 32 AD3d 234, 235 [1st Dept 2006] [quotation marks and citations omitted]).

Discussion

The Board has satisfied its burden on the motion by submission of the verified complaint (NYSCEF Doc. No. 2), the affidavits of service upon defendants (NYSCEF Doc. Nos. 14-16), and the affidavit of its counsel, Timothy Jutte, Esq., which establishes that defendants' time to respond to the complaint has expired (NYSCEF Doc. No. 12, ¶¶ 20-25). The verified complaint, and the exhibits attached thereto, set forth the conduct for which defendants were penalized, the decision of the Board assessing those penalties and directing repayment of public matching funds not used for qualified expenditures, and defendants' failure to pay the penalties and make the

required repayment (Verified Complaint [NYSCEF Doc. No. 2] ¶¶ 13-24; Certification [NYSCEF Doc. No. 5]; Final Determination of the Board [NYSCEF Doc. No. 6]; Notices of Outstanding Payment [NYSCEF Doc. Nos. 7-9]). The court also notes that the Board advised defendants of the availability of an Article 78 proceeding before the New York State Supreme Court to challenge its decision (Final Determination of the Board [NYSCEF Doc. No. 6 at 4]), and defendants did not avail themselves of such a proceeding. The Board is, therefore, entitled to entry of a default judgment in its favor.

Accordingly, it is

ORDERED that the plaintiff's motion for a default judgment is granted; and, accordingly, it is

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant Cunningham for NYC in the principal amount of \$158,461.00, of which amount defendant Brian-Christopher Cunningham is jointly and severally liable to the extent of \$138,218.00, and defendant Angela Cummings is jointly and severally liable to the extent of \$32,253.00, with interest accrued thereon at the statutory rate from April 16, 2021, through entry of judgment, as calculated by the Clerk, and continuing to so accrue thereafter through the date of satisfaction of judgment, 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.

ENTER:



<u>6/8/2023</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>
			<input type="checkbox"/> NON-FINAL DISPOSITION
			<input type="checkbox"/> GRANTED IN PART
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE