

Fecteau v City of Mount Vernon
2024 NY Slip Op 35530(U)
September 16, 2024
Supreme Court, Westchester County
Docket Number: Index No. 57471/2024
Judge: Maurice Dean Williams
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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
COUNTY OF WESTCHESTER

-----X
MATTHEW J. FECTEAU,

Petitioner,

DECISION & ORDER

-against-

Index No. 57471/2024

THE CITY OF MOUNT VERNON,

Motion Seq. 2, 4 and 5

Respondent.

-----X
Williams, A.J.S.C.

In this Article 78 proceeding Petitioner, MATTHEW J. FECTEAU, *pro se*, seeks an Order pursuant to CPLR § 3215 directing default judgment be entered against Respondent, THE CITY OF MOUNT VERNON, for their failure to appear or answer in this matter (*mtn seq. #2, NYSCEF doc # 7*). Respondent submitted papers in opposition and filed a cross-motion pursuant to CPLR § 3012[d] for an extension of time to appear and plead in this action (*mtn seq. #5, NYSCEF doc # 19*). In opposition to Respondent's motion for additional time to appear, Petitioner submitted papers in opposition which were errantly docketed as a cross-motion (*mtn seq. #4, NYSCEF doc # 15*).

Upon review of the papers submitted and the procedural history of this case, the various motions and cross-motions are decided as follows: Petitioner's motion for a default judgment is denied, Respondent's cross-motion for an extension of time to appear is granted and Petitioner's errantly filed cross-motion is marked off.

Procedural History

The history as relevant to this application is as follows: Petitioner commenced this Article 78 proceeding, (*motion seq. # 1*), on February 21, 2024, alleging that the Respondent failed to comply with their obligation under the Freedom of Information Law (*hereinafter FOIL*).

Petitioner seeks to compel the production of certain documents responsive to ten separate FOIL requests sent on or about and between December 21, 2023 and January 21, 2024. It is further alleged Respondent was served with the petition (*see NYSCEF doc # 6*) and had until March 15, 2024 to answer or appear. On March 17, 2024, Petitioner filed a motion, with a return date of March 27, 2024, alleging Respondent was in default.

On March 22, 2024, Respondent submitted a letter to the Court requesting additional time to respond to the motion (*NYSCEF doc # 9*). The letter indicated this was Petitioner's fifth such Article 78 proceeding (*all currently pending and the prior four opposed by Respondent*). Respondent further stated they were in the process of responding to this latest petition and wished to submit opposition to the motion for default judgment. That same day, Petitioner filed papers opposing Respondent's request for additional time (*NYSCEF doc # 10*). The Court granted Respondent additional time and a briefing schedule was established.

On April 23, 2024, Respondent filed their cross-motion seeking an extension of time to appear and answer the petition and opposing the motion for default judgment. Respondent contends they have endeavored to timely respond to the voluminous FOIL requests and Article 78 petitions that have been filed by the Petitioner within the past year. Respondent explains that they are continuing to work on the current FOIL requests as reflected in emails sent to the Petitioner (*see NYSCEF docs # 22-31*), and that they notified Petitioner of a timeframe within which they hoped to have a response to his remaining requests. Respondent states they intend to fully comply with their FOIL obligation. It is alleged that due to law office failure they were unable to timely file an answer. However, the delay in answering was not willful and has been for a relatively short time frame, specifically the motion for default was made within days of

when an answer was due. Respondent contends there is no prejudice to the Petitioner caused by this brief delay.

In opposition, Petitioner has filed papers opposing any extension¹. Petitioner asserts his rights have continuously been violated by the Respondent, that the Respondent has a history of “indifference” towards FOIL requests and that his “empathy wanes, given the prolonged nature of these transgressions” (*NYSCEF doc # 16, page 3, para. 5*).

CPLR § 3012 [d] provides: “upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default”. Where the responding party has failed to timely appear or submit an answer, they “must provide a reasonable excuse for the default and demonstrate a meritorious defense to the action, when opposing a motion for leave to enter judgment upon its failure to appear or answer and moving to extend the time to answer or to compel the acceptance of an untimely answer” (*Lipp v. Port Auth. of N.Y. & N.J.*, 34 A.D.3d 649, 649, 824 N.Y.S.2d 671, 672 [2nd Dept. 2006]; *see also Rosario v. Naranjo*, 165 A.D.3d 860, 84 N.Y.S.3d 556 [2d Dep’t 2018]; *Moore v. Day*, 55 A.D.3d 803, 866 N.Y.S.2d 303 [2d Dep’t 2008]; *Energy Sav. Prods. v. Milici*, 168 A.D.2d 415, 563 N.Y.S.2d 628 [2d Dep’t 1990]). A reasonable excuse may be due to law office failure (*Eagles Landing, LLC v. New York City Dept. of Envtl. Protection*, 75 A.D.3d 935, 906 N.Y.S.2d 364 [2010]), or from confusion caused by multiple summons being served (*Kegelman v. Town of Otsego*, 203 A.D.3d 82, 161 N.Y.S.3d 436 [2021]). The determination of what constitutes a

¹ Respondent e-filed a cross-motion requesting an extension of time to answer (motion seq. #3) on March 25, 2024, before becoming aware the Court had responded to the letters previously sent. The cross-motion was withdrawn on March 26, 2024 based upon the extension being granted by the Court (*see NYSCEF docs # 11 -14, 18*). On March 26, 2024, Petitioner apparently submitted papers in opposition to Respondent’s cross motion which were errantly e-filed as a “Notice of Cross-Motion” and assigned as motion seq. #4 (*see NYSCEF docs # 15-17*). In as much as these papers were erroneously marked as motion seq. #4, they have been deemed opposition papers to the application for an extension of time to appear.

reasonable excuse is a discretionary, sui generis determination that lies within the sound discretion of the court (*Ennis v. Lema*, 305 A.D.2d 632, 760 N.Y.S.2d 197 [2d Dept. 2003]; *Singh v. Sukhu*, 180 A.D.3d 837, 840, 119 N.Y.S.3d 214 [2d Dep't 2020] [citations omitted]; *Harcztark v. Drive Variety, Inc.*, 21 A.D.3d 876, 800 N.Y.S.2d 613 [2d Dep't 2005]).

Additional factors courts have considered are whether the delay was relatively brief, any prejudice to the opposing party, any evidence of a willful default or the intent to abandon defenses, and the strong public policy which favors the resolution of cases on the merits (*see Arias v. First Presbyt. Church in Jamaica*, 97 A.D.3d 712, 948 N.Y.S.2d 665 [2nd Dept. 2012]; *Finkelstein v. Sunshine*, 47 A.D.3d 882, 852 N.Y.S.2d 168 [2d Dept. 2008]; *City Line Auto Mall, Inc. v. Citicorp Leasing, Inc.*, 45 A.D.3d 716, 716, 846 N.Y.S.2d 298, 299 [2d Dept. 2007]).

Here, the Respondent has sufficiently shown that there was no willful intent to abandon its' defenses or default on submitting an answer. It is apparent there is a contentious history between the citizen and governing body wherein the Court has had to intervene to resolve their disputes. It is understandable how the date could have been overlooked considering the volume of documents sought in the present FOIL requests, and the overlapping history of litigation between the parties. The delay in this case is a matter of days or at most a week, an answer was due by March 15, 2024, the motion for default judgment was filed on March 17th. The return date on this motion for default judgment was set for a mere ten-days after it was filed.

Moreover, Respondent has presented evidence of a meritorious defense. Respondent has annexed several exhibits to demonstrate how they have responded to the Petitioner's FOIL requests and continue to do so. Respondent alleges that it has taken time to locate responsive documents, but notes that some of the requests are in their view simply inappropriate. In considering the relatively brief delay, the absence of any proof of prejudice to the opposing side,

the meritorious defense, and the preference for deciding cases on the merits, the Respondent shall be given an opportunity to submit an answer in this proceeding, as they have done so in the past.

Accordingly, it is hereby:

ORDERED, that Petitioner's motion for a default judgment (*mtn seq. #2*) is denied; and it is further

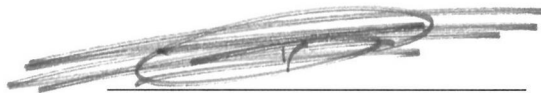
ORDERED, that Respondent's cross-motion (*mtn seq. #5*) for an extension of time to appear is granted; and it is further

ORDERED, that the Respondent shall appear or answer the petition on or before October 7, 2024; and it is further

ORDERED, the Petitioner's errantly filed cross-motion (*mtn seq. #4*) is marked off.

This constitutes the decision and order of this Court.

Dated: September 16, 2024
White Plains, New York



Hon. Maurice Dean Williams
Acting Supreme Court Justice