

**Commissioners of the State Ins. Fund v ACM Bldg.
Solutions Inc.**

2025 NY Slip Op 33385(U)

September 10, 2025

Supreme Court, New York County

Docket Number: Index No. 452271/2024

Judge: Emily Morales-Minerva

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

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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COMMISSIONERS OF THE STATE INSURANCE FUND

Plaintiff,

- v -

ACM BUILDING SOLUTIONS INC.,

Defendant.

-----X

INDEX NO. 452271/2024

MOTION DATE 03/10/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

New York State Insurance Fund (Michael D. Totaro, Esq.) for
plaintiff.

HON. EMILY MORALES-MINERVA, J.S.C.

In this action, plaintiff COMMISSIONERS OF THE STATE
INSURANCE FUND, move, by notice of motion (seq. no. 01),
pursuant to CPLR § 3215, for an order granting it a default
judgment against defendant ACM BUILDING SOLUTIONS INC. in the
amount of \$17,313.89 together with interest at the rate of nine
percent per annum from the date of cancellation, September 22,
2023. Defendant does not appear or submit opposition to the
motion.

BACKGROUND

Plaintiff COMMISSIONER OF THE STATE INSURANCE FUND provide workers' compensation and disability insurance coverage to its customers for which it charges premiums and fees. Plaintiff provided defendant with workers' compensation insurance coverage from August 24, 2021, to September 22, 2023. The policy was cancelled on September 22, 2023. For the said policy, plaintiff sent bills to an address identified by defendant (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 01, Verified Complaint).

On August 15, 2024, plaintiff commenced this action to recover \$81,612.22 from defendant (see NYSCEF Doc. No. 01, Verified Complaint). The complaint alleges causes of action sounding in breach of contract and account stated and seeks damages in the amount of \$81,612.22 together with interest at the rate of nine percent per annum from the date of cancellation, September 22, 2023 (id.).

On September 13, 2024, plaintiff served the summons and verified complaint upon defendant pursuant to section 306 of the Business Corporation Law (see NYSCEF Doc. No. 04, Notarized Affidavit of Service - Secretary of State, dated September 13, 2024). On October 1, 2024, plaintiff provided defendant with additional service of the summons and verified complaint

pursuant to CPLR § 3215 (g)(4)¹ (see NYSCEF Doc. No. 005, Notarized Affirmation of Service, dated October 1, 2024). To date, defendant has not appeared, answered, or otherwise moved against complaint.

On March 10, 2025, plaintiff moved, by notice of motion (seq. no. 01) pursuant to CPLR § 3215, for an order granting it a default judgment against defendant ACM BUILDING SOLUTIONS INC. in the amount of \$17,313.89² together with interest at the rate of nine percent per annum from the date of cancellation, September 22, 2023.

For the reasons explained, the Court grants the motion.

ANALYSIS

When a defendant fails "to appear, plead or proceed to trial of an action reached and called for trial, or when the

¹ CPLR § 3215 (g)(4) provides, "(i) When a default judgment based upon non-appearance is sought against a domestic or authorized foreign corporation which has been served pursuant to paragraph (b) of section three hundred six of the business corporation law, an affidavit shall be submitted that an additional service of the summons by first class mail has been made upon the defendant corporation at its last known address at least twenty days before the entry of judgment.

(ii) The additional service of the summons by mail may be made simultaneously with or after the service of the summons on the defendant corporation pursuant to paragraph (b) of section three hundred six of the business corporation law, and shall be accompanied by a notice to the corporation that service is being made or has been made pursuant to that provision. An affidavit of mailing pursuant to this paragraph shall be executed by the person mailing the summons and shall be filed with the judgment. Where there has been compliance with the requirements of this paragraph, failure of the defendant corporation to receive the additional service of summons and notice provided for by this paragraph shall not preclude the entry of default judgment."

² On January 08, 2025, plaintiff sent defendant a letter indicating that the balance due is \$17,313.89 -- not \$81,622.22 as alleged in the complaint (see NYSCEF Doc. No. 16, Letter from Plaintiff to Defendant, dated 01/08/2025). Therefore, plaintiff moves for a default judgment on the amount due of \$17,313.89.

court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against [the defendant]" (CPLR § 3215 [a]). To establish entitlement to a default judgment, plaintiff must file (1) proof it served defendant with the summons and complaint, and (2) "proof of the facts constituting the claim, the default, and the amount due . . . by affidavit made by the party" (CPLR § 3215 [f]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003] [providing that "an applicant for a default judgment [must] file 'proof by affidavit made by the party of the facts constituting the claim'"]; 231st Riverdale LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]; Feffer v Malpeso, 210 AD2d 60 [1st Dept 1994]).

In matters of default, where "the defendant fail[s] to appear, and the plaintiff does not have the benefit of discovery, the supporting affidavit "need only allege enough facts to enable a court to determine that a viable cause of action exists" (Woodson, 100 NY2d at 70-71, citing 7 Weinstein-Korn Miller, NY Civ Prac ¶ 3215.24, at 32-326; see also B&H Flooring, LLC v Folger, 228 AD3d 809 [2d Dept 2024]). "Indeed, defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (Woodson, 100 NY2d at 71, citing Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 [1984]; see also Petty v Law

Off. of Robert P. Santoriella, P.C., 200 AD3d 621, 621 [1st Dept 2021] [holding: "[B]y defaulting, a defendant admits all traversable allegations contained in the complaint, and thus concedes liability, although not damages"]).

However, "[s]ome proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action,' but the standard of proof is 'minimal,' and 'not stringent'" (Petty, 200 AD3d at 621, quoting Joosten v Gale, 129 AD2d 531, 535 [1st Dept 1987]).

Here, plaintiffs have met their burden, submitting affidavit of Tremaine Tinsley, an employee of COMMISSIONERS OF THE STATE INSURANCE FUND and the assigned underwriter to the Policy Holder Services Department (NYSCEF Doc. No. 07); a copy of defendant's outstanding policy dues (NYSCEF Doc. No. 12, Workers' Compensation Statement); and a copy of the policy, demonstrating defendant's ownership of such (NYSCEF Doc. No. 09, Policy).

Plaintiff also submits the affidavit of service of the summons and verified complaint (NYSCEF Doc. No. 04), the affirmation of additional service of summons and verified complaint (NYSCEF Doc. No. 05), and proof of defendant's default (NYSCEF Doc. No. 08, Affirmation of Michael Totaro, Esq.).

Accordingly, it is hereby

ORDERED that plaintiffs' motion (seq. no. 001) for a default judgment is granted; it is further

ORDERED and ADJUDGED that the Clerk of Court is directed to enter judgment in favor of plaintiff COMMISSIONERS OF THE STATE INSURANCE FUND and against defendant ACM BUILDING SOLUTIONS INC. in the amount \$17,313.89 together with interest at the rate of nine percent per annum from the date of cancellation, September 22, 2023; it is further

ORDERED that, within twenty days from the date of this decision and order, plaintiff shall serve a copy of this order, with notice of entry, on defendants, as well as on the Clerk of the Court, who shall enter judgment accordingly; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

9/10/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: