

**Brown v City of New York**

2025 NY Slip Op 34195(U)

October 30, 2025

Supreme Court, New York County

Docket Number: Index No. 160437/2015

Judge: Ariel D. Chesler

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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. ARIEL D. CHESLER PART 62M**

*Justice*

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RASHANN BROWN,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY POLICE  
DEPARTMENT, DETECTIVE MICHAEL CALLOWAY,  
POLICE OFFICERS JANE/JOHN DOE(S) #'S 1-10, 25TH  
PRECINCT

Defendant.

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INDEX NO. 160437/2015

MOTION DATE 04/22/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 56, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68

were read on this motion to/for STRIKE PLEADINGS.

Upon the foregoing documents, it is

In this motion, Plaintiff seeks to strike the Defendants' Answer pursuant to CPLR 3126.

Specifically, Plaintiff requests this relief based on the failure of a witness – John Slater – to appear for deposition.

This is a personal injury action brought by the Plaintiff for injuries sustained as the result of an incident and arrest which occurred on July 15, 2014 at Second Avenue between East 123rd & East 124th Streets, New York, New York. In particular, Plaintiff alleges he was subjected to unusual, unnecessary, excessive and abusive force at the time of his arrest.

This action was commenced in October 2015. A Case Scheduling Order was issued on October 5, 2017 and various discovery took place. Many discovery and status conferences were held over the course of the litigation.

According to Plaintiff, Defendants “continuously kept postponing the scheduled deposition of witness Detective John P A Slater as they attempt to get in touch with their witness but provides no firm answer to plaintiff’s counsel.” Plaintiff notes that while deposition was schedule for Slater, it was repeatedly adjourned.

These adjournments caused Plaintiff to file a motion to strike (MS 2) in January 2024. However, that motion was ultimately withdrawn and a deposition scheduled for Slater on April 16, 2024. Thereafter, the parties entered into three stipulations between March 2024 and January 2025 adjourning the deposition, and it never took place.

The latest stipulation provided for Slater’s deposition to be held on April 14, 2025. On March 12, 2025, Plaintiff sent a good faith letter reminding Defendants of the deposition and plan to proceed.

Plaintiff argues that Defendants violated every stipulation and order in this case and that striking the Answer is thus an appropriate sanction. Plaintiff asserts that Defendants’ actions have been willful and contumacious. Separately, Plaintiff seeks an order expanding the time to file the Note of Issue.

In opposition, Defendants note that they served responses to the CSO on July 15, 2019. They further note that on or about October 17, 2023, Plaintiff’s deposition was held, and on or about March 13, 2024, Detective Michael Calloway’s deposition was held.

Defendants stress that Slater is a non-party witness and former NYPD Detective. However, they agree that they entered into a stipulation on May 8, 2025 that they would produce Slater for deposition to the extent he is still employed by NYPD.

Defendants argue the motion should be denied because Plaintiff failed to provide a sufficient affirmation of good faith and failed to seek permission from the Court before filing the motion.

In addition, Defendants assert that the motion should be denied because they substantially complied with their discovery obligations, and did not willfully or contumaciously fail to respond to court orders. Regarding Slater's deposition, they state that he is no longer employed by NYPD and retired in August 2023. They add that they made their best attempts to produce him, but that they don't have the same level of control over him since he retired. Further, they remark that "It is questionable whether The City of New York is obligated to produce a non-party witness who is retired, especially when plaintiff has not stated the basis for the need of his testimony."

The remedy of striking an answer is drastic (*see Henderson-Jones v City of New York*, 87 AD3d 498 [1<sup>st</sup> Dept 2011]) and should be granted sparingly, and only where a party was willful, contumacious or acted in bad faith. Here, Defendants cooperated with their discovery obligations overall, produced documents, attended compliance conferences and produced a witness for deposition. Based on these papers, the Court declines to strike the answer.

It is unclear to the Court the relevance or importance of Detective Slater or what his testimony might be or to what it could establish. Had Plaintiff provided more information on this, the Court could have entertained other types of sanctions, such as a negative inference.

However, the Court is very concerned that over a course of years, including in 2025, the Defendants repeatedly agreed to produce Slater for a deposition but never ultimately did produce him. Adjournment requests may be reasonable and part of litigation but here the Court is advised that Slater had in fact retired in August 2023. This raises the question of when Defendants were

aware of this fact and when or whether they shared this information prior to 2025. While striking the answer may not be appropriate, sanctions for frivolous conduct could be warranted if the retirement was known and Plaintiff was strung along with promises never kept all while knowing Slater was not under Defendants' control. Had this been known or revealed Plaintiff could have issued a subpoena or sought one from this Court to ensure the deposition took place. Instead, this matter was delayed.

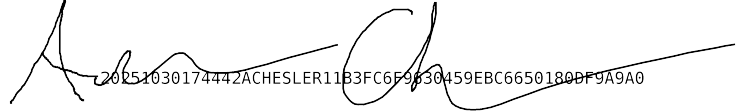
At this time, the Court does not sua sponte consider other sanctions but instead reprimands Defendants for this conduct and warns that should any similarly concerning conduct or delay occur, sanctions may be considered at that time.

Further, to the extent desired or necessary the Court will so-order any appropriate subpoenas submitted by Plaintiff in order to ensure all discovery takes place and is completed.

Finally, as unopposed and pursuant to CPLR 2004, the time to file a Note of Issue is extended and it is directed that such further deadlines shall be memorialized at the next compliance conference.

Accordingly, it is  
ORDERED that to the extent the motion seeks the remedy of striking the answer, it is denied;  
and it is further  
ORDERED that the motion is granted in that time to file a Note of Issue is extended; and it is  
further  
ORDERED that Plaintiff may submit any appropriate subpoenas to this Court for signature.

This constitutes the Decision and Order of the Court.



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10/30/2025

DATE

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ARIEL D. CHESLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE