

ARK61 v Archdiocese of N.Y.

2025 NY Slip Op 34258(U)

November 5, 2025

Supreme Court, New York County

Docket Number: Index No. 950053/2019

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 CVA 1 / 57M

Justice

-----X

ARK61,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, SOCIETY OF JESUS
A/K/A U.S.A. NORTHEAST PROVINCE OF THE SOCIETY
OF JESUS A/K/A THE NEW YORK PROVINCE OF THE
SOCIETY OF JESUS A/K/A SOCIETY OF JESUS OF
U.S.A. NORTHEAST PROVINCE A/K/A THE SOCIETY OF
JESUS JESUIT FATHERS AND BROTHERS, FORDHAM
PREPARATORY SCHOOL, DOES 1-5 WHOSE
IDENTITIES ARE UNKNOWN TO PLAINTIFF,

Defendants.

-----X

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 25, 141, 144, 145, 146, 159, 160, 161, 162, 163

were read on this motion to/for RESTORE.

BACKGROUND

Plaintiff commenced this CVA action pursuant to a summons with notice that was filed in August 2019. The unverified complaint and amended complaint assert one allegation specific to the alleged sexual abuse:

From approximately 1981 to 1982, when Plaintiff was approximately 15 to 16 years old, Beck (a lay teacher at Fordham) engaged in unpermitted sexual contact with Plaintiff in New York State. The abuse complained of herein occurred on Defendants' property and/or with the use of their chattels.

To date Plaintiff has not been deposed, although his deposition was previously noticed (NYSCEF Docs # 25 & 141) and court ordered (NYSCEF Docs # 144, 145, 146).

On May 2, 2025, the Court granted the motion of Plaintiff's counsel to be relieved. Plaintiff was present on that date and stated the only opposition he had was that he wanted the record to reflect that it was his decision to terminate the relationship, not that of counsel. Plaintiff indicated he intended to proceed *pro se*.

The Court directed counsel to provide Plaintiff with a copy of his file and directed the parties to appear in person on September 9th, 2025, at 11 am for a compliance conference. Plaintiff acknowledged on the record he understood this obligation to appear and that his counsel was being relieved. Plaintiff asked the Court to repeat the date twice. The Court specified the address and room number where Plaintiff was to appear. Plaintiff also asked what the purpose of the conference would be. The Court went over all the details of the required appearance with Plaintiff, giving him repeated opportunities to ask any questions he may have had (transcript at NYSCEF Doc # 162).

On September 9, 2025, Plaintiff failed to appear, and the Court issued an order dismissing the action pursuant to 22 NYCRR 202.27(b).

PENDING MOTION

On November 5, 2025, Plaintiff's motion for an order restoring the case to the calendar was marked submitted and the Court reserved decision. Though not specified in the notice of motion, the Court deems the motion to be seeking to vacate the dismissal based on his failure to appear.

Because Plaintiff has failed to demonstrate either an excusable default or a meritorious claim, the motion is denied.

To vacate the dismissal of an action, pursuant to 22 NYCRR 202.27(b), based on Plaintiff's failure to appear at a conference, Plaintiff is required to demonstrate both a reasonable

excuse for his failure to appear and a meritorious cause of action *Espinoza v Concordia International Forwarding Corp.*, 32 AD3d 326 (1st Dept., 2006); *Siculan v Koukos*, 74 AD3d 946(2nd Dept., 2010).

The determination as to whether a party has established a reasonable excuse rests within the sound discretion of the motion court. *Kasumu v. City of New York*, 78 A.D.3d 560 (1st Dept., 2010). Plaintiff states that he failed to appear because NYSCEF was still showing the law firm that had been previously representing him as being an attorney of record. The Court finds this alleged excuse to be unreasonable in the face of the detailed discussion that took place on the record where Plaintiff confirmed both that he understood his attorneys were being relieved and that he had to appear on the date time and place specified by the Court. Assuming *arguendo* Plaintiff was confused after looking at NYSCEF, the reasonable course of action would have been to call the Court or prior counsel and make an inquiry, not simply fail to show up. The reasonableness of this excuse is also considered against the backdrop of Plaintiff's failure in this case to appear for a deposition despite numerous court orders directing him to do so (*see Campos v New York City Health and Hospitals Corp.*, 307 AD2d 785 (1st Dept., 2003)).

Plaintiff offers nothing in the way of asserting there is a meritorious claim on which to proceed. As noted, the pleading is not verified, plaintiff was never deposed and attached no affidavit of merit to his application.

CONCLUSION

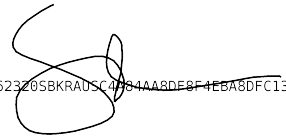
WHEREFORE it is hereby:

ORDERED that the motion is denied in its entirety; and it is further

ORDERED that, within 20 days from entry of this order, defendants shall serve a copy of this order with notice of entry on 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);].

This constitutes the decision and order of the Court.


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11/5/2025
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED
<input type="checkbox"/>	GRANTED
<input checked="" type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<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

APPLICATION:

CHECK IF APPROPRIATE: