

State of New York v Petway

2025 NY Slip Op 34586(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 452320/2023

Judge: Phaedra F. Perry-Bond

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
NEW YORK COUNTY**

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

-----X

STATE OF NEW YORK,

Plaintiff,

- v -

HOWARD PETWAY,

Defendant.

-----X

INDEX NO. 452320/2023

MOTION DATE 02/06/2025

MOTION SEQ. NO. 001

**DECISION AND ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, plaintiff the State of New York's (plaintiff) motion for a default judgment, pursuant to CPLR § 3215, against defendant Howard Petway (defendant), is granted.

Procedural History

On September 13, 2023, plaintiff commenced this action to collect unpaid debt owed by defendant to the State University of New York at Delhi, New York (SUNY Delhi) by e-filing a summons with notice in New York County Clerk's Office (NYSCEF DOC. NO. 10). On December 30, 2023, defendant was served by delivering a copy of a summons and notice, pursuant to CPLR 308 (2), at 584 West 152nd Street, Apartment 1A, New York, New York, to Valerie Petway, a co-tenant (NYSCEF DOC. NO. 11). On January 3, 2024, a copy of the summons with notice was also mailed to defendant's attention at the service address (*id.*). Plaintiff's Affidavit of Service was e-filed with the office of the County Clerk (*id.*).

On February 20, 2024, plaintiff mailed an additional copy of the summons with notice to the defendant as is required by CPLR 3215 (g)(3)(i) and an affidavit of service was e-filed with the County Clerk's Office (NYSCEF DOC. NO. 12).

Discussion

A motion for a default judgment must be supported with "proof of service of the summons and complaint[,] ... proof of the facts constituting the claim, [and] the default" (CPLR 3215 [f]). The plaintiff must offer "[s]ome proof of liability ... to satisfy the court as to the prima facie

validity of the uncontested cause of action” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*id.*). A party in default “admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff’s conclusion as to damages” (*Rokina Opt. Co. v Camera King, Inc.*, 63 NY2d 728, 730 [1984]).

CPLR § 308 (2) provides for “Personal service upon a natural person.” It states that personal service may be made upon a natural person by:

“delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend “personal and confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law . . .”

Here, as discussed above, defendant was served on December 30, 2023, with the Summons with Notice pursuant to CPLR § 308 (2), when defendant's co-tenant, identified as Valrie Petway, was served at the service address. On January 2, 2024, an additional mailing of the Summons with Notice to the defendant at the service address was also completed in compliance with CPLR § 308 (2) (NYSCEF DOC. NO. 12). In support of its motion, plaintiff also submits an Address Information Request conducted through the United States Postal Service that indicated that defendant received mail at the service address, and a LEXIS Comprehensive Person Report (NYSCEF DOC. NO. 13).

A party moving for a default judgment must tender proof of a defendant’s non-military status before a judgment may be entered (*see* 50 USC § 3931 [b]; Military Law § 303 [3]; *Unitrin Advantage Ins. Co. v 21st Century Pharm.*, 158 AD3d 450, 450 [1st Dept 2018]; *Avgush v De La Cruz*, 30 Misc 3d 133[A], 2011 NY Slip Op 50076[U], *1 [App Term, 2d Dept 2010]). Here, plaintiff’s counsel affirms that an employee of the Office of the Attorney General accessed the Servicemembers Civil Relief Act website maintained by the Defense Manpower Data Center's Military Verification Service of the United States Department of Defense and that the website verified that the defendant was not an active member of the armed forces of the United States of

America. Plaintiff's counsel further affirms that the Military Status Report states that a search of defendant's name and/or social security number showed no match to information in the Department of Defense Manpower Data Center's data banks. The Defense Manpower Data Center has advised counsel for plaintiff's office that if the defendant were in military service, the report would show active-duty status, and that a failure to find a match means that defendant is not currently in active military service (NYSCEF DOC. NO. 18).

Turning to the merits of plaintiff's claim, plaintiff's counsel affirms that defendant was registered as a student at SUNY Delhi during the Fall 2020 academic term and that in accordance with defendant's registration, and occupancy of campus owned housing and use of the student meal plan, defendant incurred charges for tuition, room and/or board charges, fees, and/or fines. While plaintiff maintains that it performed its agreement to provide and hold the courses for which defendant registered and provided housing and meals for which defendant contracted, defendant breached the agreement it entered into with plaintiff by failing to pay. Plaintiff maintains that based upon defendant's failure to pay the charges associated with defendant's class registration, housing and meal plan for the Fall 2020 semester, defendant incurred a debt to SUNY Delhi in the amount of \$6,505.88.

Regarding the proof of the amount due, plaintiff's counsel affirms that on about March 1, 2022, SUNY Delhi mailed defendant a final billing invoice and notice letter via regular mail, and it was posted to his student account, that indicated that there was an outstanding balance due for the Fall 2020 semester in the amount of \$6,612.881. Defendant was instructed to pay the outstanding balance by March 25, 2022, or it would be sent to the Office of the New York State Attorney General for collection. Plaintiff's counsel notes in his Affirmation in Support that the sum of \$6,612.88 included \$107.00 in non-mandatory fees that were excluded from the sum being pursued by in this action and that the amount of \$6,505.88 is the correct student account balance (NYSCEF DOC. NO. 9, at 5, footnote 1). Plaintiff submits a copy of a billing invoice and final notice letter dated March 1, 2022 (NYSCEF DOC. NO.'s 15 & 16).

Plaintiff's counsel affirms that following the referral of the debt by SUNY Delhi to the Office of the New York State Attorney General for collection, the Office of the Attorney General also sent defendant a letter on March 21, 2023, by regular mail advising of the balance due on the defendant's student account from SUNY Delhi for the Fall 2020 semester plus accrued interest. Defendant was provided with instructions to pay the debt balance or contest the debt.

Plaintiff contends that defendant failed to respond to the invoice notice from SUNY Delhi, or to the Office of the Attorney General's demand letter. Plaintiff counsel further affirms that there is no evidence that the debt notice letter, and/or the Office of the Attorney General's demand letter, were returned as undeliverable by the United States Postal Service.

As plaintiff demonstrates that the relationship between defendant and SUNY Delhi was contractual in nature, and as the non-payment of charges when due is a breach of that contractual

obligation, plaintiff has demonstrated proof of the facts constituting the claim (*State v Fenton*, 68 AD2d 951, 951 [3d Dept 1979] (holding “[p]laintiff correctly asserts that the relationship between defendant and the university was contractual in nature . . . [p]laintiff’s cause of action accrued when the payment fell due”) [*see also Harris v Seward Park Hous. Cor.*, 79 AD3d 425, 426 [1st Dept 2010] [holding that the elements of a breach of contract claim “include the existence of a contract, the plaintiff’s performance thereunder, the defendant’s breach thereof, and resulting damages”])).

Therefore, as plaintiff’s motion for a default judgment was supported with proof of service of the summons and complaint, proof of the facts constituting the claim, and the default, plaintiff’s motion for a default judgement must be granted.

Accordingly, it is

ORDERED that plaintiff, the State of New York’s motion for a default judgement pursuant to CPLR § 3215 is granted as against defendant Howard Petway; and it is further

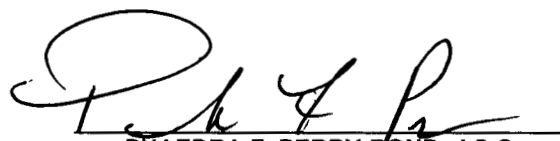
ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant Howard Petway in the sum of \$6,505.88 for defendant’s unpaid student account balance, with interest at the statutory rate from March 26, 2022, until the date of entry of judgment, and at the statutory rate thereafter, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that, within twenty (20) days of the upload of this decision to NYCCEF, plaintiff shall serve a copy of the same with notice of entry upon defendant; and it is further

ORDERED that the Clerk is directed to enter judgment upon proof of service of this order on defendant with notice of entry.

This constitutes the decision and order of this court.

12/ /2025
DATE


PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE