

**City of New York v
Pete's Ice Cream Truck Rental Corp.**

2025 NY Slip Op 35164(U)

December 18, 2025

Supreme Court, New York County

Docket Number: Index No. 451865/2025

Judge: Emily Morales-Minerva

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42M

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CITY OF NEW YORK

Plaintiff,

- v -

PETE'S ICE CREAM TRUCK RENTAL CORP.,

Defendant.

INDEX NO. 451865/2025

MOTION DATE 11/19/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12

were read on this motion to/for JUDGMENT - DEFAULT.

APPEARANCES :

Wilson, Elser, Moskovitz, Edelman & Dicker, LLP, White Plains, New York (Marc J. Gross, Esq., of counsel) for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action, plaintiff CITY OF NEW YORK moves, by notice of motion (seq. no. 01), pursuant to CPLR § 3215, for a default judgment against defendant PETE'S ICE CREAM TRUCK RENTAL CORP., in the amount of \$37,080.00, plus costs and disbursements.

Defendant does not appear or submit opposition to the motion.

For the reasons explained below, the motion (seq. no. 01) is granted.

BACKGROUND

On May 27, 2025, plaintiff CITY OF NEW YORK (plaintiff) commenced this action against defendant PETE'S ICE CREAM TRUCK RENTAL CORP. (defendant), seeking to recover \$37,080.00 (see New York State Electronic Filing System [NYSCEF] Doc. No. 01, complaint). Therein, plaintiff alleges that the New York City Department of Environmental Protection (DEP), Bureau of Environmental Compliance, issued several notices of violation to defendant pursuant to summons numbers 0216419895; 0218036455; 0218036446; 0218036437; 000603372L; 0216419886; 0218036400; 0218036372; 0218036390; 0218036381; and 0218020431¹ (see id.; see also NYSCEF Doc. No. 09, affirmation of facts). Each respective summons directed defendant to appear for a hearing before the New York City Office of Administrative Trials and Hearings (OATH) (see NYSCEF Doc. No. 01, complaint; see also NYSCEF Doc. No. 09, summons).

Defendant failed to appear for each of the scheduled hearings, and OATH rendered decisions, on default, against defendant, imposing penalties totaling \$37,080.00 for defendant's violation of NYC Administrative Code § 24-244(b)

¹ According to the summons, defendant was charged with violating NYC Administrative Code §§ 24-244(b) for, among other things, "deploy[ing] a speaker, playing the jingle while not in motion in a no standing zone, in order to attract attention for this business" (see NYSCEF Doc. No. 09, summons).

[governing the use of sound reproduction devices] (see NYSCEF Doc. No. 09, OATH decisions and orders). OATH served each of the decisions on defendant, but, to date, defendant has failed to pay the penalty imposed (see NYSCEF Doc. No. 01, complaint; see also NYSCEF Doc. No. 09, affirmation of facts and OATH daily affidavits of mailing).

Thereafter, plaintiff commenced the instant action against defendant, and on June 16, 2025, served the summons and complaint upon defendant pursuant to Business Corporation Law § 306² (see NYSCEF Doc. No. 03, affirmation of service). Plaintiff also provided defendant with additional notice of this action in

²Section 306 of the Business Corporation Law provides, as relevant here: "(b)(1) Service of process on the secretary of state as agent of a domestic or authorized foreign corporation shall be made in the manner provided by clause (i) or (ii) of this subparagraph. . . . (i) Personally delivering to and leaving with the secretary of state or a deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such corporation shall be complete when the secretary of state is so served. The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such corporation, at the post office address, on file in the department of state, specified for the purpose. If a domestic or authorized foreign corporation has no such address on file in the department of state, the secretary of state shall so mail such copy, in the case of a domestic corporation, in care of any director named in its certificate of incorporation at the director's address stated therein or, in the case of an authorized foreign corporation, to such corporation at the address of its office within this state on file in the department. . . .

"(2) An additional service of the summons may be made pursuant to paragraph four of subdivision (f) of section thirty-two hundred fifteen of the civil practice law and rules" [providing that "[w]hen 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"].

accordance with CPLR § 3215 (g)(4) (see NYSCEF Doc. No. 04, affirmation of additional mailing).

Defendant has not appeared, answered, or otherwise moved against the complaint. Now, plaintiff moves, by notice of motion (seq. no. 01), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant.

ANALYSIS

When a defendant fails "to appear, plead or proceed to trial of an action reached and called for trial, or when the 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 . . . 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, plaintiff demonstrates its entitlement to entry of a default judgment against defendant by submitting, among other things, the affirmation of service (NYSCEF Doc. No. 03), the affirmation of additional mailing (NYSCEF Doc. No. 04), the

affirmation of facts of Tasminara Mitu, supervisor of the penalty processing unit for OATH (NYSCEF Doc. No. 09), the prior OATH hearing determinations (NYSCEF Doc. No. 09), defendant's default in answering (NYSCEF Doc. No. 05), and the amount due (NYSCEF Doc. No. 09 [OATH decisions, noting the cumulative penalty amount of \$37,080.00]) (see CPLR § 3215; see also Licurgo-Villar v Samouha, 227 AD3d 619, 620 [1st Dept 2024]; Guzetti v City of New York, 32 AD3d 234 [1st Dept 2006])). Accordingly, plaintiff has demonstrated entitlement to judgment by default in the total amount of \$37,080.00, together with statutory costs and disbursements.

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 01) for a default judgment is granted; it is further


ORDERED that the Clerk of Court is directed to enter judgment in favor of plaintiff CITY OF NEW YORK and against defendant PETE'S ICE CREAM TRUCK RENTAL CORP. in the amount of \$37,080.00, with costs and disbursements to be determined by the Clerk of Court upon submission of an appropriate bill of costs; 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 defendant, 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.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

<u>12/18/2025</u> DATE	 EMILY MORALES-MINERVA, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<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