

**Progressive Cas. Ins. Co. v Yousha Med. Wellness
PLLC**

2025 NY Slip Op 35524(U)

March 13, 2025

Supreme Court, Nassau County

Docket Number: Index No. 610685/2024

Judge: Randy Sue Marber

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER**
JUSTICE

TRIAL/IAS PART 2

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PROGRESSIVE CASUALTY INSURANCE COMPANY,
PROGRESSIVE ADVANCED INSURANCE COMPANY,
PROGRESSIVE DIRECT INSURANCE COMPANY,
PROGRESSIVE GARDEN STATE INSURANCE COMPANY,
PROGRESSIVE MAX INSURANCE COMPANY,
PROGRESSIVE NORTHWESTERN INSURANCE COMPANY,
PROGRESSIVE SPECIALTY INSURANCE COMPANY
and UNITED FINANCIAL CASUALTY COMPANY,

Index No.: 610685/24

Motion Sequence...01

Motion Date...12/9/24

Plaintiffs,

XXX

-against-

YOUSHA MEDICAL WELLNESS PLLC,

Defendant.
----- X

Papers Submitted:

Notice of Motion.....x

Upon the foregoing papers, the unopposed motion by the Plaintiffs, PROGRESSIVE CASUALTY INSURANCE COMPANY, PROGRESSIVE ADVANCED INSURANCE COMPANY, PROGRESSIVE DIRECT INSURANCE COMPANY, PROGRESSIVE GARDEN STATE INSURANCE COMPANY, PROGRESSIVE MAX INSURANCE COMPANY, PROGRESSIVE NORTHWESTERN INSURANCE COMPANY, PROGRESSIVE SPECIALTY INSURANCE COMPANY and UNITED FINANCIAL CASUALTY COMPANY ("PROGRESSIVE"), seeking an Order, pursuant to CPLR § 3215, granting a default judgment in their favor as against the

Defendant, YOUSHA MEDICAL WELLNESS PLLC (“YOUSHA”), is decided as provided herein.

The Complaint seeks a declaration pursuant to CPLR § 3001 that PROGRESSIVE has no duty to provide coverage for any claims made by or on behalf of the Defendant, YOUSHA, based on the Defendant’s failure and/or refusal to appear for an Examination Under Oath (“EUO”) and the failure to respond to requests for additional verification to assist the Plaintiffs in determining the amounts due and payable, which is a condition precedent to coverage. Furthermore, the Plaintiffs provide the EUO Requests sent to the Defendant, YOUSHA, regarding the claims referenced in the Complaint at which the Defendant failed to appear (*See* EUO Requests, annexed to Motion as Exhibit “C”).

The Plaintiffs commenced this action by the electronic filing of a Summons and Complaint on or about June 19, 2024 (*See* Summons and Complaint, annexed to Motion as Exhibit “A”). The Plaintiffs submit proof that service of the Summons and Complaint was effectuated upon the Defendant, YOUSHA, *via* the Secretary of State pursuant to Business Corporation Law (“BCL”) § 306 on June 27, 2024 (*See* Affidavit of Service, annexed to Motion as Exhibit “B”). The Plaintiffs also submit proof that an additional copy of the Summons and Complaint was mailed to the Defendant, YOUSHA, pursuant to CPLR § 3215(g)(4)(i) and (ii) on October 22, 2024 (*Id.*).

Pursuant to CPLR § 3215, a plaintiff may move for a default judgment against a defendant who fails to answer or otherwise appear in the action within one year of the default. Pursuant to CPLR § 3215(f), the movant must provide: (i) proof of service

of the summons and complaint; (ii) an affidavit by the party setting forth the facts constituting the claim; (iii) proof of the default and/or amount due.

Where a defendant is a domestic or authorized foreign corporation that was served pursuant to Business Corporation Law (“BCL”) § 306(b), CPLR § 3215(g)(4)(i) and (ii) requires that an affidavit be submitted demonstrating that the defaulting defendant was provided with additional notice of the summons and complaint and informed that service was originally effectuated pursuant to BCL § 306. Such additional mailing must be made by first class mail upon the defaulting defendant-corporation at least twenty (20) days before the entry of judgment.

Here, the Plaintiffs’ motion has been timely filed within one year of the default. The Plaintiffs submitted proof that the Defendant, YOUSHA, was duly served with the Summons and Verified Complaint pursuant to both the CPLR and BCL. Since the Complaint was duly verified by the Plaintiffs’ representative, Andrew Serynek, the Verified Complaint appropriately serves as sufficient proof of the facts constituting the claim pursuant to CPLR § 3215(f).

It appears from a review of the documentation presented that all necessary parties have been duly served with a notice of this application and more than thirty (30) days has elapsed since completion of service. Thus, the Defendant is in default for failing to answer or otherwise appear in this action.

Accordingly, it is hereby

ORDERED, that the unopposed motion by the Plaintiffs, PROGRESSIVE CASUALTY INSURANCE COMPANY, PROGRESSIVE ADVANCED INSURANCE COMPANY, PROGRESSIVE DIRECT INSURANCE COMPANY, PROGRESSIVE

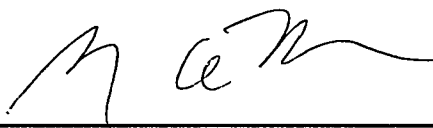
GARDEN STATE INSURANCE COMPANY, PROGRESSIVE MAX INSURANCE COMPANY, PROGRESSIVE NORTHWESTERN INSURANCE COMPANY, PROGRESSIVE SPECIALTY INSURANCE COMPANY and UNITED FINANCIAL CASUALTY COMPANY, seeking an Order, pursuant to CPLR § 3215, granting a default judgment in their favor as against the Defendant, YOUSHA MEDICAL WELLNESS PLLC, is **GRANTED**; and it is further

ORDERED, that the Plaintiffs, PROGRESSIVE CASUALTY INSURANCE COMPANY, PROGRESSIVE ADVANCED INSURANCE COMPANY, PROGRESSIVE DIRECT INSURANCE COMPANY, PROGRESSIVE GARDEN STATE INSURANCE COMPANY, PROGRESSIVE MAX INSURANCE COMPANY, PROGRESSIVE NORTHWESTERN INSURANCE COMPANY, PROGRESSIVE SPECIALTY INSURANCE COMPANY and UNITED FINANCIAL CASUALTY COMPANY, are under no obligation or duty to pay any claims made or submitted by, or on behalf of, the within defaulting Defendant, YOUSHA MEDICAL WELLNESS PLLC, as referenced in the Complaint; and it is further

ORDERED, that counsel for the Plaintiffs shall serve a copy of this Order upon the within Defaulting Defendant at its last known address by certified mail, return receipt requested, **AND** by regular mail, within twenty (20) days of the date of entry of this Order. **PROOF OF SERVICE MUST BE FILED WITH THE COURT.**

This constitutes the decision and Order of this Court.

DATED: Mineola, New York
March 13, 2025


HON. RANDY SUE MAR...
XXX

ENTERED

Mar 13 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE