

**Marachilian v City of New York**

2026 NY Slip Op 30054(U)

January 9, 2026

Supreme Court, New York County

Docket Number: Index No. 157281/2023

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

-----X

INDEX NO. 157281/2023

HARITON MARACHILIAN,

MOTION DATE 07/31/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

CITY OF NEW YORK, FORMER DEPUTY INSPECTOR
JAMES KOBEL, INDIVIDUALLY AND IN HIS
PROFESSIONAL CAPACITY

DECISION + ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28

were read on this motion to/for DISMISS

Upon the foregoing documents, it is

In this proceeding, defendants the City of New York ("City") and James Kobel ("Kobel") move for an Order pursuant to CPLR 3215(c) dismissing the Complaint as abandoned due to plaintiff failing to take proceedings for judgment within one year after defendants' default.

Plaintiff cross-moves for an Order pursuant to CPLR 3215 for default judgment against defendants, or in the alternative, an Order directing defendants to respond to the Complaint.

In sum and substance, plaintiff, a former Captain at the New York City Police Department ("NYPD"), alleges race discrimination, hostile work environment, and retaliation under 42 U.S.C. § 1983, 42 U.S.C. § 1981, the New York State Human Rights Law, and the New York City Human Rights Law. This action was commenced by the filing of a Summons and Complaint on June 19, 2023 (see NYSCEF Doc. No. 1). The Summons and Complaint was served upon the City on October 3, 2023, and the corresponding Affidavit of Service was filed with the Court on November 13, 2023 (see NYSCEF Doc. No. 2). On November 8, 2023,

defendant Kobel was served with the Summons and Complaint, and the corresponding Affidavit of Service was filed with the Court on November 13, 2023 (*id.*). To date, defendants have not responded to the Complaint.

In support of the motion, defendants argue the Complaint should be dismissed pursuant to CPLR 3215(c) because plaintiff did not seek a default judgment against defendants within one year of defendants' failure to respond to the Complaint, and as such, plaintiff abandoned his Complaint. Defendants note that the parties stipulated to extend defendants' time to respond to the Complaint until April 15, 2024 (*see* NYSCEF Doc. No. 4), however, more than year has elapsed since April 15, 2024, and defendants have still not answered. Notwithstanding this, defendants argue that plaintiff has not sought a default against defendants. Thus, defendants contend that as plaintiff as failed to timely move for a default judgment, the Complaint must be dismissed as abandoned.

In addition, defendants argue that plaintiff is also unable to provide a reasonable excuse for why he has failed to move for a default judgment and why his Complaint should not be dismissed. Defendants also assert that plaintiff cannot demonstrate that his causes of action are potentially meritorious as there is no Verified Complaint or Affidavit of Merit filed.

In support of plaintiff's cross-motion, and in opposition to defendants' motion, plaintiff argues that after defendants were served with the Summons and Complaint, prior counsel from the New York City Law Department, ACC Rodiana Katsaros, contacted plaintiff numerous times by phone and email requesting extensions to file an Answer. Plaintiff states that via email on February 28, 2024, Ms. Katsaros explained she was having a medical procedure and needed more time. Plaintiff notes that each extension was consented to and Ms. Katsaros would prepare and file the extensions. Plaintiff also notes that during phone conversations between counsel,

among other things discussed, was the difficulty the Law Department had in taking the time needed to ascertain whether they would represent the individual defendant Kobel. Additionally, plaintiff contends that on April 11, 2024, counsel received another email from Ms. Katsaros asking to extend the time to file an answer until June 6, 2024, which was also agreed to. However, plaintiff notes, Ms. Katsaros failed to execute and file a stipulation, and unfortunately, due to law office failure without the stipulation, counsel failed to calendar the answer due date.

Moreover, plaintiff argues that during the months after, plaintiff who had been arrested on December 21, 2023, in New Jersey was held in detention since, and plaintiff's counsel had no contact with plaintiff whose cell phone was disconnected which made it difficult for plaintiff's counsel to contact him. On April 16, 2025, plaintiff states that counsel received an email from another Assistant Corporation Counsel, Hayley Bronner, who had taken over the case due to Ms. Katsaros' medical leave, who asked if plaintiff would discontinue the case. Plaintiff argues that counsel told Ms. Bronner that she would need another week to reach plaintiff, however, Ms. Bronner did not reply and prematurely filed the instant motion to dismiss on April 18, 2025.

In addition, plaintiff's counsel specifically attest that her firm is sympathetic towards the Law Department and she/he has heard countless times that they are understaffed and overworked, so, she did not think to move for default judgment especially in this case where there was communication with counsel and numerous extensions given due to Ms. Katsaros' medical issues.

Similarly, plaintiff argues that the City makes no argument that the process of service failed or was untimely and makes no excuse for failing to respond to the Complaint. Plaintiff argues counsel did not hear from him until May 19, 2025, however, now that counsel has, plaintiff desires to continue the prosecution of this lawsuit. Plaintiff's counsel also argues that

there is no prejudice to the defendants if their motion is denied. Plaintiff also states plaintiff's counsel is also dealing with a medical condition due to recovering from a surgery that occurred in June.

In further support of their motion to dismiss, and in opposition to plaintiff's cross-motion, defendants argue that plaintiff's cross-motion is untimely, and the Complaint should be dismissed. Defendants also argue that plaintiff's incarceration since December 2023 is not a reasonable excuse, particularly here where he was represented by counsel. Defendants contend that after three adjournments, plaintiff's opposition was due on or before July 23, 2025 (*see* NYSCEF Doc. No. 13). However, defendants argue that plaintiff did not file his opposition until July 28, 2025, five days after it was due. Furthermore, defendants assert that plaintiff offers no excuse for his untimely opposition, even after three prior adjournments. As such, defendants argue that plaintiff's opposition should not be considered by the Court, and the Court should consider the defendants' motion unopposed and dismiss the Complaint.

Additionally, defendants argue that even if defendants' moving papers were premature when filed, plaintiff did not seek a default judgment within one year of defendants' default, assuming the date of default was June 1, 2024. Moreover, defendants assert that plaintiff has not demonstrated sufficient cause as to why his Complaint should not be dismissed as the several excuses offered by plaintiff are not reasonable or valid excuse. First, defendants argue that plaintiff's excuse of his incarceration in New Jersey since December 21, 2023, is not a reasonable excuse, particularly here where plaintiff has been represented by counsel for the entirety of the of the action. Notably, defendants state that plaintiff has been actively litigating another case against the City, where he is represented by different counsel (*see* NYSCEF Doc. No. 23). Defendants also contend that plaintiff's counsel claim that she "had no contact with

plaintiff after his December 2023 arrest” (*see* NYSCEF Doc. No. 15, ¶ 9), but does not say if she even attempted to contact him until after May 19, 2025 (*id.* at ¶ 17). As such, defendant also asserts that plaintiff’s counsel’s difficulties in communicating with plaintiff is not a reasonable excuse.

Next, defendant highlights that plaintiff offers “law office failure” as an excuse for why he failed to move within one year, because the stipulation extending defendants’ time to respond to the Complaint to June 1, 2024 was not filed on the docket. But they contend this is not a reasonable excuse because none of the several stipulations regarding extensions to respond to the Complaint, acknowledged by plaintiff’s counsel were filed on the docket. Thus, defendants aver these vague allegations of law office failure are insufficient to demonstrate a reasonable excuse

As to plaintiff’s counsel’s “medical condition and a protracted recovery from surgery” in June 2025, defendants argue this also does not excuse plaintiff’s delay. Defendants argue this was already more than one year after the date plaintiff claims defendants defaulted—June 1, 2025. Accordingly, defendants argue plaintiff’s counsel’s June 4, 2025, surgery is not a valid excuse for plaintiff’s failure to move for default before June 1, 2025, prior to her surgery. In turn, defendants attest even if plaintiff demonstrated a reasonable excuse for his delay, he failed to demonstrate his claims are potentially meritorious as plaintiff has not filed a verified complaint or affidavit of merit.

#### ANALYSIS

CPLR 3215(c) provides if plaintiff “fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed.” “[A] plaintiff opposing dismissal is

required “to proffer a reasonable excuse for the delay in timely moving for a default judgment and to demonstrate that the cause of action is potentially meritorious” (*Deutsche Bank Nat'l Tr. Co. v. Cruz*, 173 AD3d 610, 610 [1<sup>st</sup> Dept 2019] [internal citations omitted]).

Here, plaintiff affirmed that he never intended to abandon the action. Counsel was in communication with each other and plaintiff's counsel had difficulty contacting plaintiff since he was incarcerated. Further, plaintiff's counsel repeatedly granted extension of time to defendants in consideration of the needs of counsel handling the case. Additionally, the parties were in communication about maybe resolving the action by discontinuance, however defendants filed the instant motion without hearing back from plaintiff (*see* NYSCEF Doc. No. 17). As such, plaintiff established sufficient cause not to dismiss the case as abandoned (*State Farm Mut. Auto. Ins. Co. v. A. Dowd Medical, P.C.*, 2024 WL 2864293, at \*1 (N.Y. Sup. Ct. June 05, 2024) [Holding “plaintiffs have shown sufficient cause why the complaint should not be dismissed as abandoned. Plaintiffs affirm that they never intended to abandon this action and that they were attempting to resolve it by a stipulation of discontinuance, but were unable to reach an agreement with defendant”]). “Moreover, defendants did not demonstrate they have been prejudiced by the delay in prosecution of this action” (*Hinds v. 2461 Realty Corp.*, 169 AD2d 629, 632 [1<sup>st</sup> Dept 1991]).

In turn, although defendants failed to file an answer, given the negotiations between the parties, and the personal issues faced by prior counsel handling the matter, it would be inappropriate to grant plaintiff a default judgment. Instead, it is warranted to direct defendants to file an answer at this time.


Accordingly, it is hereby

**ORDERED**, defendants' motion to dismiss is denied; and it is further

ORDERED, plaintiff's cross-motion is granted to the extent that defendants are directed to respond to the Complaint within thirty days of the date of this Order.

This constitutes the Decision of the Court.

HON. ARIEL D. CHESLER  
J.S.C.



1/9/2026  
DATE

ARIEL D. CHESLER, J.S.C.

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