

Ramos v New York City Hous. Auth.

2026 NY Slip Op 30075(U)

January 6, 2026

Supreme Court, New York County

Docket Number: Index No. 155103/2024

Judge: James d'Auguste

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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. James d'Auguste

PART 55

Justice

-----X

RAMOS JR., RICKY

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

-----X

INDEX NO. 155103/2024

MOTION DATE 07/22/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

BACKGROUND

On August 3, 2023, Plaintiff served his notice of claim in this personal injury matter, alleging an injury that occurred on May 15, 2023. NYSCEF Doc. No. 5. On or about August 10, 2023, Defendant served Plaintiff's then-counsel with a first notice of a 50-h hearing for October 3, 2023. *Id.* Doc. No. 6. Defendant served Plaintiff's then-counsel with a revised notice of a 50-h hearing, set for October 17, 2023. *Id.* Doc. No. 7. Plaintiff argues that he and his counsel may not have received the revised notice. *Id.* Doc. No. 38 ¶¶ 18-19.

On August 21, 2024, Defendant filed a motion to dismiss the case on the grounds that Plaintiff filed the summons and complaint without first attending a 50-h hearing. *See* NYSCEF Doc. Nos. 3-11. Before the return date of the motion, Plaintiff's counsel sought from Defendant's counsel an extension of time to respond to the motion but, despite negotiations

between the counsel for the parties, they could not agree on the terms of a stipulation. *Id.* Doc. No. 4 ¶¶ 23-30. Plaintiff's counsel then, through law office error, defaulted on the motion. On September 19, 2024, a week after the return date, Plaintiff wrote an e-mail to the Court requesting the motion be put back on the calendar. *Id.* Doc. No. 13. The Court granted the motion on default on September 23, 2024. *Id.* Doc. No. 14.

On March 19, 2024, Defendant's counsel telephoned who he thought was Plaintiff's counsel to attempt to schedule Plaintiff's 50-h hearing, during which telephone conversation Defendant's counsel learned that that the lawyer was no longer representing Plaintiff in this matter. *Id.* Doc. No. 30 ¶ 12. On that same day, Defendant's counsel sent an email to Plaintiff's former counsel stating: "We have been attempting to schedule your client's statutory 50-H hearing. My deposition clerk just informed us that your firm is no longer representing Mr. Ramos. I would just ask you to please note that NYCHA does not waive its right to the statutory hearing of plaintiff. I would appreciate if you would pass that on to your client directly or any new counsel that may represent him." *Id.* Doc. No. 8. Later that same day, Defendant's counsel received a responsive email stating: "[M]y firm's representation of Mr. Ramos ended over a month ago. Feel free to reach out to Mr. Ramos directly to schedule his statutory hearing. If we hear from another attorney on his behalf, I will be happy to provide your information to them." *Id.* 15. On March 19, 2024, Defendant's counsel sent a letter to Plaintiff directly at his home address (and never returned by the post office) asking him to reschedule his 50-h hearing. *Id.* Doc. No. 4 ¶ 16; Doc. No. 9. However, Mr. Ramos denies receiving any letters from defense counsel and no affirmation of service of the letter has been presented. *Id.* Doc. No. 28 ¶¶ 7-8.

For the next two and one-half months, Defendant did not receive any request to reschedule the 50-h hearing from Plaintiff. *Id.* ¶ 17. On June 3, 2024, with the statute of limitations on the action approaching, Plaintiff’s new counsel initiated this action by filing a summons and complaint. *Id.* Doc. No. 10. To date, Plaintiff still has not appeared for a 50-h hearing. *Id.* Doc. No. 4 ¶ 19.

On July 22, 2025, Plaintiff filed the instant motion to vacate the default. *Id.* Doc. Nos. 18-28.

ANALYSIS

It is well settled that public policy favors resolution of cases on the merits. *E.g., Chelli v. Kelly Group, P.C.*, 63 A.D.3d 632 (1st Dep’t 2009). “A party seeking to vacate a default in opposing a motion must demonstrate both a reasonable excuse for the default and a potentially meritorious opposition to the motion (see CPLR 5015(a)(1)). The determination of what constitutes a reasonable excuse lies within the sound discretion of the trial court.” *Garcia v. City of New York*, 189 A.D.3d 788, 789 (2d Dep’t 2020).

Here, Plaintiff’s counsel admits its law office failure to adjourn Defendant’s motion to dismiss. Doc. No. 19 ¶ 23. However, the law office oversight was not one of willfulness or general disregard. Indeed, Plaintiff’s lawyer, in order to avoid seeking judicial intervention, had been negotiating with Defendant’s counsel a continuance of the return date when the former “dropped the ball” and, upon realizing the error just a week after the return date, promptly sought to put the motion back on the calendar. *Id.* ¶¶ 16-30. *Xiao Jia Lin v. Engleton*, 121 A.D.3d 483 (1st Dep’t 2014) (“The record shows that the failure of defendant's counsel to oppose the motion was isolated and unintentional with no evidence of willful neglect.”). Plaintiff’s lawyer affirms

that he has “practiced in New York State Courts for over 24 years with no mishap of this sort” NYSCEF Doc. No. 19 ¶ 26.

Moreover, Defendant does not argue in its briefing that it has suffered material prejudice, nor can the Court discern significant prejudice from the submissions. Defendant knew about the commencement of the action and had unimpeded ability to conduct an investigation. Nor does this appear to be a case where a plaintiff sought to gain some tactical advantage by serving the summons and complaint prior to being examined. There were no known demands for discovery, nor, for that matter, was any action taken by Plaintiff which prejudiced Defendant’s defense of the action on the merits.

In light of the foregoing, the Court, in its discretion, finds a reasonable excuse for the default.

Regarding a potentially meritorious opposition to the motion to dismiss, Plaintiff makes several technical arguments, including the assertion that the notice of entry of default order was defective. This argument is hardly compelling since both the default order and the notice of entry were uploaded to NYSCEF, which provides to all counsel and parties not only access to the documents but also notifications thereof.

The papers of both parties present a record of events that is less than optimal and does not permit the Court to decide whether the action should be dismissed on the grounds previously asserted by Defendant. However, the record is sufficient to establish that Plaintiff may have a *potentially* meritorious defense to a dismissal motion.

Defendant’s counsel asserts, without evidentiary support, that the original 50-h notice was superseded by a revised 50-h notice as a result of Plaintiff’s counsel’s request for a

continuance. *Id.* Doc. No. 30 ¶ 8. By contrast, Plaintiff’s current counsel argues that “the initial date for the 50-hearing [*sic*] was ‘busted’ as a result of the scheduling of a new date by new defense counsel [and] there’s no evidence that information was ever imparted to plaintiff or his counsel.” *Id.* Doc. No. 38 ¶ 14. In support of its argument, Plaintiff points to: (1) exhibits showing that Defendant’s counsel had indeed changed (*id.* ¶ 16); and (2) a lack of affirmation of service for the second notice. *Id.* ¶ 18. Plaintiff also contends that Defendant did nothing to pursue the 50-h hearing for more than five months, until a third law firm for Defendant reached out to Plaintiff’s former counsel and then mailed a letter to Mr. Ramos that he affirms he did not receive and for which no affirmation of service has been presented. *Id.* Doc. Nos. ¶¶ 9, 28 ¶¶ 7-8.

This does not appear to be a case where a defendant assiduously pursued a 50-h hearing and the plaintiff assiduously sought to avoid it. Rather, as best can be discerned from the limited record, a certain level of confusion arose from, among other things, Defendant’s multiple changes of counsel, multiple 50-h notices, and Plaintiff’s change of counsel. As Plaintiff’s arguments are supported by some evidence, the Court, in its discretion, finds that he has, under the present circumstances, established that he may have a potentially meritorious defense to a dismissal motion. *E.g., Ramos v. New York City Housing Auth.*, 256 A.D.2d 195, 195-96, 684 N.Y.S.2d 2, 3 (1st Dep’t 1998); *Ruiz v. New York City Housing Auth.*, 216 A.D.2d 258, 629 N.Y.S.2d 222 (1st Dep’t 1995).

Accordingly, the default will be lifted. However, given the limited state of the record, the Court grants leave for Defendant, should it wish, to file a renewed motion to dismiss with, it is to be hoped, a more detailed and complete record of the relevant events.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that Plaintiff's motion (Motion Sequence No. 002) is granted; and it is further

ORDERED that, should Defendant wish to move to dismiss the complaint in this action, Defendant shall file said motion to dismiss within 45 days after service of a copy of this decision and order with notice of entry.¹

1/6/2026
DATE



James d'Auguste, J.S.C.

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

¹ The Court appreciates the invaluable assistance of court clerk Andrew J. Lorin, Esq., in connection with this matter.