

Lopez v City of New York
2026 NY Slip Op 31457(U)
March 12, 2026
Supreme Court, New York County
Docket Number: Index No. 152473/2025
Judge: Gerald Lebovits
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

-----X

LINDA LOPEZ,

Plaintiff,

- v -

THE CITY OF NEW YORK and NEW YORK CITY
HOUSING AUTHORITY,

Defendants.

-----X

INDEX NO. 152473/2025

MOTION DATE 01/02/2026

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to DISMISS.

Law Office of Michael Benenati PC, Queens, NY (Michael P. Benenati of counsel), for plaintiff.
Hammill Croutier Pender Koehler Lawless & Moulton, P.C., Garden City, NY (Patricia Donohoe of counsel), for defendant New York City Housing Authority.

Gerald Lebovits, J.:

This action arises from a fall alleged to have been suffered by plaintiff, Linda Lopez, on a staircase in an apartment building owned by defendant New York City Housing Authority (NYCHA). NYCHA moves to dismiss under CPLR 3211 (a) (7). It argues that dismissal is required because Lopez failed to appear for an examination under oath under General Municipal Law (GML) § 50-h and Public Housing Law § 157 (2), a condition precedent to suit. The motion is denied, on condition that Lopez appear before defendants for an examination under oath on or before April 3, 2026.

BACKGROUND

In February 2024, Lopez timely served a notice of claim on NYCHA and co-defendant City of New York, alleging that she had fallen and been injured on a staircase in a NYCHA building in December 2023. (*See* NYSCEF No. 9 [notice of claim].) In April 2024, NYCHA served Lopez’s counsel with a demand that she appear in June 2024 for an examination under oath under Public Housing Law § 157.¹ (*See* NYSCEF No. 10 [examination notice].) It is

¹ Public Housing Law § 157 incorporates the examination-under-oath requirements of GML § 50-h. For convenience, this decision refers only to § 50-h examinations, rather than § 157 (2)/§ 50-h examinations.

undisputed that the scheduled June 2024 examination was adjourned without date at the request of Lopez's then-counsel. (See NYSCEF No. 8 at ¶ 8.)

In September 2024, NYCHA and Lopez's current counsel agreed that the examination under oath would be adjourned to October 31, 2024. (See NYSCEF No. 11 at 1-2 [email correspondence between counsel].) On October 31, Lopez appeared for her (virtual) examination while in a taxi on the way to a physical-therapy appointment. (See NYSCEF No. 17 at ¶ 5 [affirmation of Lopez's counsel]; NYSCEF No. 12 at 1 [letter from NYCHA's counsel to Lopez's counsel].) The examination was then adjourned, again without date. (See NYSCEF No. 12 at 1.)

In February 2025, Lopez brought this action, asserting negligence claims against both NYCHA and the City. (See NYSCEF No. 1 at 3-4.) In May 2025, NYCHA answered, asserting the affirmative defense of failure to comply with the statutory condition that Lopez appear for examination under oath before bringing suit. (See NYSCEF No. 5 at 4.)

The same day as NYCHA filed its answer, counsel for NYCHA also wrote to counsel for Lopez to (re)schedule her examination. (NYSCEF No. 12.) In August 2025, counsel for NYCHA wrote a second (re)scheduling letter to counsel for Lopez. (NYSCEF No. 13.) The examination was later rescheduled for October 20, 2025. (See NYSCEF No. 8 at ¶ 15 [affirmation of NYCHA's counsel]; NYSCEF No. 17 at ¶ 4 [affirmation of Lopez's counsel].) Lopez did not appear for the October 20 examination; her counsel represents that this nonappearance was the result of a calendaring error by counsel. (NYSCEF No. 17 at ¶¶ 4-5.)

In November 2025, NYCHA brought this motion to dismiss. (See NYSCEF No. 7 [notice of motion].)

DISCUSSION

Ordinarily, “an action may not be commenced against a New York municipality unless the plaintiff has complied with the municipality’s timely demand for a General Municipal Law § 50-h hearing”; and the failure to appear for that hearing requires dismissal. (*Belton v Liberty Lines Transit, Inc.*, 3 AD3d 334, 334 [1st Dept 2004]; accord *Misek-Falkoff v Metropolitan Transit Auth.*, 44 AD3d 629, 629 [2d Dept 2007] [affirming dismissal of the complaint for failure to comply with GML § 50-h].) However, when the date for a § 50-h examination was “postponed indefinitely,” and defendant “never attempted to secure its right thereto by serving plaintiff with another demand therefor,” a motion to dismiss on this ground should be denied. (*Ruiz v New York City Housing Auth.*, 216 AD2d 258, 258 [1st Dept 1995]; accord *Anderson v Liberty Lines Transit, Inc.*, 140 AD3d 479, 479 [1st Dept 2016] [same]; *Vargas v City of Yonkers*, 65 AD3d 585, 586 [2d Dept 2009] [same]; *Belton*, 3 AD3d at 334 [same].)

In this case, admittedly, NYCHA did renew its demand that Lopez appear for a § 50-h examination, once the first examination date in June 2024 was adjourned. At the same time, though, when the examination was again adjourned without having gone forward on October 31, 2024, no new examination date was set. Nor did NYCHA again request that Lopez appear for a § 50-h hearing before Lopez brought this action in late-February 2025 (NYSCEF No. 1)—five

weeks before expiration of the year-and-90-day statute of limitations (*see* GML § 50-*i*). Indeed, the timing of NYCHA’s renewed request to schedule Lopez’s § 50-h examination (*i.e.*, made on the same date that NYCHA filed its answer in this action) strongly suggests that it was Lopez’s commencement of this action that prodded NYCHA again to seek her examination. In these circumstances, it is immaterial that it was Lopez’s second § 50-h examination date that was adjourned indefinitely without a renewed demand for her appearance, rather than the first date. Lopez’s case still comes within the rule of *Ruiz* and *Belton*.

This court’s conclusion on this point is not altered by the fact that Lopez also failed to appear on the third examination date in October 2025, six months after she filed her complaint in this action. That failure to appear does not strengthen NYCHA’s stated ground for dismissal—that Lopez was required to (but did not) appear for a § 50-h examination *before* bringing suit. (*See* NYSCEF No. 8 at ¶¶ 19-20.) This court is also unpersuaded that the October 2025 nonappearance evinces a larger “pattern of dilatory behavior” by Lopez or her counsel warranting dismissal. (*Ward v New York City Health & Hosps. Corp.*, 82 AD3d 471, 472 [1st Dept 2011] [affirming denial of motion to vacate dismissal, nearly a decade after the underlying accident, when plaintiffs made three motions to file a late notice of claim and missed 10 appointments for a § 50-h examination].)

Moreover, no discovery conference has been held in this action, which remains in its early stages; and NYCHA does not contend that it has been prejudiced in its ability to defend the action by Lopez’s nonappearance to date at a § 50-h examination. Nor does NYCHA contend that the delay has led to the loss of evidence or changed conditions at the site of the fall identified in Lopez’s notice of claim.

At the same time, this court recognizes that § 50-h examinations serve an important purpose in enabling municipalities to investigate promptly the facts underlying claimed accidents, thereby facilitating settlement. (*See Ramirez v New York City Housing Auth.*, 243 AD3d 702, 702-703 [2d Dept 2025].) Lopez does not dispute that she is required to appear for her examination. And she represents that she is willing and able to “appear [for examination] on any mutually convenient date within 10-20 days.” (NYSCEF No. 17 at ¶ 14 [bolding omitted].)

This court concludes, therefore, that the appropriate course is to deny NYCHA’s motion, conditional on Lopez appearing for her § 50-h examination within three weeks—*i.e.*, on or before April 3, 2026. If Lopez does not appear by that date, absent exigent circumstances or a request for adjournment by defendants, the action will be dismissed on the written request of NYCHA (to be made by e-filing on NYSCEF and email to SFC-Part7-Clerk@nycourts.gov). The parties are directed to meet and confer on a mutually convenient date and means for Lopez’s examination.

Accordingly, it is

ORDERED that NYCHA's motion to dismiss is denied, conditioned on Lopez's appearing for her GML § 50-h examination on or before April 3, 2026, as set forth above.

3/12/2026

DATE


HON. GERALD LEBOVITS
J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE