

**En Od Capital v Counseling Off. of Dr. Debbie
Ritterbush, PhD**

2026 NY Slip Op 31624(U)

March 27, 2026

Supreme Court, Kings County

Docket Number: Index No. 510518/2025

Judge: Wavny Toussaint

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 27th day of March, 2026.

P R E S E N T :
HON. WAVNY TOUSSAINT,
Justice.

EN OD CAPITAL,

Plaintiff,

Index No.: 510518/2025

- against -

DECISION AND ORDER

THE COUNSELING OFFICE OF DR. DEBBIE RITTERBUSH, PHD D/B/A STATE MOVING-ON COUNSELING, TRAUMA CENTER, & TELEPRACTICE and DEBBIE ANN RITTERBUSH,

Defendants.

The following papers numbered 1 to read herein:
Notice of Motion/Order to Show Cause/
and Affidavits (Affirmations) Annexed
Cross Motion and Affidavits (Affirmation) Annexed
Answers/Opposing Affidavits (Affirmations)
Reply Affidavits (Affirmations)
Affidavit (Affirmation)
Other Papers

Papers Numbered
12-13, 16; 19-21
23; 29

Upon the forgoing papers, defendants The Counseling Office of Dr. Debbie Ritterbush, PhD d/b/a Start Moving-On Counseling, Trauma Center & Telepractice, and Debbie Ritterbush, move (Seq. 01) for an order, pursuant to CPLR §§ 5015 and 2005, vacating the default judgment against defendants and pursuant to CPLR 3012(d), compelling plaintiff En Od Capital to accept late service of defendants' answer nunc pro tunc. Defendants further move (Seq. 02) for an order, pursuant to CPLR §§ 2304 and 3013,

to quash a subpoena duces tecum issued by plaintiff to non-party JPMorgan Chase Bank, N.A. concerning defendants bank account(s). Plaintiff opposes both motions.

BACKGROUND

Plaintiff and defendants entered into an agreement for plaintiff to purchase all rights to company defendant's future receivables. The agreement had a face value of \$20,000 with future payments totaling \$29,980.00. Defendant Dr. Ritterbush agreed to guarantee any and all amounts owed by company defendant. After making payments totaling \$7,068, the company defendant defaulted leaving a balance owed in the amount of \$22,912. On March 28, 2025, plaintiff filed a Summons and Complaint. After defendants failed to file an Answer, plaintiff obtained a default judgment against defendants on May 9, 2025. On June 2, 2025, defendants filed a motion to vacate the prior default judgment.

THE PARTIES' CONTENTIONS

Defendants' Default Judgment Motion

Defendants assert that the default judgment should be vacated because they had a reasonable excuse for failing to answer the complaint, the delay was not willful, defendants have a meritorious defense, and plaintiff has not been prejudiced. Defendants contend that they never received the Summons and Complaint. They refer to the tracking receipt to demonstrate that the documents were lost in transit and state that they only became aware of the action when funds were garnished from their bank account.

Additionally, defendants argue that they have a meritorious defense that requires plaintiff's judgment to be vacated. Specifically, they assert that no breach of the underlying

agreement occurred because they did not take any action that impeded or prevented plaintiff from receiving monies owed under the agreement.

In opposition, plaintiff argues it has established its entitlement to a default judgment by submitting proof of service of the Summons and Complaint, and that defendants have failed to demonstrate both a reasonable excuse for the default and a meritorious defense. Plaintiff contends that the documents were delivered to the address provided by defendants in the agreement on April 7, 2025, but defendants were not present to receive delivery and neglected to make arrangements to retrieve their mail. Furthermore, plaintiff asserts that the terms of the agreement preclude defendants from claiming they did not receive service unless they provided notice of a change of address. This notice, however, was never provided by defendants.

Plaintiff also argues that defendants have not articulated a meritorious defense and that the affirmative defenses raised are insufficient to establish one. According to plaintiff, defendants actively prevented plaintiff from collecting amounts due under the agreement, and, the guarantor failed to respond to plaintiff's attempts at communication.

Defendants' Motion to Quash the Subpoena Duces Tecum

Defendants argue that the subpoena should be quashed because the default judgment on which it is based resulted from improper service and is currently being challenged, rendering the subpoena premature. Defendants contend that, as a result, plaintiff lacks a lawful basis to pursue post-judgment enforcement. Plaintiff opposes the motion, arguing that Defendants' position rests on their assertion that the judgment should be vacated and merely reiterates the arguments it raised in opposition to defendants' motion to vacate.

DISCUSSION

Defendants' Default Judgment Motion

Pursuant to CPLR § 5015(a), a court has discretion to vacate a judgment if the moving party demonstrates a reasonable excuse and a meritorious defense (*Harris v City of New York*, 30 AD3d 461, 463-64 [2d Dept 2006]). To compel a party to accept an untimely answer, a party must demonstrate a reasonable excuse for the default and the existence of a potentially meritorious defense (CPLR § 3012(d); *U.S. Bank Nat. Ass'n v Barr*, 139 AD3d 937, 937 [2d Dept 2016]). The determination of what constitutes a reasonable excuse lies with the sound discretion of the Supreme Court (see *Belches v City of New York*, 191 AD3d 754, 754 [2d Dept 2021]).

As an initial matter, while service of process generally must comply with the methods prescribed by statute, New York courts have long recognized that parties may contractually agree to alternative methods of service (*Gilbert v Burnstine*, 255 NY 348, 354 [1931]). Such agreements are enforceable, provided service is effectuated in strict compliance with the agreed-upon terms. (*New Brunswick Theol. Seminary v Van Dyke*, 184 AD3d 176, 179 [2d Dept 2020]; see *Alfred E. Mann Living Tr. v ETIRC Aviation S.a.r.l.*, 78 AD3d 137, 142 [1st Dept 2010]). Where service is made in a manner not authorized by the parties' agreement, however, service is ineffective (cf. *New Brunswick Theol. Seminary*, 184 AD3d at 179; cf. *Alfred E. Mann Living Tr.*, 78 AD3d at 142).

In the instant action, the Court finds that defendants have established a reasonable excuse for their default. Although defendants do not dispute the validity of the agreement

or their consent to service by mail, the agreement expressly permits service by first-class or priority mail. The resolution of this motion to vacate the default judgment depends upon whether the plaintiff established compliance with the agreed-upon method of service (*New Brunswick Theol. Seminary*, 184 AD3d at 179). Here, plaintiff has failed to do so.

The Summons and Complaint was served by certified mail, which is not an authorized method under the agreement. Because plaintiff failed to strictly comply with the contractually prescribed method of service, service was not properly effectuated. Moreover, defendants submitted evidence demonstrating that they did not receive the Summons and Complaint, including a tracking receipt indicating that the mailing was not successfully delivered. Under these circumstances, the Court finds that defendants' failure to timely answer was not willful.

In addition, defendants have articulated a potentially meritorious defense by asserting, in their proposed answer, that that they did not breach the agreement because they did not take any action that impeded or prevented plaintiff from receiving payments under the agreement. At this stage, defendants are not required to establish the defense conclusively, but only to demonstrate it is not meritless, which they have done here (*Harris*, 30 AD3d at 465).

Defendants' Motion to Quash

CPLR § 3103(a) provides that a court may deny, limit, condition, or regulate the use of any disclosure device to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice. Further, CPLR § 2304 authorizes the court to quash or modify a subpoena that fails to comport with these standards. Here, the subpoena duces

tecum was issued in furtherance of post-judgment enforcement and is predicated upon the existence of a valid default judgment. As discussed above, the default judgment must be vacated. In the absence of a valid judgment, plaintiff lacks a lawful basis to pursue post-judgment discovery or enforcement.

CONCLUSION

Accordingly, it is hereby

ORDERED that defendants motion to vacate the default judgment against them and to compel plaintiff to accept late service of their answer nunc pro tunc is granted and the answer is deemed served; and it is further

ORDERED that defendants motion to quash the subpoena duces tecum issued by plaintiff to non-party JPMorgan Chase Bank, N.A is granted.

This constitutes the decision and order of the Court.

For Clerks use only

MG____
MD____
Motion Seq.

E N T E R



J.S.C.

Hon. Wavny Toussaint
J.S.C.