

Smith v Vanity Club Intl., Inc.
2026 NY Slip Op 31803(U)
April 24, 2026
Supreme Court, New York County
Docket Number: Index No. 659876/2025
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

ANNIE TAYLOR SMITH,

Plaintiff,

- v -

VANITY CLUB INTERNATIONAL, INC., CHARLES KOHN,
TIMOTHY O'MALLEY, RICHARD SCHLIERER

Defendant.

-----X

INDEX NO. 659876/2025

MOTION DATE 03/03/2026

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

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

Upon the foregoing documents, the motion is denied.

Background

This motion arises out of a dispute over membership in Vanity Club International, Inc. (“VCI”), a non-profit with a principal place of business in New York. Plaintiff was a member in VCI from 2015 until her (allegedly wrongful) expulsion in April of 2025. In January of 2025, VCI election results were announced, and Plaintiff here alleges that the election was not conducted in accordance with VCI bylaws. She commenced this proceeding in November of 2025, alleging to bring claims both in her individual capacity and derivatively on behalf of VCI. She pled claims for breach of fiduciary duty and violation of corporate bylaws related to the election, defamation related to a letter shared by the current VCI president, and corporate waste. Plaintiff also sought declaratory relief deeming the January 2025 election invalid. The first complaint neglected to mention the fact that Plaintiff had been expelled from VCI in April.

Defendants timely moved to dismiss the complaint. They raised the fact that Plaintiff's membership had been terminated for violating the bylaws, arguing that Plaintiff lacked derivative standing and that the claims also failed for various reasons. That motion was filed on February 10, 2026, and had a return date of February 27, 2026. According to counsel for Plaintiff, eight days after the motion was filed, he forwarded the papers to Plaintiff and asked her to review them. Counsel states that Plaintiff's response was sent to him on February 20th, with a further response sent to counsel on February 25th. No response to the motion to dismiss was filed by Plaintiff, nor was any request for an adjournment made. In an Order from this Court dated March 2nd, 2026, the motion to dismiss was granted. The March 2nd Order noted that even with the standard of a motion to dismiss whereby a plaintiff is afforded every favorable inference, here the Defendants had established prima facie entitlement to dismissal, and granted Defendant's motion for costs for responding to a frivolous action. On March 3rd, Plaintiff moved to vacate the default and to amend the complaint.

Discussion

Plaintiff Fails to Provide a Reasonable Excuse

As a general rule, a party seeking to vacate a default under CPLR § 5015(a)(1) "must demonstrate a reasonable excuse for its delay in appearing and answering the complaint and a meritorious defense to the action." *Eugene Di Lorenzo, Inc. v. A.C. Dutton Lumber Co.*, 67 N.Y.2d 138, 141 [1986]. Failure to demonstrate a reasonable excuse necessitates a denial of the motion to vacate, without reaching the issue of a meritorious defense. *Yang v. Knights Genesis Group*, 223 A.D.3d 639, 640 [1st Dept. 2024].

Here, the Court finds that there has been no reasonable excuse presented. In the papers, Plaintiff's counsel claims to have been unable to finish their response to the motion in time. But

it appears that counsel never sought an adjournment, either from the Court, Motion Support, or through stipulation with opposing counsel. Counsel for Plaintiff was clearly aware that they would not finish their response in time and failed to even attempt to seek an adjournment through the multiple avenues available to them. In oral argument held on April 24, 2026, counsel for Plaintiff noted the short time that elapsed between the motion's return date of February 27 and the decision and order on the motion issued March 2nd. Counsel offered as an excuse a surprise at the quick response and stated that he thought he would have more time to proffer a (late) response to the motion. While the Court is gratified to hear that its response to the motion to dismiss was faster than expected, such an excuse has no bearing on the decision to merely ignore a return date without even attempting to seek an adjournment.

Even If the Court Reached the Merits of Plaintiff's Complaint the Default Should Not Be Vacated

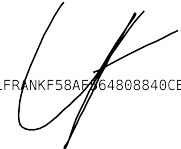
As stated above, with no showing of a reasonable excuse the Court should not reach the matter of the merits of Plaintiff's claims. But even if the excuses offered were reasonable, the Court still finds that vacatur would not be appropriate here. The March 2nd Order clearly stated that regardless of default, Defendants had met their burden on a motion to dismiss the complaint. The proposed amended complaint fares no better. In the proposed amended complaint, Plaintiff now seeks to add claims related to her April expulsion and challenges the January 2026 election as well as the January 2025 election. These claims fail for various reasons. For instance, Plaintiff pleads a claim for defamation related to statements made in a letter circulated to the VCI members by the VCI president. These statements fail to rise to the level of per se defamation, some because they are not false (such as the statement that Plaintiff threatened to contact the New York Attorney General's Office)¹ and some because they are opinion (such as the statement

¹ Defendants have provided a transcript and screenshot of the YouTube video in which Plaintiff explicitly threatened to contact the NYAG's office.

that the President finds Plaintiff’s actions “outrageous”). *See, e.g., Gross v. New York Times Co.*, 82 N.Y.2d 146, 153 [1993].

Some of Plaintiff’s claim injuries are not, in fact, harm. For instance, Plaintiff claims that her expulsion resulted in the “loss of more than fifteen years of personal investment in VCI membership, including extensive travel and participation in VCI events.” The Court is at a loss to understand how ending a membership in 2025 could reach back in time and undo her participation in prior events. Ultimately, while this motion more properly should be a motion to reargue the March 2nd Order (which did not grant a default but rather found that Defendants met their burden on a motion to dismiss), even when considered as a motion to vacate a default Plaintiff fails to establish a reasonable excuse or a meritorious claim. Accordingly, it is hereby

ADJUDGED that the motion is denied.


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4/24/2026
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" 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"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE