

Erie Ins. Co. of N.Y. v Da Costa
2026 NY Slip Op 31864(U)
April 29, 2026
Supreme Court, New York County
Docket Number: Index No. 158305/2024
Judge: Emily Morales-Minerva
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42M

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ERIE INSURANCE COMPANY OF NEW YORK,

Plaintiff,

- v -

BRENDA XAVIER DA COSTA, ABU MUHAMMAD M. HAQUE, M.D., P.C., ADVANCED SUPPLIES OF NY CORP., ATLANTIC MEDICAL & DIAGNOSTIC, P.C., BELLA DORMAN PSYCHOLOGY, P.C., COMMUNITY PHYSICAL THERAPY OF LONG ISLAND, P.C., EXPRESS D CORP., FIVE TOWNS PHYSICIANS P.C., GRAND AVENUE SERVICES INC., HOME PHYSICIAN ASSISTENCE SERVICES P.C., JULES F. PARI SIEN, MYRTLE AVENUE TRADING LLC, NEW YORK MEDICAL AND DIAGNOSTIC CARE PC, R FAMILY PHARMACY INC, STAYWELL CHIROPRACTIC P.C., VELVET BK CORP.

Defendants.

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INDEX NO. 158305/2024

MOTION DATE 08/27/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

ROBYN M. BRILLIANT, P.C., New York, NY (Tori Buttrum, Esq.),
for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this declaratory judgment action for no-fault benefits arising from an alleged motor vehicle accident that occurred on June 20, 2023, plaintiff ERIE INSURANCE COMPANY OF NEW YORK (plaintiff) moves, pursuant to CPLR § 3215, for an order granting it leave to enter a default judgment against defendants ABU MUHAMMAD M. HAQUE, M.D., P.C., ATLANTIC MEDICAL &

DIAGNOSTIC, P.C., BELLA DORMAN PSYCHOLOGY, P.C., COMMUNITY PHYSICAL THERAPY OF LONG ISLAND, P.C., EXPRESS D CORP., FIVE TOWNS PHYSICIANS P.C., HOME PHYSICIAN ASSISTANT SERVICES P.C., JULES F. PARISIEN, MYRTLE AVENUE TRADING LLC, NEW YORK MEDICAL AND DIAGNOSTIC CARE PC, R FAMILY PHARMACY, STAYWELL CHIROPRACTIC P.C., and VELVET BK CORP. (defendants), and a declaration that plaintiff has no obligation to pay any no-fault benefits arising from the alleged accident, on the ground that defendant BRENDA XAVIER DA COSTA failed to appear for her scheduled IME appointments.

Defendants do not appear or submit opposition to the motion (sequence number 01).

When a defendant fails "to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against [the defendant]" (CPLR § 3215 [a]). To establish entitlement to a default judgment, plaintiff must file (1) proof it served defendant with the summons and complaint, and (2) "proof of the facts constituting the claim, the default, and the amount due . . . by affidavit made by the party" (see CPLR § 3215 [f]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003] [providing that "an applicant for a default judgment [must] file 'proof by affidavit made by the party of the facts constituting

the claim'"]; 231st Riverdale LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]; Feffer v Malpeso, 210 AD2d 60 [1st Dept 1994]).

Here, plaintiff demonstrates its entitlement to entry of a default judgment against defendants ABU MUHAMMAD M. HAQUE, M.D., P.C., ATLANTIC MEDICAL & DIAGNOSTIC, P.C., BELLA DORMAN PSYCHOLOGY, P.C., COMMUNITY PHYSICAL THERAPY OF LONG ISLAND, P.C., EXPRESS D CORP., FIVE TOWNS PHYSICIANS P.C., HOME PHYSICIAN ASSISTANT SERVICES P.C., MYRTLE AVENUE TRADING LLC, NEW YORK MEDICAL AND DIAGNOSTIC CARE PC, R FAMILY PHARMACY, STAYWELL CHIROPRACTIC P.C., and VELVET BK CORP. by submitting, among other things, the affirmations of service (see NYSCEF Doc. No. 21); the affirmations of additional mailing (see NYSCEF Doc. No. 30); proof of the underlying facts constituting the claim (see NYSCEF Doc. Nos. 23, 25-27; see also Hertz Corp. v Active Care Med. Supply Corp., 124 AD3d 411, 411 [1st Dept 2015] [failure to submit to a duly requested IME constitutes breach of a condition precedent to coverage under no-fault policy, and plaintiff may deny claims for no-fault benefit for this reason]); and proof of default (see NYSCEF Doc. No. 19; see also CPLR § 3215 [f]).

However, plaintiff is not entitled to a default judgment against defendant JULES F. PARISIEN because it fails to submit an affidavit of non-military service for defendant. In addition to

providing proof of service of the summons and complaint and the facts constituting the claim (see generally CPLR § 3215; see also Bigio v Gooding, 213 AD3d 480, 481 [1st Dept 2023]), a plaintiff moving for a default judgment must tender proof of a defendant's non-military status before a judgment may be entered (see Unitrin Advantage Ins. Co. v 21st Century Pharm., 158 AD3d 450, 451 [1st Dept 2018]). Specifically, pursuant to the Federal Servicemembers Civil Relief Act and New York State Soldiers' and Sailor's Civil Relief Act, a party seeking a default judgment against an individual defendant must submit proof that said defendant was not in military service at the time of the default (see 50 USC § 3931 [b][1] [emphasis added]; see also Military Law § 309 [1]).

"A proper affidavit of nonmilitary service should include the date and location of the investigation and the facts gleaned from the investigation" (Benabi Realty Mgt. Co. v Van Doorne, 190 Misc2d 37, 38 [Sup Ct NY Cnty 2001]). Documentation provided directly from the Department of Defense Manpower Data Center -- "the official source of data on eligibility for military" -- is sufficient to enable the court to conclude that a defendant is not currently on active military duty, or was at the time of the default (363 Assoc. v Sharhan, 2 Misc3d 928, 930 [Civ Ct NY Cnty 2003]).

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 01) for a default judgment is granted against defendants ABU MUHAMMAD M. HAQUE, M.D., P.C., ATLANTIC MEDICAL & DIAGNOSTIC, P.C., BELLA DORMAN PSYCHOLOGY, P.C., COMMUNITY PHYSICAL THERAPY OF LONG ISLAND, P.C., EXPRESS D CORP., FIVE TOWNS PHYSICIANS P.C., HOME PHYSICIAN ASSISTANT SERVICES P.C., MYRTLE AVENUE TRADING LLC, NEW YORK MEDICAL AND DIAGNOSTIC CARE PC, R FAMILY PHARMACY, STAYWELL CHIROPRACTIC P.C., and VELVET BK CORP.; it is further

ORDERED that plaintiff's motion is dismissed without prejudice against defendant JULES F. PARISIEN; it is further

ORDERED, ADJUDGED and DECLARED that each and every part of any arbitration or court proceeding bought by defendants ABU MUHAMMAD M. HAQUE, M.D., P.C., ATLANTIC MEDICAL & DIAGNOSTIC, P.C., BELLA DORMAN PSYCHOLOGY, P.C., COMMUNITY PHYSICAL THERAPY OF LONG ISLAND, P.C., EXPRESS D CORP., FIVE TOWNS PHYSICIANS P.C., HOME PHYSICIAN ASSISTANT SERVICES P.C., MYRTLE AVENUE TRADING LLC, NEW YORK MEDICAL AND DIAGNOSTIC CARE PC, R FAMILY PHARMACY, STAYWELL CHIROPRACTIC P.C., and VELVET BK CORP. for No-Fault benefits stemming from the alleged collision of June 20, 2023 collision is permanently stayed; it is further

ORDERED, ADJUDGED and DECLARED that this action is severed and shall proceed against defendants BRENDA XAVIER DA COSTA, ADVANCED SUPPLIES OF NY CORP. and JULES F. PARISIEN; it is further

ORDERED that, within twenty days from the date of this decision and order, plaintiff shall serve a copy of this order, with notice of entry, on defendants, as well as on the Clerk of the Court, who shall enter judgment accordingly; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

4/29/2026
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: