

**Shaikh v Davis**

2026 NY Slip Op 31998(U)

May 8, 2026

Supreme Court, New York County

Docket Number: Index No. 100809/2025

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 65M**

*Justice*

-----X

ZIA SHAIKH,

Plaintiff,

- v -

JEFFREY DAVIS, LAW OFFICE OF JEFFREY DAVIS  
P.C., DANIEL RYAN, LAW OFFICE OF DANIEL RYAN P.C.,

Defendant.

-----X

INDEX NO. 100809/2025

MOTION DATE 04/27/2026

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 34  
were read on this motion for MONEY JUDGMENT.

Plaintiff Zia Shaikh (“plaintiff”), appearing *pro se*, moves pursuant to CPLR § 3215 for the entry of a default judgment against defendant Daniel Ryan, Esq. Plaintiff further seeks an order striking Ryan’s time to answer, deeming the allegations of the complaint admitted as against Ryan, and setting the matter down for an inquest on damages. To the extent the motion may be read as seeking any relief against defendant Jeffrey Davis, Esq. or the Law Office of Jeffrey Davis, P.C., those defendants oppose the application.

For the reasons that follow, plaintiff’s motion is denied.

**BACKGROUND AND PROCEDURAL HISTORY**

This action arises from plaintiff’s allegations of legal malpractice and related professional misconduct in connection with legal representation allegedly provided in an underlying action captioned Walling v Shaikh, Index No. 158656/2017. Plaintiff alleges, in substance, that defendant Ryan failed to exercise the ordinary reasonable skill and knowledge commonly possessed by members of the legal profession by failing to properly plead and pursue contract-based counterclaims, failing to assert viable breach-of-contract theories, failing to pursue arbitration rights, failing to analyze the procedural posture under CPLR § 3019, and failing to protect plaintiff’s alleged fee-recovery interests.

Plaintiff now seeks a default judgment against Ryan. In support of the motion, plaintiff submits an affirmation stating that Ryan was served with the summons and verified complaint on August 1, 2025, that more than thirty days elapsed after service, and that Ryan failed to answer, move, appear, or request an extension of time. Plaintiff also submits a certification stating that, on April 9, 2026, he mailed a copy of the summons and verified complaint, together with the notice of motion for default judgment, to Ryan at 251 New Karner Road, Albany, New York 12205.

Defendant Davis opposes the motion only insofar as plaintiff's filing may be construed to seek relief against Davis or to relitigate claims previously dismissed as against Davis. Davis asserts that plaintiff cannot use a motion for default judgment against Ryan as a procedural vehicle to revive or collaterally attack prior determinations concerning Davis.

### ARGUMENTS

Plaintiff argues that Ryan was duly served, failed to timely respond, and is therefore in default under CPLR § 3012 and CPLR § 3215. Plaintiff further contends that Ryan's default constitutes an admission of the traversable factual allegations of the complaint and that the matter should be set down for an inquest on damages.

Davis argues that the motion is improper to the extent it seeks any relief against him because the court has already determined the prior motion practice concerning the claims asserted against Davis. Davis further argues that plaintiff cannot revive dismissed claims, seek discovery on claims no longer pending, or obtain relief against Davis by embedding such requests in a motion ostensibly directed to Ryan's default.

### DISCUSSION

A motion for default judgment is not granted merely because a defendant has failed to appear. CPLR § 3215 requires the movant to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the default (CPLR § 3215 [f]; *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 [2003]). While a defaulting defendant admits all traversable factual allegations in the complaint, the default does not admit legal conclusions, nor does it relieve the plaintiff of the obligation to demonstrate that the pleaded facts state a viable cause of action (*Woodson*, 100 NY2d at 71; *Guzetti v City of New York*, 32 AD3d 234, 234 [1st Dept 2006]; *Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). Thus, even on default, the court must determine whether the plaintiff has supplied sufficient proof to enable the court to conclude that a viable claim exists (*Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]).

Here, plaintiff has not made the showing required by CPLR § 3215. Plaintiff's affirmation recites that Ryan was served on August 1, 2025 and that an affidavit of service was filed, but the present motion papers do not provide the court with an adequate evidentiary foundation establishing service in the manner required by the CPLR. A conclusory assertion that service occurred, without the court being provided with the proof necessary to determine the method, date, place, recipient, and legal sufficiency of service, does not satisfy CPLR § 3215(f)'s requirement that the applicant file proof of service of the summons and complaint (CPLR § 3215 [f]; *McGee v Dunn*, 75 AD3d 624, 624 [2d Dept 2010]; see also *Woodson*, 100 NY2d at 70-71). Because jurisdiction over a defendant is dependent upon proper service of process, the court cannot enter a default judgment on an incomplete or conclusory showing of service (*Ruffin v Lion Corp.*, 15 NY3d 578, 581 [2010]; *Feinstein v Bergner*, 48 NY2d 234, 241 [1979]).

Nor has plaintiff supplied adequate proof of the facts constituting the claim. In a legal malpractice action, a plaintiff must demonstrate that the attorney failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession, that the

attorney's breach was a proximate cause of actual and ascertainable damages, and that, but for the attorney's negligence, the plaintiff would have prevailed in the underlying matter or would not have sustained the alleged damages (*Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 442 [2007]; *McCoy v Feinman*, 99 NY2d 295, 301-302 [2002]; *Nomura Asset Capital Corp. v Cadwalader, Wickersham & Taft LLP*, 26 NY3d 40, 49-50 [2015]). The "but for" causation requirement is a demanding one, and speculative allegations that a different strategy might have produced a better outcome are insufficient to sustain a malpractice claim (*AmBase Corp. v Davis Polk & Wardwell*, 8 NY3d 428, 434 [2007]; *Brooks v Lewin*, 21 AD3d 731, 734 [1st Dept 2005]).

Plaintiff's submission identifies categories of alleged professional failures, including the failure to plead contract-based counterclaims, pursue arbitration rights, and protect fee-recovery interests. However, plaintiff does not provide the underlying pleadings, retainer materials, relevant court orders, arbitration agreement, proposed counterclaims, documentary basis for the alleged contractual rights, or any competent evidentiary showing from which the court could determine that Ryan's alleged omissions were negligent, that the omitted claims were viable, that plaintiff would have succeeded on those claims, or that any non-speculative damages were proximately caused by Ryan's conduct. A default judgment cannot rest on conclusory allegations of malpractice, particularly where the claim depends upon an assessment of the underlying action and the plaintiff's burden to establish that he would have obtained a more favorable result but for counsel's alleged negligence (*Rudolf*, 8 NY3d at 442; *AmBase Corp.*, 8 NY3d at 434; *Heritage Partners, LLC v Stroock & Stroock & Lavan LLP*, 133 AD3d 428, 428-429 [1st Dept 2015]).

The court is mindful that plaintiff appears *pro se*. However, a *pro se* litigant is not excused from compliance with the CPLR, the rules of evidence, or the substantive requirements governing the relief sought (*Roundtree v Singh*, 143 AD2d 995, 996 [2d Dept 1988]). CPLR § 3215 requires more than the assertion that a defendant failed to appear. It requires proof sufficient to demonstrate both default and entitlement to judgment. On this record, plaintiff has not met that burden.

The additional mailing submitted under CPLR § 3215(g) does not cure these defects. CPLR § 3215(g) imposes additional notice requirements in certain default applications, but compliance with that provision does not dispense with the separate statutory requirements of proof of service, proof of default, and proof of the facts constituting the claim under CPLR § 3215(f). The court therefore cannot grant the requested default judgment or set the matter down for an inquest on damages.

To the extent plaintiff's motion is construed as seeking relief against Davis or the Davis law office, such relief is denied. A motion for default judgment against Ryan is not a proper vehicle to revive, reargue, renew, or collaterally attack prior determinations concerning Davis. A party seeking reargument or renewal must proceed under CPLR § 2221 and satisfy the standards applicable to that relief, and a party seeking appellate review must proceed by timely notice of appeal (CPLR § 2221; CPLR § 5513). Plaintiff's disagreement with a prior determination does not create a pending motion to dismiss, restore dismissed claims, or authorize discovery on claims no longer active.

Accordingly, it is hereby

ORDERED that plaintiff's motion for default judgment pursuant to CPLR § 3215 is denied; and it is further

ORDERED that plaintiff's request to strike defendant Daniel Ryan's time to answer is denied; and it is further

ORDERED that plaintiff's request to deem the allegations of the complaint admitted as against defendant Daniel Ryan is denied; and it is further

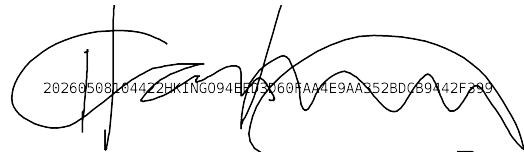
ORDERED that plaintiff's request to set this matter down for an inquest on damages is denied; and it is further

ORDERED that, to the extent plaintiff's motion seeks any relief against defendant Jeffrey Davis, Esq. or the Law Office of Jeffrey Davis, P.C., such relief is denied; and it is further

ORDERED that the denial of plaintiff's CPLR § 3215 motion is without prejudice to any procedurally proper application supported by competent proof satisfying CPLR § 3215(f), CPLR § 3215(g), and all other applicable statutory requirements; and it is further

ORDERED that the parties shall appear for their previously scheduled conference on June 9, 2026 at 2:15 PM in Room 308 of the courthouse located at 80 Centre Street, New York, New York.

This constitutes the decision and order of the court.



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**HASA A. KINGO, J.S.C.**

5/8/2026  
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: