

Kelly v City of New York
2026 NY Slip Op 32087(U)
June 11, 2026
Supreme Court, New York County
Docket Number: Index No. 157142/2024
Judge: Ilana J. Marcus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ILANA J. MARCUS

PART

05

Justice

-----X

LISA KELLY,

Plaintiff,

- v -

THE CITY OF NEW YORK, NYPD CAPTAIN ABRAHAM
BADILLO; NYPD SERGEANT ELVIN GASHI; NYPD
SERGEANT SASHA H. ROSEN; NYPD OFFICER
EDWARD E. GASTON; NYPD INSPECTOR ELIAS A.
NIKAS; NYPD SERGEANT DAVID A. LAMARRE; NYPD
OFFICER STEVEN OQUENDO; and NYPD MEMBER
DOES 1-13,

Defendants.

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INDEX NO. 157142/2024MOTION DATE 02/19/2026MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 25-39, 50, 54
were read on this motion to/for VACATE DEFAULT JUDGMENT.

In this violation of civil rights action, defendant INSPECTOR ELIAS A. NIKAS makes the instant motion seeking to vacate the default judgment against him, dated February 9, 2026, and permit the filing of a late answer. Plaintiff opposes and defendant submits reply. The court grants defendant's motion to the following extent:

In the absence of a jurisdictional defect, defendant must demonstrate both a reasonable excuse for his failure to appear (*see* CPLR 5015[a][1]) and a meritorious defense to the action to vacate the default judgment (*see Brown v Suggs*, 38 AD3d 329, 330 [1st Dept 2007]). This court is guided by the strong public policy of deciding cases on the merits (*see Heskel's W. 38th St. Corp. v Gotham Constr. Corp.*, 14 AD3d 306 [1st Dept 2005]).

CPLR 3012(d) states that "[u]pon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default" (CPLR 3012[d]).

Here, plaintiff filed her summons and complaint on August 5, 2024, and effectuated service on defendant Nikas on October 1, 2024 (*see* NYSCEF Doc. Nos. 1, 2). Corporation Counsel of the City of New York filed its answer on behalf of the City of New York on November 13, 2024 (*see* NYSCEF Doc. No. 4). Corporation Counsel filed an Amended Answer on May 27, 2025, accepting additional representation of defendants NYPD Captain Abraham Badillo and NYPD Sergeant David A. Lamarre (*see* NYSCEF Doc. No. 5). Corporation Counsel filed a Second Amended Answer on June 23, 2025, accepting the additional representation of defendant NYPD Officer Edward E. Gaston (*see* NYSCEF Doc. No. 6). Corporation Counsel filed a Third Amended Answer on August 14, 2025, accepting additional representation of defendants NYPD Sergeant Elvin Gashi, NYPD Sergeant Sasha H. Rosen, and NYPD Officer Steven Oquendo (*see* NYSCEF Doc. No. 7).

By notice of motion dated November 7, 2025, plaintiff moved for default judgment against defendant Inspector Nikas (*see* NYSCEF Doc. No. 9). Defendant Nikas did not submit opposition. The court denied plaintiff's motion without prejudice on the grounds that plaintiff failed to submit an affidavit of merit of someone with personal knowledge verifying the facts constituting the claim (*see* NYSCEF Doc. No. 13).

By notice of motion dated January 5, 2026, plaintiff again moved for default judgment against defendant Inspector Nikas (*see* NYSCEF Doc. No. 14). The motion was made returnable on January 29, 2026, and stated that answering affidavits, if any, are to be served upon plaintiff's counsel seven (7) days prior to the return date (*see id.*; CPLR 2214[b]). Again, defendant Nikas did not submit opposition. Instead, on January 27, 2026, Corporation Counsel filed a Fourth Amended Answer two days before the return date of the motion, accepting the additional representation of defendant NYPD Inspector Elias A. Nikas (*see* NYSCEF Doc. No. 21).

Plaintiff's motion for default judgment was marked submitted without opposition on January 29, 2026, and the court issued default judgment against defendant Nikas by decision and order dated February 13, 2026 (*see* NYSCEF Doc. No. 22). Corporation Counsel of the City of New York moved to vacate the default judgment against defendant Nikas by notice of motion filed February 19, 2026 (*see* NYSCEF Doc. No. 22).

Defendants' Fourth Amended Answer asserts, *inter alia*, defendant Nikas' defense of qualified immunity as against plaintiff's claims (*see* NYSCEF Doc. No. 21). The court notes that Corporation Counsel fails to make any specific argument regarding defendant Nikas' proposed meritorious defense or even mention what the proposed defense is in its affirmation in support (*see* NYSCEF Doc. No. 26). Nonetheless, upon review of defendants' proposed Fourth Amended Answer, the court finds the defense listed therein to be meritorious (*see Federal Natl. Mtge.*

Assn. v Rosenberg, 180 AD3d 401 [1st Dept 2020] [holding a meritorious defense must show a “substantial possibility of success in the action”]).

Corporation Counsel claims law office failure as its excuse for defendant Nikas’ failure to answer or appear (*see* NYSCEF Doc. No. 26; CPLR 2005). Specifically, defendant states the high volume of cases filed against the City of New York and Corporation Counsel’s limited number of personnel hindered the law office’s ability to timely investigate the claims and determine whether Corporation Counsel would represent defendant Nikas (*see* NYSCEF Doc. No. 26; GML 50-k; *Williams v City of New York*, 64 NY2d 800 [1985] [holding Corporation Counsel makes first determination whether public employee was acting within the scope of his duties and thus was entitled to representation by the Corporation Counsel]; *Silverio v City of New York*, 266 AD2d 129 [1st Dept 1999] [finding City’s excuse for its late answer on the police officers’ behalf due to its investigation of its obligation to defend them reasonable]). The assigned attorney also admitted error in failing to appear before the return date of plaintiff’s motion for default judgment to inform the court of the newly amended answer filed on behalf of defendant Nikas (*see* NYSCEF Doc. No. 26).¹

Plaintiff opposes the motion, arguing that the City has a pattern of practice of intentional defaults for individual officers aimed at increasing the costs of litigation and delaying cases for plaintiffs (*see* NYSCEF Doc. No. 50). Plaintiff sets forth thirty-one (31) other cases as a non-exhaustive list where the City defaulted on answering for individual officers only to later move to vacate those defaults (*see id.*). Plaintiff argues that if the defendant’s motion is granted, just terms require that the City pay plaintiff’s attorneys’ fees for the time spent on filing its default motion, or at a minimum, the motion filing fee itself (*see id.*).

In its reply, Corporation Counsel opposes plaintiff’s request for sanctions, arguing they “have substantially complied with Court orders; have not engaged in willful and contumacious behavior; and despite Plaintiff’s baseless allegations, have not defrauded the Court” (NYSCEF Doc. No. 54, ¶6).

On this record, defendant Nikas establishes both a reasonable excuse for his default and a meritorious defense. However, this Court does not ignore the numerous instances of law office failure to date and the fact that it took Corporation Counsel over fifteen (15) months, and two motions for default judgment, before determining to undertake representation of defendant Nikas and filing its Fourth Amended Answer.

¹ Defendant makes an additional argument pursuant to CPLR 2221 to reargue the court’s previous decision, decided without opposition, and vacate the default. Defendant contends plaintiff’s affirmation of merit failed to conform to the requirements of CPLR 2106. As the Court vacates the default judgment pursuant to CPLR 3012(d) and 5015, it need not address plaintiff’s potential procedural defect.

Part 130 of the Rules of the Chief Administrative permits a court, in its discretion, to award any party costs in the form of reimbursement for actual expenses reasonably incurred and attorney's fees, resulting from another party's frivolous conduct (*see* 22 NYCRR 130-1.1[a]). Frivolous conduct is defined as follows:

- (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.

(22 NYCRR 130-1.1[c]). Trial judges are "accorded wide latitude to determine the appropriate sanctions for dilatory and improper attorney conduct" (*Pickens v Castro*, 55 AD3d 443 [1st Dept 2008]).

Here, the record establishes frivolous conduct on the part of Corporation Counsel in permitting defendant Nikas to default through numerous instances of law office failure and then seeking to vacate that default after-the-fact and over fifteen (15) months after being served with the summons and complaint. The City's conduct unduly prolonged the resolution of the action and unreasonably increased plaintiff's costs to litigate the action.

Therefore, pursuant to CPLR 3012(d) and 5015, the court vacates the default judgment as against defendant Nikas and compels plaintiff to accept defendants' late Fourth Amended Answer on the just condition that the City of New York pays plaintiff's motion filing fee for her second motion for default judgment (*see* NYSCEF Doc. Nos. 14 *et seq.*) within forty-five (45) days of entry of the instant order. Plaintiff shall provide Corporation Counsel with proof of expenditure by email within ten (10) days of entry of this order. Defendants shall also file and serve their answer on NYSCEF no later than forty-five (45) days after entry of the instant order.

Accordingly, it is hereby

ORDERED, that defendant INSPECTOR ELIAS A. NIKAS motion is granted to the extent that the default judgment is vacated, and plaintiff is compelled to accept defendant's late answer on the condition that the City of New York pay plaintiff's motion filing fee for her second motion for default judgment within forty-five (45) days of entry of the instant order; plaintiff shall provide Corporation Counsel with proof of expenditure by email within ten (10) days of entry of this order; if defendants comply in payment, defendants shall file and serve their Fourth Amended Answer on NYSCEF no later than forty-five (45) days after entry of the instant order.

This constitutes the decision and order of the court.

<u>6/11/2026</u>			
DATE		ILANA J. MARCUS, 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