

New York Supreme Court, Albany County

Gerard Aprea,)	CASE NO. 7215-11
John Vidurek,)	
)	HON Judge <i>Joseph C. Teresi</i>
Plaintiffs;)	
)	
- vs -)	
)	
NEW YORK STATE BOARD OF ELECTIONS,)	PLAINTIFFS ANSWER TO
Defendant.)	ORDER TO SHOW CAUSE

Plaintiffs, who are not attorneys, object to this Court's entertainment of any response from the defendant to the plaintiffs motion for default considering the fact that the Defendant is in "double default". (1) Defendant failed to answer the complaint and (2) Defendant failed to answer the motion for default.

DEFENDANT IS MUTE

1. This court has been more than lenient to Ms Galvin, unlike the plaintiffs reception in their judicial experiences, in that Ms Galvin has been given 30 days to respond to this motion when Ms Galvin should have responded in eight (8) days. Plaintiffs object to Court's entertainment of the muted Ms Galvin.

2. The Defendant is in default and mute to all discussions and the plaintiffs object to the un-muzzling of Ms Galvin including for that of default. Therefore all of Ms Galvin's statements

and papers are meant only to cloud the court, and it is unclear as to why the Court is permitting this, "**and plaintiffs moves this court to clarify**".

3. Plaintiffs have many objections before this court, plaintiffs demand a ruling on each objection before the court.

4. Plaintiffs move the court to "take notice" that Ms Galvin, in her affirmation, with all her words, fails to meet the requirements of **Rule NY CVP Law Section 3215**, and **NYCRR Tit. 6 Sec. 622.15** whereas the defendant "must" meet both of the following requirements (1) the failure or delay was a result of excusable neglect and, (2) there is a reasonable likelihood that the defaulted party can prevail in the case. The defaulted defendant is unable to prevail or be excused.

5. At a conference/hearing held, on January 19, 2012, for this case, called by Judge Teresi; Ms Galvin was asked by Judge Teresi why she did not answer the complaint, and Ms Galvin, in all her frustration, and in an excited utterance, "clearly" responded "**NO GOOD REASON**"!

6. No excuse, including the newly offered excuse that she was so confused, **FOR MORE THAN TWENTY (20) DAYS**, by the two cases bla, bla, blaaaa, can possibly stand, because ignorance does not excuse anyone. Ms Galvin is an Attorney for over twenty (20) years and by now should know the rules of the court. The plaintiffs, who are not attorneys, barely have three (3) months experience and we know.

7. Furthermore once Ms Galvin admitted "**NO GOOD REASON**" it was admitted for all purposes and cannot be taken back, and Ms Galvin's ranting in an attempt to cloud the court, is obvious.

THE OTHER CASE

8. Acting Judge Connolly was openly and boldly prejudice, favoring the state, violated his oath, if he took one, violated the plaintiff's (who are not attorneys) right to be heard by dismissing our first case within 24 hours of Ms Galvin's reply to our complaint, at a secrete ex parte hearing set by the uninvited plaintiffs for an injunction, sending all our papers back, sanitization the record, along with our "Notice of Demand for authority", slamming the doors of the court in our face. Plaintiffs were not dismissed they were railroaded, and plaintiffs are determined that it will not happen, again and intend a remedy. **See plaintiffs exhibit 121**

EX PARTE

9. Plaintiffs have "never once" communicated with anyone involved with this case ex parte.

10. Plaintiffs are framing their pleadings, for a possible appeal and or the filing of a complaint with the New York State Commission on Judicial Conduct.

11. Plaintiffs object to "any" papers submitted to this court being returned to plaintiff thereby creating confusion and interfering with plaintiffs construction of their case.

12. Plaintiffs object to the Court's returning of plaintiffs papers and the Court's statement that the Motion to Compel Combined Discovery, Productions, Interrogatories & Admissions dated 1-12-12 was ex parte, and is **returned to the court herein**, with Affidavit of service and postal certification attached as proof.

13. Plaintiffs object to the Court's returning of plaintiffs papers and the Court's statement that the Memorandum answering the Judges letter dated 1-12-12 was ex parte and is **returned to the court herein** with Affidavit of service and postal certification attached as proof.

14. Plaintiffs object to the Court's returning of plaintiffs papers and the court's statement that the Plaintiffs Answer to Green County BOE dated 12-8-11 was ex parte and is **returned to the court herein**, Affidavit of service and postal certification was/is attached, as proof, to the Memorandum answer to Judges letter dated 1-12-12 returned to the court herein.

15. Plaintiffs object to the Court's returning of plaintiffs papers and statement that the Plaintiffs Answer to Dutchess County BOE dated 12-10-11 was ex parte and is **returned to the court herein**, Affidavit of service and postal certification was/is attached, as proof, to the Memorandum answer to Judges letter dated 1-12-12 returned herein.

OBJECTION TO Ms GALVIN'S IMPROPER, IMPATIENT INJUDICIOUS ACTIONS

16. Plaintiffs object to defendant answer to the complaint while they are 46 days in default and this action by order of the court has been stayed as clearly written by the Judge on the order to show cause, Ms Galvin is very much aware and still cannot refrain from breaking the rules. Therefore plaintiffs demand that the court remove said answer to complaint from the case file and return it to the defendant immediately.

17. Plaintiffs object to defendants motion to dismiss and memorandum of law while they are 46 days in default and this action by order of the court has been stayed as clearly written by the Judge on the order to show cause, Ms Galvin is very much aware and still cannot refrain

from breaking the rules. Therefore plaintiffs demand that the court remove said complaint from the case file and return it to the defendant immediately.

18. Ms Galvin by her actions has failed to respect and comply with the law, and to be faithful to the law in violation of the ethical standard.

PURPOSE OF THIS CASE

19. As Ms Galvin has powerfully demonstrated in both cases that she ignores the rules and the law to achieve her goals which is exactly what Ms Galvin's employer (NYSBOE) has been doing. Led by legal counsel, NYSBOE, through policies and procedures "enforced" upon all sixty-two (62) county BOE's have hidden from public view, the elected committeeman. And until this court enforces the law they will blatantly, and illegally continue to violate the Peoples Constitutional Right to become an elected committeeman, this court has a duty to Judge righteously.

20. Ms Galvin would like this court to believe that she does not know what we are talking about, and that the NYSBOE has no control over the County BOE's, but nothing could be further from the truth, as we have already demonstrated the NYSBOE is responsible for law enforcement and uniform policies and procedures among the counties pursuant to **Election Law §3-102, §3-104, and §3-105** upon all County BOE's. And obviously it is Ms Galvin's "legal department" that orchestrated the writing of NYSBOE's policies and procedures.

21. NYSBOE's Mission statement on their website states the following:

The State Board of Elections **was established** in the Executive Department June 1, 1974 as a bipartisan agency vested **with the responsibility for administration and enforcement of all laws relating to elections** in New York State. The Board is also responsible for regulating disclosure and limitations of a Fair Campaign Code intended to govern campaign practices. In conducting these wide-ranging responsibilities, the Board offers assistance to local election boards and investigates complaints of possible statutory violations. In addition to the regulatory and enforcement responsibilities the board is charged with the preservation of citizen confidence in the democratic process and enhancement in voter participation in elections.

CONTROVERSY

22. This is not a constitutional controversy, it's a simple case of enforcing the law, upon an out of control rogue government agency, and it is the solemn duty of this court to set its face against such, and set the People free of the NYSBOE's iron grip.

23. Anytime a bureaucrat employed by the state abuses a citizen, through the breaking of any law, it's an assault upon our constitutional rights but usually, like in this case, not a constitutional controversy, the remedy is just a simple matter of "forcing" the state bureaucrats to obey the simple plain language law, and if being done for personal gain, criminal action, and if by more than one person acting in concert, conspiracy.

24. N.Y. Executive Law § 71. Requires that the Attorney-general is to appear in cases involving the "**constitutionality of an act of the legislature**", or a rule or regulation adopted is challenged. The plaintiffs are not questioning the constitutionality of a law. The Plaintiffs only want "The Law" obeyed.

THE CONSEQUENCE OF OBEYING THE LAW

25. If the consequences of a righteous ruling from a righteous court is to effect so many people as Ms Galvin says, then I guess that just tells us how deep the corruption goes, how much Ms Galvin is aware of it, and how much the more this Court needs to act. One would think that freedom would be welcomed among those who are exercising "their rights" in the party, but it's not!

26. The idea that Ms Galvin has the audacity to petition this court to ignore the Law because other criminals may be distressed and effected by a righteous ruling is both appalling, reveling and is further evidence of our case and just another reason why this court must rule in favor of the plaintiffs.

27. Corruption is contagious, and destroys the whole body like a cancer, to continue ignoring this malignancy will certainly result in the death of our Republic and that will be the legacy of this Court should "lawlessness prevail".

SIGNATURE

28. Ms Galvin challenges receipt of the motion, attached is the Affidavit of service with postal certification and NYSBOE signature card dated 12-16-12. Additionally Ms. Galvin already stated in court that she had already had possession of the said motion.

PROPER INDEX NUMBER

29. Plaintiffs have properly labeled "EVERY DOCUMENT" with the proper index number which is 7215-11 it is Ms Galvin who continues to use the wrong index number 1196-11. Ms

Galvin has never used the correct index number, maybe just another ruse to confuse the court. I certainly hope that the records of this case makes it to the proper file for future reference, plaintiffs intend on visiting this file after the ruling to confirm the contents.

30. Additionally, Green Dutchess Counties seemed to always have the correct Index number, it is Ms Galvin who is again trying to confusing the court because her only hope is to have this case thrown out on a technicality, plaintiffs who are not attorney object to this behavior.

CONTEMPT FOR THE PEOPLE

31. The two private organizations are creatures of statutes empowered by Election Law Article 2 and are governed by party rules, plaintiffs are seeking no relief from the parties who are unable to give any relief, and have nothing but good intentions towards the unaware victims held captive of the same.

32. The two private organizations are not necessary parties needed to complete relief, if anything they are witnesses.

33. The County BOE's are also victims and "totally oblivious" of what we are talking about, plaintiffs are seeking no relief from the County Boards who are incapable of giving any.

34. The County BOE's are not necessary parties needed to complete relief, if anything they are witnesses.

35. Again, It is the NYSBOE that has created this state of affairs with their destructive, deceiving and corrupt policies and procedures, and it is within the power of this court to stop it simply by enforcing the law!

36. Why is a State Agency displaying such Contempt for the People? Why is a State Agency fighting so hard to prevent the people the right to participate? Why is a State Agency so willing to break the rules and law just to keep the common people from entering the committeeman process? Why is a State Agency spending the people's money to defend law breaking? Why doesn't the State Agency just acknowledge that something is wrong and just fix it? Why is a State Agency so fearful of a freely elected Committeeman?

CAUSE OF ACTION

37. Plaintiffs deny that they did not state a cause of action, plaintiffs stated five causes of action and has been careful to allege every element necessary to stand.

CPLR 5015(A)(1)

38. Ms Galvin cited **Winney v. County of Saratoga, 252 A.D.2 882 (1998) and Abel v, Collins, 73 a.D. 3d 1425 (2010)**, plaintiffs were unable to find these cases for comment. Plaintiffs request a copy in time to respond if necessary.

39. **Kouzios v Dery, 2008 NY Slip Op 10590 (App. Div., 2nd)** The Supreme Court providently exercised its discretion in granting the plaintiffs' motion for leave to enter a default judgment on the issue of liability upon the defendant's failure to answer and to set the matter down for an inquest on the issue of damages. To successfully oppose the plaintiffs' motion, the defendant was required to demonstrate a reasonable excuse for his default and the existence of a meritorious defense **(see CPLR 5015[a][1]; Giovanelli v Rivera, 23 AD3d 616; Mjahdi v**

Maquire, 21 AD3d 1067, 1068; Thompson v Steuben Realty Corp., 18 AD3d 864, 865; Dinstber v Fludd, 2 AD3d 670, 671). Although a court has the discretion to accept law office failure as a reasonable excuse (*see* CPLR 2005), the defendant's conclusory, undetailed, and uncorroborated claim of law office failure did not amount to a reasonable excuse (*see Matter of ELRAC, Inc. v Holder, 31 AD3d 636, 637; McClaren v Bell Atl., 30 AD3d 569; Matter of Denton v City of Mount Vernon, 30 AD3d 600, 601; Solomon v Ramlall, 18 AD3d 461*). Moreover, the Supreme Court providently exercised its discretion in rejecting the defendant's further claim that he assumed that he did not need to answer the complaint because of purported settlement negotiations (*see Antoine v Bee, 26 AD3d 306; Majestic Clothing Inc. v East Coast Stor., LLC, 18 AD3d 516, [*2]518*). Furthermore, the defendant failed to demonstrate the existence of a meritorious defense.

40. **Montefiore Med. Ctr. v Auto One Ins. Co., 2008 NY Slip Op 10596 (App. Div., 2nd)** The Supreme Court providently exercised its discretion in denying the defendant's motion pursuant to **CPLR 5015(a)(1)** to vacate a judgment entered upon its default in appearing or answering the complaint since it failed to demonstrate a reasonable excuse for the default (*see Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co., 67 NY2d 138, 141; Giovanelli v Rivera, 23 AD3d 616*). The plaintiffs established that they effectuated service upon the defendant through delivery of the summons and complaint upon the Assistant Deputy Superintendent and Chief of Insurance (*see Insurance Law § 1212; Hospital for Joint Diseases v Lincoln Gen. Ins. Co., 55 AD3d 543; New York & Presbyt. Hosp. v Allstate Ins. Co., 29 AD3d 968; Kaperonis v Aetna Cas. & Sur. Co., 254 AD2d 334; see also CPLR 311[a][1]*). The defendant did not contend that the address on file with the Superintendent of Insurance was incorrect, and the mere denial of receipt of the

summons and complaint was insufficient to rebut the presumption of proper service created by the affidavit of service (see Commissioners of State Ins. Fund v Nobre, Inc., 29 AD3d 511; [*2]Carrenard v Mass, 11 AD3d 501; Truscello v Olympia Constr., 294 AD2d 350, 351). Even if the defendant's motion were treated as one made pursuant to CPLR 317 (see Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co., 67 NY2d 138, 143; Mann-Tell Realty Corp. v Cappadora Realty Corp., 184 AD2d 497, 498), the defendant failed to meet its burden of showing that it did not receive actual notice of the summons in time to defend the action (see General Motors Acceptance Corp. v Grade A Auto Body, Inc., 21 AD3d 447; cf. Hospital for Joint Diseases v Lincoln Gen. Ins. Co., 55 AD3d 543).

41. The Defendant has failed to demonstrate a reasonable excuse for the default and a meritorious defense, and has already confessed the same in open Court.

WHEREFORE; the plaintiffs move the Court to:

- A) deem the plaintiffs allegations of facts admitted for all purposes and,
- B) to enter an Order for a Default judgment in favor of the plaintiffs for the relief demanded in the complaint.

All rights reserved,

DATE: The Thirtieth Day of the First month of the Year of Our Lord two thousand twelve and the two hundred thirty-sixth Year of Our Independence.

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