

**New York Supreme Court, Albany County**

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

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Plaintiffs, who are not Attorneys, object to this Court's entertainment of any response from the defendant bearing in mind the fact that the Defendant is in "**double default**".

1. Plaintiffs object to defendant answer to the complaint while they are 46 days in default to answering the complaint and more than 20 days in default in answering the default.
2. We will duly note Ms. Galvin has filed an affirmation as opposed to an oath which contains in it a swearing to God. If Ms. Galvin is going to swear to untruths it seems somehow better not to swear to God.
3. In lines two (2) through seven (7) Ms. Galvin admits to receiving plaintiffs complaint on November 17, 2011. Ms. Galvin goes on to explain that, another attorney for the NYSBOE accepted service of the complaint, and upon turning the same over to Ms. Galvin, indicated that

his initial review led him to believe that it was "the same action" that the plaintiffs had filed earlier in the year, which was dismissed by Judge Connolly.

4. The unnamed attorney further suggested that we send a letter to the assigned Judge on the new matter and advise him of the same.

5. Why is it Ms. Galvin felt compelled to expound about her normal inter-office procedure.

6. The NYSBOE is a large office with multiple attorneys do we really need to know who received the complaint?

7. It is a fact which the plaintiffs, as well as the court, doesn't need to know, if anything it goes to the fact that we now have two NYS Bar attorneys, with the knowledge that their office has been served, with a time and date sensitive complaint, that MUST be answered to avoid a default.

8. On line 4 Ms. Galvin said "I reviewed the pleadings and concluded that..."; on line 5 "I presumes that..."; and line 6 "Despite several readings of the claim I could not be certain that... and continues to remain unclear to me"; finally on line 7 Ms. Galvin said, "It was ultimately decided to send a letter to the Court addressing the concerns regarding the past claim".

Responding to the court in an ex parte letter is not a meritorious excuse for not answering the summons.

9. Ms. Galvin goes on to say "*by a letter dated November 28, 2011, the NYSBOE informed the Court of the same*". It appears that Ms. Galvin, and her team of attorneys, chose as a strategy, to send an ex-parte letter to the Court, which is not a meritorious excuse, rather than answer the complaint with her conclusions.

10. In order to exonerate herself, Ms. Galvin continues in line 8, that "the local boards of elections, alleged to have committed the actual grievances set out in the complaint were now named, and the NYSBOE had neither direct nor constructive knowledge of any of the documents, or actions upon them alleged by plaintiffs, it was anticipated that they would continue to defend their own actions", and that was a fatal error and such an anticipation is not a meritorious excuse!

11. Ms. Galvin continues on line 9, "as a result of the NYSBOE letters sent to the Court, by letter dated December 15, 2011, the Court directed the plaintiffs to" ... "immediately respond to the statements in that letter and upon receipt of the foregoing I will determine whether I will hold a preliminary Conference or allow the defendants to make a motion to dismiss", as if that is to somehow exonerate the NYSBOE from answering the "**SUMMONS**".

12. Ms. Galvin goes on, "upon receipt of that letter, I mistakenly presumed that any additional action was stayed pending the Court's determination of that threshold issue". Mistakenly presuming is not a meritorious excuse!

13. Ms. Galvin continues in line 10, "as such, the NYSBOE took no further action by way of response, either to the original complaint, or any of the supplemental filings made by the plaintiffs, as we were laboring under the belief that the Court's letter of December 15 indicated that further direction regarding any motion schedule would be given at the conference". Laboring under the belief is not a meritorious excuse!

14. What Ms. Galvin does not offer in her dialog is the fact that her ex parte letter allegedly dated Nov 28 2011 was time stamped by the court clerk Dec 14, 2012, which the plaintiffs only

received by demanding it by fax after being ordered to answer it! Meanwhile the NYSBOE was already in default seven days .

15. Any attorney, or anyone claiming to be one, knows that an ex parte letter to the court will not stay a default.

16. And a "command" from the court to answer such a letter, the defendant being in default, as if the plaintiffs were asked to construe the said letter to be a substitute for a timely answer to a complaint, the plaintiffs thought bizarre and found themselves perplexed.

17. Ms Galvin continues to make false allegations throughout the remainder of the affirmation .

18. Ms Galvin falsely accuses the plaintiffs of using the wrong index number on their papers, the first time the wrong index number turns up is on a document from the court to Ms Galvin, and it is Ms Galvin who copies and continues to put the erroneous number on her subsequent documents, not the plaintiffs.

19. At no time was there a wrong index number on ANY of the plaintiffs documents.

20. Ms, Galvin continues on lines twenty (20) through Thirty-two (32) trying to deny the plaintiffs allegations and attempts to plead in a poor attempt to build a meritorious case.

21. On one hand Ms Galvin doesn't understand what the plaintiffs are asking or what role the NYSBOE plays in those things, and on the other hand Ms Galvin claims that if the plaintiff's are awarded what they ask that it will affect the party organizations themselves as well as every county chairman's rights, Ms Galvin continues and states that everyone of them needs to be enjoined. The plaintiffs at this point, as should be the court, are confused as to how enforcing and or obeying the law is going to affect anyone's rights!

22. Could it be? that Ms Galvin does understand that there is rampant unlawful acts being perpetrated by the NYSBOE.

23. Ms Galvin's feeble attempt to demonstrate a reasonable excuse to convince the court is obviously ludicrous. Nor has Ms Galvin offered any defense for a meritorious case.

24. Ms Galvin additionally failed to demonstrate a reasonable excuse and/or offered any defense for a meritorious case for the NYBOE's default in answering the default.

**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.

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**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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