

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

JOHN WILLIAM LICCIONE,

Plaintiff,

v.

Case No.: 24-003939-CI

JULIE MARCUS, et al.,

Defendants.

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**PLAINTIFF'S RESPONSE TO DEFENDANT MARK WEINKRANTZ'S
MOTION TO VACATE CLERK DEFAULT**

COMES NOW, Plaintiff **John William Liccione**, and hereby submits this response to Defendant Mark Weinkrantz' Motion to Vacate Clerk Default, respectfully urging the Court to deny the Motion. Plaintiff rebuts Defendant's arguments as follows:

Rebuttal to Defendant's Summary Points

1. A Motion to Vacate Clerk Default is Premature

The Clerk has yet to enter Default and the Court has yet to enter a Default Final Judgement against Defendant Weinkrantz. As such, there is no Clerk Default Entry in the docket, nor has there been entered a Default Final Judgement. Thus, this Motion to Vacate is premature. The court cannot vacate a Default Judgement that doesn't yet exist.

2. Relevance of Primary Election Outcome (Paragraphs 1 & 3):

Defendant's assertion that he lost the Democratic primary with 7.2% of the votes does not absolve him of potential involvement in alleged fraudulent activities. The issue here is not Defendant's success in the election but rather his role in an alleged conspiracy to engage in fraudulent conduct which resulted in damages to Plaintiff. Losing the primary does not negate his potential involvement in unlawful acts, nor does it excuse his failure to respond to the complaint.

3. Alleged Lack of Benefit from the Fraud (Paragraph 4):

Defendant claims he was not a beneficiary of the alleged fraud. However, Plaintiff's complaint implicates Defendant as an active participant in a scheme intended to influence the election process unlawfully. The legal standard for fraud does not require that Defendant personally benefit from the fraud if the Plaintiff suffered damages as a result. Defendant's argument about lack of benefit does not excuse his failure to timely respond to the complaint.

4. Claim of Late Notification (Paragraph 5):

Defendant's attorney's assertion that "he" was unaware of Defendant's involvement until notified of an in-person hearing is unsupported by evidence and was a function of inexcusable neglect on the part of Defendant Weinkrantz. Weinkrantz was served with the complaint on September 25, 2024, and had ample time to hire a lawyer and respond before the entry of default. Failing to monitor or respond to legal actions against him does not constitute excusable neglect. Defendant's inaction was not the result of any legitimate misunderstanding or clerical error but rather reflects a disregard for the court's deadlines.

5. Defendant’s Delay in Filing Motion to Vacate

Defendant waited until November 11, 2024—approximately 25 days after Plaintiff filed his Motion for Clerk Default—to hire an attorney and to file this Motion to Vacate.

Defendant’s delay in hiring counsel and filing this motion demonstrates a lack of diligence and respect for court deadlines. Further, Defendant failed to file a timely response within the required 20-day period following the filing of Plaintiff’s Motion for Clerk Default, further weakening any claim of excusable neglect. Defendant’s substantial delay and missed deadlines without valid justification does not support vacating the Clerk’s Default, even if one had been already entered.

Rebuttal to Defendant’s Legal Arguments (Memorandum of Law and Analysis)

5. Florida Rule of Civil Procedure 1.540 and Excusable Neglect (Paragraphs 6 & 7):

Defendant argues excusable neglect based on clerical or human error as described in cases like *Elliott v. Aurora Loan Servs. LLC*. However, Defendant has not demonstrated any specific clerical error or administrative mistake that led to the default. Rule 1.540 does allow relief for genuine mistakes or misunderstandings, but it does not protect a defendant who simply failed to act within the required timeframe without a valid reason.

In this case, the default arose due to Defendant’s failure to file any responsive pleading within the allotted time, not because of any error beyond his control. Defendant’s failure to respond to the complaint for an extended period reflects neglect, but it is not excusable under Rule 1.540.

6. Alleged Meritorious Defenses (Paragraph 8):

Defendant claims to have meritorious defenses, asserting that he did not benefit from any alleged fraud, that no fraud took place, and that he lost the primary election. However, these assertions are insufficient to meet the standard for vacating a default. A “meritorious defense” under Florida law must be supported by a showing of genuine, specific, and substantial defenses.

Merely denying the allegations without evidence or specific factual support is insufficient to justify vacating the default. Defendant has not provided any factual evidence or plausible defense that addresses the complaint’s allegations, such as how he was uninvolved in any alleged conspiracy or election fraud activities. As such, Defendant’s claim of a meritorious defense is unsupported and should not be grounds for vacating the default.

7. Lack of Diligence in Responding to the Default (Paragraph 9):

Defendant’s claim that he acted diligently upon learning of the default is unsubstantiated. The record shows that Defendant failed to respond to the complaint within the required timeframe, and his Motion to Vacate was filed only after the filing of the Motion for Clerk. A party seeking to vacate a default must demonstrate prompt action upon learning of the default, which Defendant has not convincingly shown. Defendant’s delay in responding does not reflect diligence but rather an attempt to circumvent the consequences of his inaction.

Conclusion

In summary, there is no Clerk Default nor a Court Default Judgement that exists that can yet be vacated. Even if there was, Defendant has failed to demonstrate excusable neglect, a meritorious defense, or diligent action sufficient to meet the standard under Rule 1.540. Defendant's arguments do not justify vacating the default, as they are unsupported by evidence and fail to address the substantive issues in Plaintiff's complaint. Allowing Defendant to avoid default without a valid justification would unfairly prejudice Plaintiff's case and reward Defendant's lack of responsiveness.

WHEREFORE, Plaintiff respectfully requests that this Court DENY Defendant Mark Weinkrantz' Motion to Vacate Clerk Default.

Respectfully submitted,

/s/ John W. Liccione

John William Liccione

Plaintiff, Pro Se

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via the Court's e-file and serve system to all parties listed below on this November 12th, 2024. to GEORGE A.D. THURLOW, ESQ. Attorney for Defendant JENNIFER GRIFFITH, JAMES B. LAKE, ESQ., Attorney for Defendant CATHY SALUSTRI LOPER, and JOHN MCGUIRE, attorney for Defendant MARK WEINKRANTZ.

/s/ John W Liccione

John W Liccione