

**Kennedy Lewis Inv. Mgt., LLC v StimQ Med. LLC**

2024 NY Slip Op 34412(U)

December 16, 2024

Supreme Court, New York County

Docket Number: Index No. 653767/2022

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

go

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

KENNEDY LEWIS INVESTMENT MANAGEMENT, LLC,

Plaintiff,

- v -

STIMQ MEDICAL LLC, LAURA TYLER PERRYMAN

Defendant.

-----X

INDEX NO. 653767/2022

MOTION DATE 12/13/2024

MOTION SEQ. NO. 010

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 010) 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326 were read on this motion to/for SANCTIONS.

Plaintiff’s motion for strike defendant Perryman’s answer is granted as described below.

**Background**

Plaintiff is an investment advisory firm that provides investment services to pension plans and other entities. It claims that this case relates to the alleged conduct of defendant Perryman. Plaintiff argues that Perryman fraudulently induced it into extending \$20 million in financing (via a loan) and to invest \$10 million to purchase shares in an entity called Stimwave Technologies Inc. (“Stimwave”); Perryman was, at the time, CEO of Stimwave. Defendant LTP Limited LLC (“LTP”) is purportedly an entity controlled by Perryman. Defendant StimQ Medical LLC is a subsidiary of Stimwave.

**Procedural Posture**

Previously, the Court dismissed defendant LTP Limited LLC in connection with a motion to dismiss (NYSCEF Doc. No. 37).

The Court observes that the remaining defendant, StimQ Medical LLC, never appeared or filed an answer. The affidavit of service for this defendant contends that service was effectuated via registered international mail to an address in the Bahamas in February 2023 (NYSCEF Doc. No. 9).

The Court dismisses the causes of action against this defendant for two reasons. First, there is no indication that this defendant was properly served in accordance with the Hague Service Convention requirements (*see Starostenko v UBS AG (A Swiss Bank)*, 19 CIV. 9993 (KPF), 2023 WL 34947, at \*3 [SD NY 2023]). According to the complaint, StimQ is a Bahamian entity (NYSCEF Doc. No. 2, ¶ 10) and so it appears that the Hague Service Convention requirements apply but were not followed. Second, even if this service was effective, plaintiff never moved for a default judgment against this defendant and the time to make such a motion has long passed (CPLR 3215[c] [requiring that a default judgment be made within a year of a defendant's default]).

That leaves defendant Perryman as the sole remaining defendant.

### **The Instant Motion**

Plaintiff seeks to strike defendant Perryman's answer on the ground that she has not complied with discovery orders, including directives that she appear for a deposition. Plaintiff details that it served a notice to take her deposition on May 16, 2024 and that defendant Perryman simply ignored this demand. It points out that it then brought a motion to compel a deposition and that this Court issued a decision (NYSCEF Doc. No. 247) that directed defendant Perryman to appear for a deposition on or before August 30, 2024.

Plaintiff insists that defendant Perryman never appeared for a deposition. It contends that she was not subject to any restrictions on her travel in connection with a then pending

confinement related to a criminal conviction in federal court. Plaintiff emphasizes that defendant Perryman was not incarcerated until September 13, 2024 and yet she still did not sit for a deposition as ordered by this Court.

Plaintiff also details how during the month of August 2024, it sought to facilitate defendant Perryman's deposition. It argues that it proposed a deposition date of August 20, 2024 and then suggested September 4, 2024, which was the day after she was supposed to be in New York for arguments related to her criminal case. Plaintiff argues that defendant Perryman unilaterally refused to appear for a deposition until plaintiff produced all of the documents she demanded. Plaintiff argues it made significant document productions to defendant Perryman on August 9 and August 26, 2024.

Defendant, who is now incarcerated, mailed a letter to the Court (which the Court uploaded to NYSCEF as Doc. No. 325). The Court will accept this letter as her opposition. In this document, defendant claims she has provided all of the discovery materials in her possession. She claims that dates were suggested for depositions but that plaintiff cancelled all of the proposed times. Defendant claims she has no issue sitting for a deposition and that plaintiff should arrange for one at the facility where she is currently incarcerated. Defendant also asks until December 28, 2024 to file opposition to the instant motion. She also claims that plaintiff has not provided discovery.

In reply,<sup>1</sup> plaintiff reiterates that defendant Perryman has only produced six documents in discovery and that she repeatedly refused to appear for a deposition.

---

<sup>1</sup> Curiously, plaintiff did not upload a reply affirmation and instead filed a letter. However, since the Court accepted defendant's letter opposition (as defendant is self-represented), the Court will consider plaintiff's reply letter.

## Discussion

As this Court has already observed in a prior motion decision, striking an answer is a drastic remedy. However, the record presented in this motion compels the Court to grant plaintiff's motion.

This Court previously found “that should Ms. Perryman not cooperate with the virtual or in person deposition (assuming she receives bail pending appeal), the Court will not hesitate to strike her answer. The burden on showing any travel restrictions imposed by the Federal Court is on Ms. Perryman. To be clear, unless she is incarcerated, she will have to come to New York absent a showing that she cannot leave the state of Florida” (NYSCEF Doc. No. 247 at 4).

Plaintiff attached an order detailing defendant Perryman's bail conditions, which show that she was permitted to travel to Manhattan and could have taken a deposition in accordance with the Court's order (NYSCEF Doc. No. 318). It also attached acrimonious email exchanges between plaintiff's counsel and defendant in which defendant refused to cooperate in scheduling a deposition despite the Court's prior order (NYSCEF Doc. No. 313). Another email thread clearly evidences defendant's clear refusal to appear for a deposition (NYSCEF Doc. No. 320).

There is only one conclusion to be drawn from this record—that defendant had no interest in participating in discovery and repeatedly ignored plaintiff's valid efforts to schedule her deposition prior to her incarceration. Enough is enough; this Court must enforce its own orders and so this Court simply abides by its own decision, which warned that Ms. Perryman's answer would be stricken if she failed to appear for a deposition in New York.

To be clear, this Court's decision to grant plaintiff's motion is based on the failure by defendant to appear for a deposition in direct contradiction of Court orders and valid notices to take her deposition. While the parties also raise arguments about document production, this

Court makes no findings about those issues. To reach a conclusion about whether or not defendant Perryman (or plaintiff for that matter) fully complied with all document demands would likely require a lengthy hearing. In contrast, it is very clear that defendant Perryman refused to show up for a deposition.

To the extent that defendant Perryman seeks an extension of time to oppose the instant motion, the Court finds that her letter opposition suffices as opposition to this motion. In any event, the Court observes that plaintiff filed this motion on October 22, 2024 with a return date of December 13, 2024; that is more than enough time for defendant to oppose even though she is currently incarcerated. The Court declines to drag out this motion any longer.

Accordingly, it is hereby

ORDERED that plaintiff's motion to strike defendant Perryman's answer is granted; and it is further

ORDERED that plaintiff's claims against StimQ Medical LLC are severed and dismissed as plaintiff did not submit proof that it properly served this defendant or, in the alternative, plaintiff did not timely move for a default judgment against this defendant; and it is further

ORDERED that there shall be an inquest on damages before a special referee; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court on the damages to be awarded to plaintiff from the only remaining defendant (Ms. Perryman) and plaintiff shall serve a copy of this decision on the Special Referee Clerk; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that plaintiff shall file a note of issue for an inquest on or before December 22, 2024.

12/16/2024  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/>	REFERENCE