

Memorandum of Law In Support of Motion To Set Aside

Defendant brings his motion to set aside the default judgment entered against him on ____, ____. Defendant's failure to respond timely to the Petition was not caused by any bad faith or willfulness, but rather because of matters beyond his control. [state your reason]. An evaluation of defendant's failure to respond lies within the discretion of the court, *Chase Manhattan Automotive Finance Corp. v. Allstate Ins. Co.* 708 NYS2d 174 (3 Dept. 2000), but this discretion must be guided by the strong public policy in favor of judgment on the merits rather than technicalities. *Mediavilla v. Gurman*, 707 N.Y.S.2d 432, 434 (A.D.1 Dept. 2000). In accordance with all the facts and the law, the court should set aside the default judgment entered against defendant and set the above-styled matter for trial.

Although defendant has been unable to find a case in which medical crisis affecting the defendant and preventing an appearance in court, as in the present case, the court has excused a defendant for failure to respond in time when the illness was of a close relative, *Zaidi v. New York Bldg. Contractors, Ltdl* (2 Dept. 2009), 877 N.Y.S.2d 381; dissolution of business, *Garcia v. Pepe* (2 Dept. 2007), 839 N.Y.S.2d 544; or simple clerical error, *Perez v. Travco Ins. Co.* (2 Dept. 2007), 843 N.Y.S.2d 390. Defendant's reasons for not responding are equally grave. The court must excuse defendant's failure to respond as not willful or in bad faith.

As alleged in the accompanying Motion, the plaintiff's petition against defendant should not have been granted, and defendant has alleged a meritorious defense. [go into as much detail here as possible, restating what you pointed out as wrong in the motion itself and your affidavit. The more the better]

Wherefore, because defendant has shown a reasonable excuse for his failure to respond and a meritorious defense to the action against him such that it would be unjust for the judgment to stand as it was entered, and in consideration of the strong public policy favoring judgments upon the merits, defendant requests this court to set aside its default judgment against defendant and set the matter for trial.

Respectfully,

_____ (signature)

Your name, address, phone number,

Certificate of service (as above)