

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Amirov v. Turtle Bay Tavern Corp.

2026 NY Slip Op 03055 · No. Index No. 23467/19; Appeal No. 6642; Case No. 2025-04813 · Decided May 14, 2026

SUMMARY

The Appellate Division, First Department reversed an order striking defendants' answer under CPLR 3126 and reinstated the answer. The court held that defendants' failure to produce a witness with knowledge of an alleged assault and related security and alcohol-service policies was not shown to be willful, contumacious, or in bad faith, particularly because the business had closed and former employees were no longer under defendants' control. The court stated that any additional witnesses later produced would first need to be made available for pretrial depositions and could be subject to preclusion orders.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Kennedy, J.; Friedman, J.; Gesmer, J.; Rosado, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 14, 2026
DOCKET	Index No. 23467/19; Appeal No. 6642; Case No. 2025-04813
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from an order granting plaintiffs' motion to strike defendants' answer pursuant to CPLR 3126.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Turtle Bay Tavern Corp. et al. v. Mikael Amirov et al.

TOPICS

- sanctions
- discovery dispute
- appellate procedure
- civil procedure
- standard of review

PRACTICE AREAS

Civil procedure

Discovery sanctions

Appellate procedure

Commercial litigation

QUESTIONS PRESENTED

1. Whether Supreme Court properly exercised its discretion by striking defendants' answer under CPLR 3126 for failing to produce a witness with knowledge of the alleged assault and defendants' internal policies and procedures.
2. Whether defendants' discovery conduct was willful, contumacious, or in bad faith so as to warrant the severe sanction of striking the answer.
3. What conditions may govern the later production of additional witnesses if defendants obtain control over them.

HOLDINGS

1. Supreme Court improvidently exercised its discretion by striking defendants' answer because the record did not establish that defendants' failure to produce the requested witness was willful, contumacious, or in bad faith.
2. If defendants later obtain control over additional witnesses and produce them at trial, they may not do so without first allowing plaintiffs to complete pretrial depositions of those witnesses, and the trial court may impose appropriate preclusionary orders.

KEY QUOTATIONS

"Based on the foregoing, the record does not establish that defendants' conduct was willful, contumacious or in bad faith" ([*1])

"However, on this record, defendant will not "maintain the option of simply producing [additional witnesses] at trial to testify [on] their behalf if at a future time they should obtain control over [them]" without, at a minimum, first "allowing [plaintiff] to complete [a] pre-trial deposition" of those witnesses" ([*1])

FACTUAL BACKGROUND

Plaintiffs sought discovery concerning an alleged assault at defendants' premises and defendants' internal policies regarding security and service of alcohol to intoxicated patrons. The business closed in 2018, and the employees with knowledge of those matters were no longer employed by defendants or within their control. Defendants had disclosed the names and addresses of 17 former employees, including nine who worked on the night of the alleged assault, and later promptly disclosed the last known address of a former manager who had assisted in preparing interrogatory responses.

PROCEDURAL HISTORY

Supreme Court, Bronx County, granted plaintiffs' motion to strike defendants' answer for failing to produce a witness with knowledge of an alleged assault and defendants' security and alcohol-service policies. The Appellate Division unanimously reversed, denied the motion, and reinstated defendants' answer.

DISPOSITION

reversed

REMAND INSTRUCTIONS

Defendants' answer is reinstated. If defendants later obtain control over additional witnesses, they must first allow plaintiffs to complete pretrial depositions of those witnesses, and the trial court may enter appropriate preclusionary orders.

CASES CITED

- Lee v. 13th St. Entertainment LLC, 161 AD3d 631, 632 [1st Dept 2018]
- Catarine v. Beth Israel Med. Ctr., 290 AD2d 213, 215 [1st Dept 2002]
- Vera v. Beth Israel Medical Center, 175 AD2d 716 [1st Dept 1991]
- Center Sheet Metal v. Cannon Design, Inc., 185 AD3d 507, 507-508 [1st Dept 2020]

OPINION

Amirov v. Turtle Bay Tavern Corp. 2026 NY Slip Op 03055
PER CURIAM.

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<p>2026 NY Slip Op 03055</p> <p>May 14, 2026</p> <p>Appellate Division, First
Department</p> <p>Published by New York State Law Reporting Bureau pursuant to Judiciary
Law § 431.</p> <p>This decision is uncorrected and subject to revision before publication in the
Official Reports.</p> </div> <div> <p>Mikael Amirov et al., Plaintiffs-Respondents,</p>
<p>v</p> <p>Turtle Bay Tavern Corp. et al, Defendants-Appellants.</p> </div> <p>Decided and
Entered: May 14, 2026</p> <p>Index No. 23467/19|Appeal No. 6642|Case No. 2025-04813|</p>
<p>Before: Manzanet-Daniels, J.P., Kennedy, Friedman, Gesmer, Rosado, JJ. </p> <div>
<p>Ondrovic & Platek, PLLC, White Plains (John Notoris of counsel), for appellants.</p>
<p>Leav & Steinberg, L.L.P., New York (Philip Schultze of counsel), for respondents.</p>
</div> [*1] <p>Order, Supreme Court, Bronx County (Alison Y. Tuitt, J.), entered
May 30, 2025, which granted plaintiffs' motion to strike defendants' answer pursuant to CPLR
3126, unanimously reversed, on the law, without costs, the motion denied and defendants' answer

reinstated.

The motion court improvidently exercised its discretion in striking defendants' answer for failing to produce a witness with knowledge of the facts concerning an alleged assault at defendants' premises and defendant's internal policies and procedures related to security and the service of alcohol to intoxicated patrons. Since the business closed in 2018, the individuals with knowledge of the foregoing issues were no longer employed by defendant or within its control (*see Lee v 13th St. Entertainment LLC*, 161 AD3d 631, 632 [1st Dept 2018]).

Moreover, five months before the parties appeared for a preliminary conference on October 16, 2019, defendants disclosed the names and addresses of 17 former employees, nine of whom worked on the night of the alleged assault: seven security guards, one manager, and one bartender. Plaintiff could have subpoenaed those employees as nonparty witnesses (*see id.*).

Plaintiff's position that defendants concealed the identity of a former manager of the business who assisted them in preparing responses to plaintiffs' interrogatories is unavailing. Plaintiff's interrogatories did not seek any other information. It was not until over four years later that plaintiff further inquired about this individual in a letter to opposing counsel and defendant's counsel promptly responded disclosing her last known address. Based on the foregoing, the record does not establish that defendants' conduct was willful, contumacious or in bad faith (*see e.g. Lee*, 161 AD3d at 632; *Catarine v Beth Israel Med. Ctr.*, 290 AD2d 213, 215 [1st Dept 2002]).

However, on this record, defendant will not "maintain the option of simply producing [additional witnesses] at trial to testify [on] their behalf if at a future time they should obtain control over [them]" without, at a minimum, first "allowing [plaintiff] to complete [a] pre-trial deposition" of those witnesses (*see e.g. Vera v Beth Israel Medical Center*, 175 AD2d 716 [1st Dept 1991]). The production of additional witnesses will also be subject to any preclusionary orders the trial court deems necessary at that time (*Center Sheet Metal v Cannon Design, Inc.*, 185 AD3d 507, 507-508 [1st Dept 2020]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 14, 2026

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PER CURIAM.

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May 14, 2026

Appellate Division, First Department

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Mikael Amirov et al., Plaintiffs-Respondents,

v

Turtle Bay Tavern Corp. et al, Defendants-Appellants.

Decided and Entered: May 14, 2026

Index No. 23467/19|Appeal No. 6642|Case No. 2025-04813|

Before: Manzanet-Daniels, J.P., Kennedy, Friedman, Gesmer, Rosado, JJ.

Ondrovic & Platek, PLLC, White Plains (John Notoris of counsel), for appellants.

Leav & Steinberg, L.L.P., New York (Philip Schultze of counsel), for respondents.

Order, Supreme Court, Bronx County (Alison Y. Tuitt, J.), entered May 30, 2025, which granted plaintiffs' motion to strike defendants' answer pursuant to CPLR 3126, unanimously reversed, on the law, without costs, the motion denied and defendants' answer reinstated.

The motion court improvidently exercised its discretion in striking defendants' answer for failing to produce a witness with knowledge of the facts concerning an alleged assault at defendants' premises and defendant's internal policies and procedures related to security and the service of alcohol to intoxicated patrons. Since the business closed in 2018, the individuals with knowledge of the foregoing issues were no longer employed by defendant or within its control (*see Lee v 13th St. Entertainment LLC*, 161 AD3d 631, 632 [1st Dept 2018]).

Moreover, five months before the parties appeared for a preliminary conference on October 16, 2019, defendants disclosed the names and addresses of 17 former employees, nine of whom worked on the night of the alleged assault: seven security guards, one manager, and one bartender. Plaintiff could have subpoenaed those employees as nonparty witnesses (*see id.*).

Plaintiff's position that defendants concealed the identity of a former manager of the business who assisted them in preparing responses to plaintiffs' interrogatories is unavailing. Plaintiff's interrogatories did not seek any other information. It was not until over four years later that plaintiff further inquired about this individual in a letter to opposing counsel and defendant's counsel promptly responded disclosing her last known address. Based on the foregoing, the record does not establish that defendants' conduct was willful, contumacious or in bad faith (*see e.g. Lee*, 161 AD3d at 632; *Catarine v Beth Israel Med. Ctr.*, 290 AD2d 213, 215 [1st Dept 2002]).

However, on this record, defendant will not "maintain the option of simply producing [additional witnesses] at trial to testify [on] their behalf if at a future time they should obtain control over [them]" without, at a minimum, first "allowing [plaintiff] to complete [a] pre-trial deposition" of those witnesses (*see e.g. Vera v Beth Israel Medical Center*, 175 AD2d 716 [1st Dept 1991]). The production of additional witnesses will also be subject to any

preclusionary orders the trial court deems necessary at that time (*Center Sheet Metal v Cannon Design, Inc.*, 185 AD3d 507, 507-508 [1st Dept 2020]).

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PER CURIAM.

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not until over four years later that plaintiff further inquired about this individual in a letter to opposing counsel and defendant's counsel promptly responded disclosing her last known address. Based on the foregoing, the record does not establish that defendants' conduct was willful, contumacious or in bad faith (see e.g. Lee , 161 AD3d at 632; Catarine v Beth Israel Med. Ctr. , 290 AD2d 213, 215 [1st Dept 2002]). However, on this record, defendant will not "maintain the option of simply producing [additional witnesses] at trial to testify [on] their behalf if at a future time they should obtain control over [them]" without, at a minimum, first "allowing [plaintiff] to complete [a] pre-trial deposition" of those witnesses (see e.g. Vera v Beth Israel Medical Center , 175 AD2d 716 [1st Dept 1991]). The production of additional witnesses will also be subject to any preclusionary orders the trial court deems necessary at that time (Center Sheet Metal v Cannon Design, Inc. , 185 AD3d 507, 507-508 [1st Dept 2020]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 14, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.