

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

May v. Gibbs

2026 NY Slip Op 01602 · No. Case No. 2025-00870; Appeal No. 6149; Index No. 160607/22 · Decided March 19, 2026

SUMMARY

The Appellate Division, First Department reversed an order granting a default judgment and denying the defendant's motions for a permanent stay and vacatur of a seizure order. The court held that the defendant established a reasonable excuse for the default and a meritorious defense, and that the dispute concerning replevin of a brass sign was subject to FINRA arbitration under an earlier unappealed order. The court denied the default judgment, granted the stay, and vacated the seizure order.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Scarpulla, J.P.; Kapnick, J.; Pitt-Burke, J.; Michael, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	March 19, 2026
DOCKET	Case No. 2025-00870; Appeal No. 6149; Index No. 160607/22
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed from an order granting plaintiff's motion for a default judgment and denying defendant's motions for a permanent stay of the action and vacatur of an order of seizure.
STANDARD OF REVIEW	Review of the Supreme Court's legal determination concerning default judgment, arbitration, and the effect of a prior unappealed order; the Appellate Division reviewed the order on the law.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Gerson Gibbs v. Owen May

TOPICS

- default judgment
- default
- arbitration
- replevin
- appellate procedure

PRACTICE AREAS

civil procedure

appellate procedure

arbitration

replevin

default judgment

QUESTIONS PRESENTED

1. Whether defendant demonstrated a reasonable excuse for his default and a potentially meritorious defense sufficient to warrant denial of plaintiff's motion for a default judgment.
2. Whether the prior unappealed determination that the dispute was subject to FINRA arbitration required a permanent stay of the action and dismissal of the replevin complaint.
3. Whether the order of seizure should be vacated because the court lacked authority to address the merits of claims already referred to arbitration.

HOLDINGS

1. Defendant demonstrated a reasonable excuse for the default and a meritorious defense, supported by an affidavit; his untimeliness should therefore have been excused and plaintiff's motion for a default judgment denied.
2. The action should have been permanently stayed and the complaint dismissed because the alleged conversion of the brass sign had already been determined to be subject to FINRA arbitration in an earlier unappealed order.
3. The order of seizure should have been vacated because the replevin dispute was subject to arbitration and the court lacked authority to adjudicate its merits.

KEY QUOTATIONS

"Given the questions of fact as to the merits, the brief delay, the lack of intention on defendant's part to default, and plaintiff's failure to demonstrate any prejudice attributable to the delay, as well as the policy preference in favor of resolving disputes on the merits, defendant's untimeliness should have been excused" ([*1])

"Once the issue was remanded to arbitration, the court's role ended and it did not have the power to address the merits of the replevin claims" ([*1])

FACTUAL BACKGROUND

Plaintiff sought replevin of a brass sign recovered from the World Trade Center 9/11 site. Defendant delayed responding to the complaint, but his counsel appeared shortly before plaintiff's default-judgment motion was processed, and defendant timely opposed the motion by filing a motion to dismiss asserting lack of jurisdiction and other defenses. In an earlier order in a separate action, Supreme Court had determined that plaintiff's claims against defendant concerning the brass sign were subject to FINRA arbitration; plaintiff filed this action while asserting the same claim in the pending arbitration and did not inform the court of the arbitration or the earlier order.

PROCEDURAL HISTORY

Supreme Court, New York County, granted plaintiff's motion for a default judgment and denied defendant's motions for a permanent stay and to vacate an order of seizure. The Appellate Division unanimously reversed, denied the default-judgment motion, granted the motions for a permanent stay and vacatur, and directed dismissal of the complaint based on the prior determination that the dispute was subject to FINRA arbitration.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The default judgment is denied, the motion for a permanent stay is granted, the order of seizure is vacated, and the complaint is to be dismissed because the dispute is subject to FINRA arbitration.

CASES CITED

- Xiaoyong Zhang v Jong, 195 AD3d 435, 435 [1st Dept 2021]
- Morrison Cohen LLP v Fink, 81 AD3d 467, 468 [1st Dept 2011]
- New Media Holding Co. LLC v Kagalovsky, 97 AD3d 463, 465-466 [1st Dept 2012]
- Morales v American United Transp., Inc., 214 AD3d 415, 416 [1st Dept 2023]
- Nimble Ventures, LLC v Graves, 192 AD3d 514, 516 [1st Dept 2021]
- Markowits v Friedman, 144 AD3d 993, 996-997 [2d Dept 2016]

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