

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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Baxley

April 15, 2024

Opposition No. 91289331

*NIHC, Inc.*

*v.*

*James Lindsay*

**Andrew P. Baxley, Interlocutory Attorney:**

In response to the notice of default that the Board issued on March 13, 2024, Applicant, on April 11, 2024, filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) and a response to the notice of default. Further briefing of the motion to dismiss is **tolled** pending resolution of the following.

However the issue of a defendant's default for failure to timely answer is raised, the determination of whether to set aside a default is made in accordance with Fed. R. Civ. P. 55(c), which states in pertinent part: "for good cause shown the court may set aside an entry of default." As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). Even if the Board assumes that there is no indication of prejudice

to the plaintiff is lacking, and that Applicant has a meritorious defense by way of the motion to dismiss, Applicant's statement that "the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the Applicant," is insufficient because it sets forth no facts explaining why Applicant failed to timely answer. Without such facts, the Board cannot set aside the notice of default. Until the notice of default is set aside, briefing of the motion will not go forward. Applicant is allowed until **ten days** from the date of this order to explain why it failed to timely answer.

Proceedings herein are otherwise **suspended**.