



When You Have Been Found In Violation By “Default”

What Does It Mean To Be In “Default/In Violation By Default?”

On the front of every summons is listed a *hearing date*. When a Respondent, or representative for the Respondent, does not appear at the hearing, or admit and pay/settle/stipulate in advance, then the Respondent is found In Violation by Default.

What Is The Penalty For A Default?

The penalty following a Default Decision depends on the violation that is charged in the summons. However, a default penalty is often **2-3 times higher** than the standard penalty.

What Can I Do If I Received A Decision Finding Me In Default?

You can either 1) Pay the default penalty and any additional penalties, fees, or interest that has been imposed; or 2) You can request to reopen the missed hearing, depending on the summons.

How Can I Request To Reopen A Missed Hearing?

You can submit a “Request for a New Hearing After A Failure to Appear” request form [online](#) at OATH’s website, by [regular mail](#), or [in person](#) at any OATH location.

If I Request To Reopen A Missed Hearing, Will OATH Grant My Request?

It depends on how long the summons has been in default status and your reason for missing the hearing. [OATH’s procedural rules](#) allow defaulted hearings to be reopened as follows:

- 1) For a **1st** Request to Reopen a Hearing after Default made **within 75 days** of the Default Decision date, the request will be *automatically* granted.
- 2) For a **1st** Request to Reopen a Hearing after Default made **more than 75 days after** the Default Decision date, but within one (1) year, the request must provide a “reasonable excuse” for missing the hearing. OATH will decide whether the excuse is reasonable, based on factors detailed in the procedural rules.
- 3) For a **1st** Request to Reopen a Hearing after Default made **more than one (1) year after** the Default Decision date, or for a **2nd** request (after a 1st default was previously vacated and rescheduled), you must prove “exceptional circumstances” for missing the hearing and show how a denial of your request would result in an injustice.

If I Request To Reopen A Missed Hearing, When Will I Find Out The Result?

A decision to reopen a defaulted hearing could take up to six (6) weeks. The decision will be sent by regular mail to the requestor. OATH may also request additional information to determine if the requestor has standing to make the request.

What If OATH Grants Me A New Hearing?

If OATH grants your request, a new hearing date will be scheduled. The new hearing date and instructions on how to participate in the hearing will be sent by regular mail.

Can I Submit My Request In A Language Other Than English?

Yes. The request form can be submitted in the language you feel most comfortable using. OATH's online form can be translated into many languages.

Can I Attach Evidence To My Request?

Yes, you can. You may also write a detailed explanations for missing the hearing on a separate sheet of paper and attach it to your application, along with any supporting documents.

What If My Request Is Denied?

A denial to reopen a defaulted hearing is the agency's final determination and cannot be appealed at OATH. If a request is denied, then the assigned default penalties will remain until they are paid/satisfied. If you disagree with OATH's decision regarding a request to reopen a missed hearing, you may also seek legal review through Article 78 of the New York Civil Practice Law and Rules in the New York State Supreme Court.

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