Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13189
T/hu

_____AD3d_____ Argued - November 2, 2006

HOWARD MILLER, J.P.
GABRIEL M. KRAUSMAN
STEVEN W. FISHER
MARK C. DILLON, JJ.

2005-09017 DECISION & ORDER

Jeffrey L. Rosenberg & Associates, LLC, respondent,
v Philippe Lajaunie, et al., appellants.

(Index No. 913/05)

Robert V. Ferrari, New York, N.Y. (Richard H. Byrnes of counsel), for appellants.

Jeffrey L. Rosenberg & Associates, LLC, Old Westbury, N.Y., respondent pro se.

In an action to recover an attorney's fee, the defendants appeal from an order of the Supreme Court, Nassau County (Jonas, J.), dated August 23, 2005, which denied their motion pursuant to CPLR 3012(d) to vacate their default in appearing and answering and to compel the plaintiff to accept late service of their verified answer.

ORDERED that the order is reversed, on the facts and as a matter of discretion, with costs, the motion is granted, and the verified answer is deemed served upon the plaintiff.

The Supreme Court improvidently exercised its discretion in denying the defendants' motion pursuant to CPLR 3012(d) to vacate their default in appearing and answering and to compel the plaintiff to accept their verified answer, which was served 10 days late. Although a Judicial Hearing Officer determined that the defendants were properly served with the summons and complaint, the defendants' objection to service was not the sole explanation for their brief delay in answering. Considering the defendants' additional explanations for the brief delay, the absence of prejudice to the plaintiff, the existence of a potentially meritorious defense, and the strong public policy in favor of resolving cases on the merits, the defendants' motion should be granted (*see Jolkovsky v Legeman,* 32 AD3d 418; *Rottenberg v Preferred Prop. Mgt. Inc.,* 22 AD3d 826; *Kaiser*

v Delaney, 255 AD2d 362; *Classie v Stratton Oakmont,* 236 AD2d 505; *Van Man Adhesives Corp. v City of New York,* 236 AD2d 465; *Robles v Grace Episcopal Church,* 192 AD2d 515).

MILLER, J.P., KRAUSMAN, FISHER and DILLON, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court