

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

D13367  
C/mv

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 21, 2006

HOWARD MILLER, J.P.  
STEPHEN G. CRANE  
ROBERT A. LIFSON  
MARK C. DILLON, JJ.

2005-07048

DECISION & ORDER

Samuel Neuman, respondent, v Zurich North America,  
etc., et al., defendants, Norwest Bank Minnesota, etc.,  
et al., appellants.

(Index No. 3104/04)

O'Melveny & Myers, LLP, New York, N.Y. (Yosef Rothstein and Brian Brooks of  
counsel), for appellant Ocwen Federal Bank, FSB, n/k/a Ocwen Loan Servicing, LLC.

Sanford Solny (Ephrem J. Wertenteil, New York, N.Y., of counsel), for respondent.

In an action to recover under an insurance policy, the defendants Norwest Bank  
Minnesota and Ocwen Federal Bank, FSB, n/k/a Ocwen Loan Servicing, LLC, appeal from an order  
of the Supreme Court, Kings County (Douglass, J.), dated May 20, 2005, which denied their motion,  
in effect, pursuant to CPLR 5015(a)(1) and CPLR 5015(a)(4) to vacate an order of the same court  
dated February 16, 2005, which granted, on default, the plaintiff's motion for leave to enter a  
judgment against the defendant Ocwen Federal Bank, FSB, upon its failure to appeal or answer.

ORDERED that the appeal by the defendant Norwest Bank Minnesota is dismissed,  
as abandoned (*see* 22 NYCRR 670.8[e][1]); and it is further,

ORDERED that the order is affirmed, with costs.

The defendants Norwest Bank Minnesota and Ocwen Federal Bank, FSB, n/k/a

January 9, 2007

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NEUMAN v ZURICH NORTH AMERICA

Ocwen Loan Servicing, LLC, moved, in effect, pursuant to CPLR 5015(a)(1) to vacate an order of the Supreme Court, Kings County, dated February 16, 2005, which granted on default, the plaintiff's motion for leave to enter a judgment against the defendant Ocwen Federal Bank, FSB (hereinafter Ocwen). "The decision as to the setting aside of a default in answering is generally left to the sound discretion of the Supreme Court, the exercise of which will generally not be disturbed if there is support in the record therefor" (*MacMarty, Inc. v Scheller*, 201 AD2d 706, 707). Here, the movants failed to offer a reasonable excuse for Ocwen's default and thus the court properly denied the motion to vacate the order entered on Ocwen's default (*see Mjahdi v Maguire*, 21 AD3d 1067, 1068; *Bray v Luca*, 233 AD2d 284, 285). Contrary to Ocwen's contention, the complaint set forth enough facts to enable the Supreme Court to determine that the plaintiff alleged a viable cause of action (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71). Furthermore, the plaintiff's failure to submit an affidavit of the facts or a verified complaint did not render the order a "nullity" under CPLR 3215(f) or warrant excusing Ocwen's default in the absence of a reasonable excuse or a meritorious defense (*see Araujo v Aviles*, 33 AD3d 830; *Coulter v Town of Highlands*, 26 AD3d 456, 457; *Harkless v Reid*, 23 AD3d 622, 623; *Roberts v Jacob*, 278 AD2d 297; *Bass v Wexler*, 277 AD2d 266). Nor was Ocwen entitled to vacatur of the order pursuant to CPLR 5015(a)(4) (*see Fashion Page v Zurich Ins. Co.*, 50 NY2d 265, 271-273).

MILLER, J.P., CRANE, LIFSON and DILLON, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court