

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

D13495  
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Submitted - December 7, 2006

STEPHEN G. CRANE, J.P.  
PETER B. SKELOS  
ROBERT A. LIFSON  
MARK C. DILLON, JJ.

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2005-09440

DECISION & ORDER

Jackie Goldberg, respondent, v Stanley J. Zawada,  
etc., appellant.

(Index No. 193/04)

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Stanley J. Zawada, Whitestone, N.Y., appellant pro se.

Hirsch, Britt & Mosé, Garden City, N.Y. (Eugene S. R. Pagano of counsel), for  
respondent.

In an action to recover damages for medical malpractice, the defendant appeals from a judgment of the Supreme Court, Queens County (Weiss, J.), entered August 26, 2005, which, upon an order of the same court dated January 7, 2005, denying his motion to vacate his default in appearing or answering the summons with notice, and upon an inquest on the issue of damages at which he appeared, is in favor of the plaintiff and against him in the principal sum of \$232,500.

ORDERED that the judgment is affirmed, with costs.

To vacate his default, the defendant was required to show a reasonable excuse for his default and a meritorious defense (*see* CPLR 5015[a]; *Santiago v New York City Health & Hosps. Corp.*, 10 AD3d 393, 394). The defendant failed to establish either, and accordingly, his motion to vacate his default was properly denied (*see Mount Sinai Hosp. of Queens v Hertz Corp.*, 3 AD3d 523, 524).

January 23, 2007

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There is no basis upon which to disturb the award of \$150,000 for future pain and suffering, at it does not deviate materially from what would be reasonable compensation (*see* CPLR 5501[c]).

The defendant's remaining contention regarding an order dated March 11, 2005, denying his motion, in effect, to reargue, is not reviewable on appeal (*see Mucciola v City of New York*, 207 AD2d 435; CPLR 5501[a][1]).

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

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court