

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

D13659
Y/cb

_____AD3d_____

Submitted - December 20, 2006

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

2006-02364

DECISION & ORDER

Deborah Kossefis, appellant, v Law Office of
Robert P. Tusa, etc., respondent.

(Index No. 28092/99)

Mallilo & Grossman, Flushing, N.Y. (Francesco Pomara, Jr., of counsel), for
appellant.

Law Office of Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y.
[Marshall D. Sweetbaum] of counsel), respondent pro se.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Nassau County (Brandveen, J.), dated January 20, 2006, which denied
her motion to vacate the dismissal of the action, and to restore the action to the trial calendar.

ORDERED that the order is affirmed, with costs.

The record does not demonstrate whether the court dismissed this action on April 15,
2004, pursuant to 22 NYCRR 202.27(b) based upon the plaintiff's counsel's failure to appear at a
trial conference, or whether the court marked this action off the trial calendar on April 15, 2004, and
it was later automatically dismissed pursuant to CPLR 3404. Regardless, the plaintiff failed to
present grounds for restoration under either scenario (*see Rezene v Williams*, 22 AD3d 656, 657;
Sharpe v Osorio, 21 AD3d 467, 468; *Costigan v Bleifeld*, 21 AD3d 871, 871-872; *Uddin v Mirza*,
10 AD3d 722; *Beale v Yepes*, 309 AD2d 886; *Sarot v Yusufov*, 301 AD2d 512, 513). Accordingly,

January 30, 2007

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the court providently exercised its discretion in denying the plaintiff's motion to vacate the dismissal and to restore this action to the trial calendar.

MILLER, J.P., SPOLZINO, KRAUSMAN, FISHER 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