

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

D15848
Y/cb

_____AD2d_____

Submitted - May 31, 2007

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
STEVEN W. FISHER
MARK C. DILLON, JJ.

2006-02949

DECISION & ORDER

Bank of New York, etc., respondent, v Margarita Segui, appellant, et al., defendants.

(Index No. 47606/03)

Helfand & Helfand, New York, N.Y. (Marisa Falero of counsel), for appellant.

Rosicki, Rosicki & Associates, P.C., Plainview, N.Y. (Owen M. Robinson of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Margarita Segui appeals from so much of an order of the Supreme Court, Kings County (Ruditzky, J.), dated March 22, 2006, as denied her motion, pursuant to CPLR 5015(a)(1), to vacate a judgment of foreclosure and sale of the same court, entered July 12, 2004, upon her default in appearing or answering.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Vacatur of a default judgment requires the moving defendant to establish both a reasonable excuse for the default and a meritorious defense (*see* CPLR 5015[a][1]; *Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr Co.*, 67 NY2d 138, 141; *Credit-Based Asset Servicing & Securitization v Chaudry*, 304 AD2d 708; *Mary Immaculate Hosp. v New York Cent. Mut. Fire Ins. Co.*, 296 AD2d 385, 386). The appellant failed to offer a reasonable excuse for her failure to answer or appear in the action and did not set forth the existence of a meritorious defense to foreclosure. Accordingly, the Supreme Court properly denied her motion to vacate the judgment of foreclosure

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and sale (see *Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr Co.*, *supra*; *Credit-Based Asset Servicing & Securitization v Chaudry*, *supra*).

The appellant's remaining contentions are without merit

RIVERA, J.P., FLORIO, 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