

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

D16708
Y/kmg

_____AD3d_____

Argued - October 9, 2007

ROBERT W. SCHMIDT, J.P.
PETER B. SKELOS
ROBERT A. LIFSON
RUTH C. BALKIN, JJ.

2006-03348
2006-03351

DECISION & ORDER

In the Matter of Apollo Real Estate Advisors, L.P.,
respondent, v Board of Assessors, et al., appellants.
(and another title).

(Index No. 403227/05)

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Gerald R. Podlesak of counsel), for appellants.

Cronin Cronin & Harris, Mineola, N.Y. (Laureen Harris of counsel), for respondent.

In a proceeding pursuant to Real Property Tax Law articles 5 and 7 to review the tax assessment of real property known as 100 Duffy Avenue in the Town of Oyster Bay for the 2005/06 tax year, the Board of Assessors and Assessment Review Commission of the County of Nassau appeal from an order and judgment (one paper) of the Supreme Court, Nassau County, dated September 26, 2005, which, inter alia, granted the petitioner's motion for summary judgment upon their default in opposing the motion, and (2), as limited by their brief, from so much of an order of the same court entered February 24, 2006, as denied that branch of their motion which was to vacate the order and judgment.

ORDERED that the appeal from the order and judgment dated September 26, 2005, is dismissed, as no appeal lies from an order and judgment entered upon the default of the appealing party (*see* CPLR 5511); and it is further,

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ORDERED that the order is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the petitioner.

In order to vacate the prior order and judgment, entered upon the appellants' default in opposing the motion by petitioner Apollo Real Estate Advisors, L.P. (hereinafter Apollo), for summary judgment, the appellants were required to show both a reasonable excuse for the default and a meritorious defense (*see* CPLR 5015[a]; *Ortega v Bisogno & Meyerson*, 38 AD3d 510; *Goldberg v Zawada*, 36 AD3d 756). The appellants failed to establish either and therefore, that branch of their motion which was to vacate the prior order and judgment was properly denied.

SCHMIDT, J.P., SKELOS, LIFSON and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court