

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

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Submitted - November 12, 2008

PETER B. SKELOS, J.P.
DAVID S. RITTER
MARK C. DILLON
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2008-02585

DECISION & ORDER

In the Matter of Putnam County National Bank,
respondent, v JP Morgan Chase Bank, N.A.,
appellant.

(Index No. 2132/06)

Simmons, Jannace & Stagg, LLP, Syosset, N.Y. (Thomas E. Stagg of counsel), for
appellant.

In a turnover proceeding pursuant to CPLR 5225(b) to direct JP Morgan Chase Bank, N.A., to turn over the sum of \$8,062.50 to the petitioner, a judgment creditor of Capital Management Consultants, Inc., and Frederic Cohn, JP Morgan Chase Bank, N.A., appeals from an order of the Supreme Court, Putnam County (O'Rourke, J.), dated February 15, 2008, which denied its motion pursuant to CPLR 5015(a)(1) to vacate a prior order of the same court dated October 27, 2006, granting the unopposed petition and directing it to turn over to the petitioner the sum of \$8,062.50 held in an account of the judgment debtor Capital Management Consultants, Inc., in partial satisfaction of the outstanding judgment.

ORDERED that the order dated February 15, 2008, is affirmed, without costs or disbursements.

The appellant admittedly received an order dated October 27, 2006, which was entered upon its default in opposing the petition, as early as November 17, 2006, but did not move to vacate that order, on the ground of excusable neglect, until December 18, 2007. The appellant failed to demonstrate a reasonable excuse for its lengthy delay in moving to vacate the order. Under

all of the circumstances, the Supreme Court providently exercised its discretion in denying the appellant's motion, which was made more than one year after it obtained actual notice of the order granting the petition (*see* CPLR 5015[a][1]; *Malik v Noe*, 54 AD3d 733; *Allen v Preston*, 123 AD2d 303).

SKELOS, J.P., RITTER, DILLON, CARNI and LEVENTHAL, 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