

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

D23938
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_____AD3d_____

Submitted - June 10, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
JOSEPH COVELLO
RANDALL T. ENG
L. PRISCILLA HALL, JJ.

2008-07380

DECISION & ORDER

Eli Brown, appellant, v Jack Vanchieri, et al.,
respondents.

(Index No. 22665/98)

David H. Singer & Associates, LLP, New York, N.Y., for appellant.

Wilson Elser Moskowitz Edelman & Dicker, LLP, New York, N.Y. (Thomas E. Leghorn and Robert Pariser of counsel), for respondents.

In an action to recover damages for legal malpractice, the plaintiff appeals from an order of the Supreme Court, Kings County (Hurkin-Torres, J.), dated July 2, 2008, which denied his motion, in effect, to vacate the dismissal of the action and to restore the action to the trial calendar.

ORDERED that the order is affirmed, with costs.

Where, as here, an action on the trial calendar is dismissed pursuant to 22 NYCRR 202.27(b), the dismissal of the action may be vacated, and the action restored to the trial calendar, only if the plaintiff can demonstrate both a reasonable excuse for the default and a meritorious cause of action (*see* CPLR 5015[a][1]; *Santiago v Santana*, 54 AD3d 929, 930; *Cazeau v Paul*, 2 AD3d 477). Under all of the circumstances, including the plaintiff's failure to provide a reasonable excuse for his lengthy delay in moving for that relief, the Supreme Court providently exercised its discretion in denying the plaintiff's motion (*see Seven Acre Wood St. Assoc. v Wood*, 286 AD2d 432; *Piacentini v Mineola Union Free School Dist.*, 267 AD2d 290, 291; *cf. Matter of Putnam County Natl. Bank*

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v JP Morgan Chase Bank, N.A., 57 AD3d 677, 678; *Malik v Noe*, 54 AD3d 733, 734).

RIVERA, J.P., DILLON, COVELLO, ENG and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court