

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

D24668  
H/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 20, 2009

FRED T. SANTUCCI, J.P.  
DANIEL D. ANGIOLILLO  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

---

2008-07951

DECISION & ORDER

Efren Rivera, appellant, v Michelle Komor, et al.,  
respondents.

(Index No. 1441/05)

---

Joseph J. Haspel, Goshen, N.Y., for appellant.

Fein, Such, Kahn & Shepard, P.C., Chestnut Ridge, N.Y. (Samit G. Patel of counsel),  
for respondents.

In an action to recover damages for negligent misrepresentation, the plaintiff appeals from a judgment of the Supreme Court, Rockland County (Kelly, J.), entered June 25, 2008, which, upon an order of the same court dated May 27, 2008, inter alia, denying his motion pursuant to CPLR 5015 to vacate a prior order of the same court dated April 29, 2008, which granted the defendants' motion for summary judgment dismissing the complaint upon his default in opposing the motion, is in favor of the defendants and against him, among other things, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

A party seeking to vacate an order entered upon his or her default is required to demonstrate a reasonable excuse for the default and the existence of a meritorious cause of action or defense (*see* CPLR 5015[a][1]; *Nowell v NYU Med. Ctr.*, 55 AD3d 573; *Simpson v Tommy Hilfiger U.S.A., Inc.*, 48 AD3d 389). The determination of what constitutes a reasonable excuse lies within the Supreme Court's discretion (*see Santiago v New York City Health & Hosps. Corp.*, 10 AD3d 393, 394; *Roussodimou v Zafiriadis*, 238 AD2d 568, 569). Under the circumstances of this case, the Supreme Court did not improvidently exercise its discretion in denying the plaintiff's motion to vacate

January 19, 2010

RIVERA v KOMOR

Page 1.

the order dated April 29, 2008, entered upon his default.

SANTUCCI, J.P., ANGIOLILLO, LEVENTHAL and LOTT, 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