

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

D26447
Y/prt

_____AD3d_____

Submitted - February 24, 2010

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2009-10279

DECISION & ORDER

Patricia Moriano, etc., respondent, v
Provident New York Bancorp, appellant.

(Index No. 3159/09)

McGivney & Kluger, P.C., New York, N.Y. (Kenneth S. Ross of counsel), for appellant.

Jacobowitz & Gubits, LLP, Walden, N.Y. (David Gandin of counsel), for respondent.

In an action to recover damages for breach of a lease, the defendant appeals from an order of the Supreme Court, Orange County (Slobod, J.), dated September 8, 2009, which, in effect, denied its motion, inter alia, to compel the plaintiff to accept its late answer.

ORDERED that the order is affirmed, with costs.

“A defendant who has failed to timely appear or answer the complaint must provide a reasonable excuse for the default and demonstrate a meritorious defense to the action, when opposing a motion for leave to enter judgment upon its failure to appear or answer and moving to extend the time to answer or to compel the acceptance of an untimely answer” (*Lipp v Port Auth. of N.Y. & N.J.*, 34 AD3d 649, 649; *see Juseinoski v Board of Educ. of City of N.Y.*, 15 AD3d 353, 356). Here, the Supreme Court providently exercised its discretion in denying the defendant’s motion, inter alia, to compel the plaintiff to accept its late answer, since it failed to demonstrate the existence of a meritorious defense to the action (*see Baldwin v Mateogarcia*, 57 AD3d 594, 595; *Cortlandt*

March 9, 2010

MORIANO v PROVIDENT NEW YORK BANCORP

Page 1.

Healthcare, LLC v Gantt, 54 AD3d 799, 800; *Lipp v Port Auth. of N.Y. & N.J.*, 34 AD3d at 649-650; *Juseinoski v Board of Educ. of City of N.Y.*, 15 AD3d at 357-358).

RIVERA, J.P., FLORIO, DICKERSON, BELEN and ROMAN, 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