

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

D27858
O/ct

_____AD3d_____

Submitted - June 2, 2010

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2010-00509

DECISION & ORDER

Amir Pasha Shapouri, etc., et al., appellants, v Joseph
A. Molinelli, et al., respondents.

(Index No. 13133/08)

Bornstein & Emanuel, P.C., Garden City, N.Y. (Mitchell Dranow of counsel), for
appellants.

Lewis Johs Avallone Aviles, LLP, Melville, N.Y. (Seth Weinberg of counsel), for
respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as
limited by their brief, from so much of an order of the Supreme Court, Nassau County (Winslow, J.),
dated November 5, 2009, as granted the defendants' cross motion pursuant to CPLR 5015(a) to
vacate their default in appearing or answering the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

A defendant seeking to vacate its default in appearing or answering the complaint must
provide a reasonable excuse for the default and demonstrate the existence of a potentially meritorious
defense to the action (*see* CPLR 5015[a][1]; *Kramer v Oil Servs., Inc.*, 65 AD3d 523; *Lemberger
v Congregation Yetev Lev D'Satmar, Inc.*, 33 AD3d 671, 672; *Krieger v Cohan*, 18 AD3d 823).
Here, the Supreme Court did not improvidently exercise its discretion in finding a reasonable excuse
and the existence of a potentially meritorious defense. Accordingly, the Supreme Court properly

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granted the defendants' cross motion to vacate their default in appearing or answering the complaint.

COVELLO, J.P., ANGIOLILLO, LEVENTHAL and ROMAN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court