

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

D29685
G/kmb

_____AD3d_____

Argued - December 17, 2010

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2009-11192

DECISION & ORDER

Deutsche Bank National Trust Company, etc.,
respondent, v Mannes Rudman, et al., appellants,
et al., defendant.

(Index No. 11347/07)

Sanford Solny, Brooklyn, N.Y., for appellants.

Fein, Such & Crane, LLP (D.J. & J.A. Cirando, Syracuse, N.Y. [John A. Cirando, Bradley E. Keem, Elizabeth deV. Moeller, and Vicki Jo Beighley], of counsel), for respondent.

In an action to foreclose a mortgage, the defendants Mannes Rudman and Lotty Rudman appeal from an order of the Supreme Court, Kings County (Partnow, J.), dated July 8, 2009, which granted the plaintiff's motion for leave to enter a judgment of foreclosure and sale against them upon their failure to answer and denied their cross motion, inter alia, to vacate their default in answering and extend their time to answer.

ORDERED that the order is affirmed, with costs.

In this action to foreclose a mortgage, the appellants did not answer the complaint until more than eight weeks after their time to do so expired and, even after their untimely answer was immediately rejected, they took no action to remedy their default until many months later. A defendant who seeks to extend the time to appear or to compel acceptance of an untimely answer must provide a reasonable excuse for the default and show a potentially meritorious defense (*see Maspeth Fed. Sav. & Loan Assn. v McGown*, 77 AD3d 889). Here, the appellants failed to offer any

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excuse for their failure to timely answer the complaint (*id.*; see *Emigrant Mtge. Co., Inc. v Teel*, 74 AD3d 1275, 1276). Since the appellants failed to offer a reasonable excuse, it is unnecessary to consider whether they demonstrated the existence of a potentially meritorious defense (see *Maspeth Fed. Sav. & Loan Assn. v McGown*, 77 AD3d at 889).

Accordingly, the Supreme Court properly denied the appellants' cross motion, *inter alia*, to vacate their default in answering and extend their time to answer, and properly granted the plaintiff's motion for leave to enter a judgment of foreclosure and sale against the appellants.

DILLON, J.P., BALKIN, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court