

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

D32073  
H/prt

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

Submitted - June 14, 2011

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
LEONARD B. AUSTIN  
JEFFREY A. COHEN, JJ.

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2010-06969

DECISION & ORDER

Leon Kohn, appellant, v  
Relli Kohn, respondent.

(Index No. 2737/07)

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Eric Ole Thorsen, New City, N.Y., for appellant.

Barbara J. Strauss, Goshen, N.Y., for respondent.

Appeal by the plaintiff, as limited by his brief, from so much of an order of the Supreme Court, Rockland County (Weiner, J.), dated June 21, 2010, as granted those branches of the defendant's motion which were (a) to vacate a prior order of the same court granting that branch of his motion which was to direct that certain interest earned on funds deposited into an escrow account be paid to him upon the defendant's default in opposing his motion, and (b) to direct that the subject interest be paid to the defendant.

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

To vacate her default in opposing the plaintiff's motion, the defendant was required to demonstrate both a reasonable excuse for her default and a potentially meritorious opposition (*see Remote Meter Tech. of NY, Inc. v Aris Realty Corp.*, 83 AD3d 1030; *Bazoyah v Herschitz*, 79 AD3d 1081). A motion to vacate a default is addressed to the sound discretion of the Supreme Court (*see Dimitriadis v Visiting Nurse Serv. of N.Y.*, 84 AD3d 1150). The Supreme Court has the discretion to accept law office failure as a reasonable excuse (*see CPLR 2005*), where the claim of law office failure is supported by a "detailed and credible" explanation of the default (*see Remote Meter Tech. of N.Y., Inc. v Aris Realty Corp.*, 83 AD3d 1030; *Winthrop Univ. Hosp. v Metropolitan Suburban*

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*Bus Auth.*, 78 AD3d 685, 686). Here, the defendant's claim of law office failure was supported by a "detailed and credible" explanation of the default, and the Supreme Court providently exercised its discretion in accepting that explanation. Moreover, the defendant demonstrated the existence of a potentially meritorious opposition to the plaintiff's motion.

Furthermore, the defendant demonstrated her entitlement to the subject interest and, thus, upon vacating the defendant's default, the Supreme Court properly granted that branch of the defendant's motion which was to direct that the subject interest be paid to her (*see CPLR 5002; Aloi v Simoni*, 82 AD3d 683, 686; *Bartek v Draper*, 309 AD2d 825, 826).

The defendant's request for the counsel fees incurred in connection with the defense of this appeal is not properly before this Court (*see Taft v Taft*, 135 AD2d 809, 810), and is properly addressed in the first instance to the Supreme Court (*see Kane v Rudansky*, 309 AD2d 785).

The plaintiff's remaining contentions are without merit.

RIVERA, J.P., FLORIO, AUSTIN and COHEN, JJ., concur.

ENTER:



Matthew G. Kiernan  
Clerk of the Court