

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

D32641  
Y/kmb

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Argued - October 4, 2011

MARK C. DILLON, J.P.  
RUTH C. BALKIN  
RANDALL T. ENG  
JEFFREY A. COHEN, JJ.

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2010-09076

DECISION & ORDER

Edzer Roche, appellant, v City of New York, et al.,  
respondents, et al., defendants.

(Index No. 16961/07)

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White, Cirrito & Nally, LLP, Hempstead, N.Y. (James P. Nally of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Karen M. Griffin of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Flug, J.), dated August 16, 2010, which denied his motion to vacate an order of the same court dated April 1, 2010, granting the motion of the defendants City of New York and New York City Department of Corrections for summary judgment dismissing the complaint insofar as asserted against them, upon his default in opposing the motion.

ORDERED that the order dated August 16, 2010, is affirmed, with costs.

In order to vacate his default in opposing the municipal defendants' motion for summary judgment, the plaintiff was required to demonstrate both a reasonable excuse for his default and a potentially meritorious opposition to the motion (*see* CPLR 5015[a][1]; *Casali v Cyran*, 84 AD3d 711; *Simpson v Tommy Hilfiger, U.S.A., Inc.*, 48 AD3d 389, 392). Although the plaintiff's claim of law office failure can be deemed a reasonable excuse (*see Kohn v Kohn*, 86 AD3d 630; *Winthrop Univ. Hosp. v Metropolitan Suburban Bus Auth.*, 78 AD3d 685, 686), he did not demonstrate the existence of a potentially meritorious opposition to the municipal defendants' motion, since the record demonstrates that there is no triable issue of fact as to whether a special

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relationship existed between the plaintiff and the municipal defendants under the circumstances presented (*see Greene v New York City Hous. Auth.*, 283 AD2d 458, 459; *see also Cuffy v City of New York*, 69 NY2d 255, 260; *Brown v City of New York*, 73 AD3d 1113; *Feinsilver v City of New York*, 277 AD2d 199; *Montague v City of New York*, 194 AD2d 524).

DILLON, J.P., BALKIN, ENG and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court