

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

D33425
O/ct

_____AD3d_____

Argued - November 22, 2011

WILLIAM F. MASTRO, A.P.J.
L. PRISCILLA HALL
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2010-11297

DECISION & ORDER

Rodney Miller, appellant, v Delores Mack, et al.,
defendants; Motor Vehicle Accident Indemnification
Corporation, nonparty-respondent.

(Index No. 38005/09)

Alan Ross, Brooklyn, N.Y. (Stuart K. Gechlik of counsel), for appellant.

Cruz & Gangi and Associates (Kornfeld, Rew, Newman & Simeone, Suffern, N.Y.
[Scott A. Dow] of counsel), for nonparty-respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Starkey, J.), dated April 9, 2008, which denied those branches of his motion which were to restore the action to active status and to compel the nonparty Motor Vehicle Accident Indemnification Corporation to interpose an answer on behalf of the defendants Delores Mack and Isaiah Smalls in accordance with a prior order of the same court dated November 16, 2005, and granted the cross motion of the nonparty Motor Vehicle Accident Indemnification Corporation pursuant to CPLR 5015 to vacate the order dated November 16, 2005, entered upon its default, which had granted the plaintiff's motion to compel it to provide a defense and indemnification to the defendants.

ORDERED that the order is affirmed, with costs.

Contrary to the plaintiff's contentions, the Supreme Court properly granted the cross motion of the nonparty Motor Vehicle Accident Indemnification Corporation (hereinafter MVAIC) to vacate the order dated November 16, 2005, entered upon its default. MVAIC succeeded in

December 27, 2011

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establishing a reasonable excuse for its default in opposing the underlying motion to compel it to provide a defense and indemnification to the defendants, and it further demonstrated a potentially meritorious opposition to the motion based on the plaintiff's alleged failure to comply with the substantive and timeliness requirements of Insurance Law § 5208 (*see generally Knight v Motor Veh. Acc. Indem. Corp.*, 62 AD3d 665, 666; *Naula v Dela Puente*, 48 AD3d 434, 434-435; *Barillas v Rivera*, 32 AD3d 872; *Matter of Wilcox v Motor Veh. Acc. Indem. Corp.*, 187 AD2d 909, 910-911; *Carty v Davis*, 140 AD2d 661; *Sain v Forrest*, 130 AD2d 733; *Matter of Bailey v Motor Veh. Acc. Indem. Corp.*, 67 AD2d 707; *Matter of Ramos v Motor Veh. Acc. Indem. Corp.*, 54 AD2d 734).

Furthermore, under the circumstances of this case, the Supreme Court did not improvidently exercise its discretion in denying those branches of the plaintiff's motion which were to restore the action to active status and to compel MVAIC to interpose an answer on behalf of the defendants Delores Mack and Isaiah Smalls.

MASTRO, A.P.J., HALL, SGROI and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court