

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

D33657
Y/prt

_____AD3d_____

Submitted - December 13, 2011

ANITA R. FLORIO, J.P.
ARIEL E. BELEN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2011-03695

DECISION & ORDER

2261 Palmer Avenue Corporation, respondent, v
Lynn Malick, appellant.

(Index No. 19014/10)

Michel Costello, Rosedale, N.Y., for appellant.

Goldenberg & Selker, LLP, White Plains, N.Y. (Diane E. Selker of counsel), for
respondent.

In an action for ejectment and to recover damages for use and occupancy, the defendant appeals, as limited by her brief, from so much of an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered February 22, 2011, as granted that branch of the plaintiff's motion which was pursuant to CPLR 3215 for leave to enter a default judgment, and denied that branch of her cross motion which was to vacate her default in appearing or answering the complaint.

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

In order to vacate her default in appearing or answering the complaint, the defendant was required to demonstrate both a reasonable excuse for the default and the existence of a potentially meritorious defense to the action (*see* CPLR 5015[a][1]; *Bank of Am. v Faracco*, 89 AD3d 879; *Community Preserv. Corp. v Bridgewater Condominiums, LLC*, 89 AD3d 784; *see also Swensen v MV Transp., Inc.*, 89 AD3d 924). Even if the defendant demonstrated a reasonable excuse for her default, our review of the record establishes that she failed to demonstrate a potentially meritorious defense to the action. The papers submitted in support of her cross motion,

January 24, 2012

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inter alia, to vacate her default in appearing or answering the complaint were replete with self-serving, vague, and unsubstantiated denials and unsupported legal conclusions as to whether a potentially meritorious defense to the action existed, and were thus an insufficient basis for vacating her default (*see Thapt v Lutheran Med. Ctr.*, 89 AD3d 837; *Garal Wholesalers, Ltd. v Raven Brands, Inc.*, 82 AD3d 1041).

Accordingly, the Supreme Court properly granted that branch of the plaintiff's motion which was pursuant to CPLR 3215 for leave to enter a default judgment, and properly denied that branch of the defendant's cross motion which was to vacate her default in appearing or answering the complaint.

FLORIO, J.P., BELEN, ROMAN and SGROI, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court