

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

D36047  
N/kmb

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Submitted - September 5, 2012

DANIEL D. ANGIOLILLO, J.P.  
RUTH C. BALKIN  
LEONARD B. AUSTIN  
ROBERT J. MILLER, JJ.

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2012-03770

DECISION & ORDER

NYU-Hospital for Joint Diseases, as assignee of  
Gladys Feliz, appellant, v Praetorian Insurance  
Company, respondent.

(Index No. 14662/11)

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Joseph Henig, P.C., Bellmore, N.Y., for appellant.

Law Offices of Moira Doherty, P.C., Bethpage, N.Y. (Janice Rosen and Maureen Knodel of counsel), for respondent.

In an action to recover no-fault benefits under a policy of automobile insurance, the plaintiff appeals from an order of the Supreme Court, Nassau County (Galasso, J.), entered March 7, 2012, which granted the defendant's motion to vacate a clerk's judgment of the same court entered December 1, 2011, which, upon the defendant's default in appearing or answering the complaint, was in favor of the plaintiff and against the defendant in the sum of \$38,645, and to compel the plaintiff to accept the defendant's answer.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in granting the defendant's motion to vacate the default judgment and to compel the plaintiff to accept its answer (*see* CPLR 3012[d]). In light of the lack of any prejudice to the plaintiff resulting from the minimal delay in serving an answer to the complaint, the lack of willfulness on the part of the defendant, the existence of a potentially meritorious defense, and the public policy favoring the resolution of cases on the merits, the defendant's default in appearing or answering the complaint was properly excused (*see*

September 26, 2012

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NYU-HOSPITAL FOR JOINT DISEASES, as assignee of GLADYS FELIZ  
v PRAETORIAN INSURANCE COMPANY

CPLR 2004; *Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 199; *Vinny Petulla Contr. Corp. v Ranieri*, 94 AD3d 751, 752; *Zeccola & Selinger, LLC v Horowitz*, 88 AD3d 992, 993; *Mount Sinai Hosp. v Triboro Coach*, 263 AD2d 11, 18-20).

ANGIOLILLO, J.P., BALKIN, AUSTIN and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court