

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

D36185
O/kmb

_____AD3d_____

Submitted - September 19, 2012

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2011-04994

DECISION & ORDER

Taylor Appraisals, et al., respondents, v
Joseph W. Prokop, appellant.

(Index No. 40651/08)

Joseph W. Prokop, Central Islip, N.Y., appellant pro se.

Taylor Elderidge, P.C., Smithtown, N.Y. (J. David Eldridge of counsel), for respondents.

In an action, inter alia, to recover damages for breach of contract and on an account stated, the defendant appeals from an order and judgment (one paper) of the Supreme Court, Suffolk County (Spinner, J.), entered April 5, 2011, which denied his motion to vacate an order of the same court dated March 16, 2010, granting the plaintiffs' unopposed motion for summary judgment on the complaint, and is in favor of the plaintiffs and against him in the principal sum of \$18,700.

ORDERED that the order and judgment is affirmed, with costs.

To vacate his default in opposing the plaintiffs' motion for summary judgment on the complaint, the defendant was required to demonstrate a reasonable excuse for his default and a potentially meritorious opposition to the motion (*see* CPLR 5015[a][1]; *Walker v Mohammed*, 90 AD3d 1034; *Roche v City of New York*, 88 AD3d 978, 979; *Casali v Cyran*, 84 AD3d 711; *Simpson v Tommy Hilfiger U.S.A., Inc.*, 48 AD3d 389, 392). "While law office failure can be accepted as a reasonable excuse in the exercise of a court's sound discretion, the movant must submit supporting facts to explain and justify the default, and mere neglect is not accepted as a reasonable excuse" (*Ogunmoyin v 1515 Broadway Fee Owner, LLC*, 85 AD3d 991, 992; *see Morrison v Rosenberg*, 278

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AD2d 392, 392; *Cole-Hatchard v Grand Union*, 270 AD2d 447, 447).

Here, the defendant's proffered excuse of law office failure was vague and unsubstantiated and, thus, did not constitute a reasonable excuse for the default (*see Ogunmoyin v 1515 Broadway Fee Owner, LLC*, 85 AD3d at 992; *Alberton Devs., Inc. v All Trade Enterprs., Inc.*, 74 AD3d 1000; *Siculan v Koukos*, 74 AD3d 946, 947; *Chechen v Spencer*, 68 AD3d 801). Furthermore, the defendant failed to demonstrate a potentially meritorious opposition to the plaintiffs' motion for summary judgment (*see CPLR 3018[b]*; *Merrill Lynch Realty/Carl Burr, Inc. v Skinner*, 63 NY2d 590, 596; *White Plains Cleaning Servs., Inc. v 901 Props., LLC*, 94 AD3d 1108, 1109; *Landau v Weissman*, 78 AD3d 661, 662; *Profex, Inc. v Town of Fishkill*, 65 AD3d 678; *Pothos v Arverne Houses*, 269 AD2d 377, 378). Accordingly, the Supreme Court properly denied the defendant's motion to vacate the order dated March 16, 2010, which was entered upon his default in opposing the plaintiffs' motion for summary judgment on the complaint, and properly awarded judgment in favor of the plaintiffs and against the defendant in the principal sum of \$18,700.

RIVERA, J.P., FLORIO, DICKERSON, LEVENTHAL and LOTT, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court