

<b>T3 Trading Group, LLC v Di Gioia</b>
2021 NY Slip Op 32295(U)
October 27, 2021
Supreme Court, New York County
Docket Number: Index No. 654381/2020
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. LAURENCE LOVE **PART** **63M**

*Justice*

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T3 TRADING GROUP, LLC, T3 COMPANIES, LLC

Plaintiff,

- v -

MICHAEL DI GIOIA, AFFINITY TRADING GROUP, LLC,

Defendant.

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**INDEX NO.** 654381/2020

**MOTION DATE** 09/10/2021

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41 were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, the motion is decided as follows:

Plaintiff served a summons and complaint in this action pursuant to CPLR § 308(4) by affixing the summons and complaint to defendant, Michael Di Gioia's door on December 1, 2020 and mailing a copy to defendant on December 3, 2020 and served Affinity Trading Group, LLC pursuant to LLC Law Section 303 on December 4, 2020. Over thirty days have elapsed since the completion of service in this action and defendants have failed to appear in this action. In an Order dated July 14, 2021, this Court denied plaintiff's prior motion seeking the entry of a default judgment for plaintiff's non-compliance with CPLR 3215(g). On July 26, 2021, plaintiff mailed additional copies of the summons and complaint to both defendants pursuant to said section. As such, defendants are now in default.

Plaintiff demonstrated the merits of their claim by submitting the affidavit of Sean Handelman, the CEO of plaintiffs, together with the relevant Commission sharing agreement, assignment and assumption agreement, an additional commission sharing agreement, and supporting documentation (see, CPLR 3215[f]; *Henriquez v. Purins*, 245 AD2d 337 [2nd Dept

1997]; Rafiq v. Weston, 171 AD2d 783 [2nd Dept 1991]; Woodson v. Mendon Leasing Corp., 100 NY2d 62 [NY 2003]). Said documents establish as follows: On March 19, 2018, Arive Capital Markets, LLC ("Arive"), Di Gioia and Vision Brokerage Services, LLC ("Vision") entered into a Commission Sharing Agreement (the "March 2018 Commission Sharing Agreement") whereby Vision paid Arive 90% of the net revenues generated by certain accounts that were introduced by Di Gioia and maintained at Vision (the "Vision Accounts"). In October 2018, Di Gioia approached T3 Securities, Inc. ("T3 Securities") and asked if T3 Securities wanted to purchase his and Arive's rights to collect the net revenues generated by the Vision Accounts under the March 2018 Commission Sharing Agreement. Di Gioia provided T3 Securities with commission statements showing that Di Gioia had received up to \$23,978 in monthly commission from Vision pursuant to the March 2018 Commission Sharing Agreement between the months of January and September 2018. Said representations were relied upon by T3 Securities but were misleading. On October 24, 2018, T3 Securities entered into the October 2018 Assignment and Assumption Agreement by which Arive and Di Gioia assigned to T3 Securities their right to receive revenues from Vision under the March 2018 Commission Sharing Agreement. As part of said agreement, T3 Securities paid \$130,000.00 to an escrow agent for use to satisfy Di Gioia's outstanding debt obligations. Said debts were paid and DiGioia received the balance of \$10,464.08. On November 1, 2018, T3 Securities and Vision entered into a separate Commission Sharing Agreement (the "November 2018 Commission Sharing Agreement") which provided that "T3 may receive a payout for those account relationships previously introduced by its registered representative [Di Gioia] and established at Vision, and Vision may continue to service those accounts and receive revenue from them." On November 6, 2018, Di Gioia provided T3 Securities with a list of nine open and/or pending accounts at Vision which T3 Securities would receive commissions for under the October

2018 Assignment and Assumption Agreement and the November 2018 Commission Sharing Agreement. On December 5, 2018, Vision provided T3 Securities with a list of accounts that Di Gioia managed at Vision. Only three (3) of the nine (9) accounts provided by Di Gioia on November 6, 2018 appeared on Vision's list. On January 1, 2020, T3 Securities executed an Assignment and Assumption Agreement (the "January 2020 Assignment and Assumption Agreement") by which it transferred its right to receive revenues from Vision under the November 2018 Commission Sharing Agreement to T3 Trading Group in exchange for \$130,000.00. As a result of Di Gioia's (i) knowingly false representations regarding the underlying value of the Vision accounts subject to the October 2018 Assignment and Assumption Agreement; and (ii) breach of the October 2018 Assignment and Assumption Agreement T3 Trading Group (and T3 Securities) received less than \$4,000 in total commission payments in exchange for its payment to Di Gioia of \$130,000.00. On October 24, 2018, T3 Companies entered into an Asset Purchase Agreement with Affinity Trading Group (the "Asset Purchase Agreement"). T3 Companies purchased substantially all of the assets of Affinity Trading Group in exchange for \$20,000.00. After the execution of the Asset Purchase Agreement, Affinity Trading Group and Di Gioia breached Section 2(c) and failed to facilitate the transfer of existing revenues and subscribers from Affinity Trading Group to T3 Live. Affinity Trading Group and Di Gioia breached the Asset Purchase Agreement by failing to complete any of its obligations under Section 2(d) of the Asset Purchase Agreement. T3 Companies suffered damages in the amount of \$20,000.00 as a result of Affinity Trading Group and Di Gioia's breach of the Asset Purchase Agreement.

ORDERED, that Plaintiff's motion for a default judgment is granted as against all defendants; and it is further

ORDERED, that Plaintiffs be awarded a judgment in the amount of \$130,000.00 against defendant, Michael Di Gioia, together interest from September 11, 2020, costs, and disbursements and Plaintiffs are awarded a judgment in the amount of \$20,000.00 against defendant, Affinity Trading Group, LLC, together interest from September 11, 2020, costs, and disbursements The Clerk shall enter judgment accordingly.

10/27/2021  
DATE

  
LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE