

Rutigliano v Locantro
2021 NY Slip Op 32649(U)
December 8, 2021
Supreme Court, New York County
Docket Number: Index No. 654118/2015
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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JOSEPH RUTIGLIANO,

Petitioner-Plaintiff,

- v -

WILLIAM LOCANTRO, ROBERT ROMANOFF, EDM
ELECTRICAL CONTRACTORS, INC., BRAVO SALES
GROUP, INC., EDM ELECTRIC, INC., JOHN DOES 1
THROUGH 10, ABC CORPORATIONS 1 THROUGH 10,

Respondents-Defendants.
-----X

INDEX NO.	654118/2015
MOTION DATE	N/A
MOTION SEQ. NO.	012
DECISION AND ORDER ON MOTION – INCLUDES REFERENCE	

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 426, 427, 428, 429
were read on this motion for DEFAULT JUDGMENT.

Petitioner-Plaintiff Joseph Rutigliano, individually, and derivatively on behalf of
Absolute Electrical Contracting of NY Inc. (“Absolute”), moves for a default judgment pursuant
to CPLR § 3215(a) against Respondent-Defendants EDM Electrical Contractors, Inc. (“EDM
Contractors”) and EDM Electric, Inc. (“EDM Electric”) (collectively, “the EDM Defendants”) for failure to retain counsel after its prior counsel withdrew on March 1, 2021, or file an Answer to the Third Amended Verified Petition, or otherwise move with respect to the petition.

CPLR § 3215(a) permits entry of a default judgment “when a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him” The party seeking such a judgment must make “submissions of proof of service of the summons and complaint, a factually-detailed verified complaint, and an affirmation from its attorney regarding the defendant’s default in appearing and answering” (*599 Ralph Ave. Dev.*,

LLC v 799 Sterling Inc., 34 AD3d 726, 726 [2d Dept 2006]; *see also Zelnik v Bidermann Indus. U.S.A., Inc.*, 242 AD2d 227, 228 [1st Dept 1997] [“[J]udgment by default further requires proof by affidavit made by the party of the facts constituting the claim, the default and the amount due, or at least a verified complaint”] [internal citations omitted]).

Here, Petitioner-Plaintiff has submitted un rebutted evidence demonstrating compliance with the requirements of CPLR § 3215 (*see* NYSCEF 428, 429). The EDM Defendants have not filed any opposition to this motion. The Court grants the default judgment against Respondents-Defendants *as to liability* and directs the parties to an inquest, before a Special Referee, to hear and make a recommendation to the Court as to the amount of damages, if any, to which Petitioner-Plaintiff is entitled.

Accordingly, it is

ORDERED that Petitioner-Plaintiff’s Motion for a Default Judgment against Respondents-Defendants EDM Electrical Contractors, Inc. and EDM Electric, Inc. is hereby **Granted as to liability**; it is further

ORDERED this matter is directed to an Inquest before a Special Referee who shall hear and make a recommendation to the Court as to Petitioner-Plaintiff’s damages, if any; and it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/supctmanh at the

“Local Rules” link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

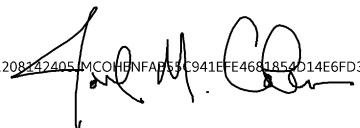
ORDERED that Petitioner-Plaintiff's counsel shall serve a copy of this order with notice of entry on Respondents-Defendants within five days and that counsel for Petitioner-Plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/1jd/suptctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

This constitutes the Decision and Order of the Court.

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12/08/2021

DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE