

Colliers Intl. NY LLC v DDG Partners, LLC
2022 NY Slip Op 31044(U)
March 29, 2022
Supreme Court, New York County
Docket Number: Index No. 655068/2021
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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INDEX NO. 655068/2021

COLLIERS INTERNATIONAL NY LLC,

MOTION DATE 10/07/2021

Plaintiff,

MOTION SEQ. NO. 001

- v -

DDG PARTNERS, LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10 were read on this motion for DEFAULT JUDGMENT.

Upon the foregoing documents, it is hereby ordered that plaintiff's motion for entry of a default judgment is granted, based upon the following memorandum decision.

Background

Defendant leases office space on the eighteenth floor of the building located at 60 Hudson Street, New York, New York (NYSCEF Doc. No. 6, ¶ 6). The parties entered into an agreement pursuant to which plaintiff brokered the sublease of defendant's offices to non-party Stadium Enterprises LLC in November 2019 (*id.*, ¶¶ 7-11, 17). Pursuant to a Commission Agreement dated November 6, 2019, defendant agreed to pay plaintiff a commission of \$237,251.49, payable in four installments (*id.*, ¶ 14). Subsequently, in January 2020, the parties modified the Commission Agreement to the extent that it would be payable in ten monthly installments, beginning in February 2020 (*id.*, ¶ 20). Plaintiff alleges that defendant only made four payments totaling \$96,000, leaving an outstanding balance of \$141,251.49 (*id.*, ¶ 21). Plaintiff now seeks entry of a default judgment for the outstanding balance, as well as its reasonable attorney's fees as provided for in the parties' agreement (*id.*, ¶¶ 32, 38).

Plaintiff commenced this action by filing the summons and verified complaint on August 19, 2021 (NYSCEF Doc. No. 1). Affidavits of service filed on September 7, 2021 attest to service on defendant via the Secretary of State on August 27, 2021, pursuant to Limited Liability Company Law § 303, and by in-hand delivery to defendant's managing agent on August 30, 2021, pursuant to CPLR 311-a(a) (NYSCEF Doc. No. 7). Service on defendant's managing agent obviates the need for an additional mailing pursuant to CPLR 3215(g)(4). To date, defendant has not answered the complaint or otherwise appeared in the action. There is no opposition to the motion.

Discussion

A plaintiff that seeks entry of a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Here, plaintiff has met its burden on the motion by submission of the affidavits of service demonstrating service of the summons and verified complaint on defendant (NYSCEF Doc. Nos. 7), the verified complaint (NYSCEF Doc. No. 6), and the affirmation of its counsel, Steven

Landy, Esq., attesting to the default (NYSCEF Doc. No. 5, ¶¶ 19-21). The complaint is verified by Stephen Shapiro, defendant's Chief Operating Officer for the Tri-State Region, and is therefore sufficient proof of the facts constituting plaintiff's claims (CLR 3215[f]). As set forth in the verified complaint, defendant is obligated to pay plaintiff a commission for brokering the sublease of defendant's offices, the outstanding balance of which is \$141,251.49 (NYSCEF Doc. No. 6, ¶¶ 7-11, 14, 17, 20-21). Moreover, plaintiff is entitled to its reasonable attorney's fees (*id.*, ¶¶ 32, 38). By failing to appear and contest the allegations in the verified complaint, defendant is deemed to have admitted all factual allegations contained therein and all reasonable inferences that flow from them (*Woodson*, 100 NY2d 62, 71 [2003]).

Accordingly, it is hereby

ORDERED that plaintiff's motion for a default judgment is granted; and, therefore, it is

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Colliers International NY LLC and against defendant DDG Partners, LLC in the sum of \$141,251.49, with interest at the statutory rate from August 19, 2021, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff is entitled to its reasonable attorneys' fees incurred in this action in an amount to be heard and determined by a Judicial Hearing Officer ("JHO") or Special Referee at inquest; and, therefore, it is

ORDERED that the issue of such fees is severed and a JHO or Special Referee shall be designated to conduct an inquest and determine the amount of Plaintiff's said fees, which is hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) 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 "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above.

This constitutes the Decision and Order of the court.

Louis L. Nock

3/29/2022

DATE

LOUIS L. NOCK, 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