

258 A.D.2d 347, 685 N.Y.S.2d 223, 1999 N.Y. Slip Op. 01406
(Cite as: 258 A.D.2d 347, 685 N.Y.S.2d 223)

©

Supreme Court, Appellate Division, First Department,
New York.

Mohammed SHEIKH, Plaintiff-Appellant,
v.

NEW YORK CITY TRANSIT AUTHORITY, et
al., Defendants-Respondents.

New York City Transit Authority, et al., Third
Party Plaintiffs,

v.

Malik Brothers, Inc., Third Party Defendant.
Feb. 18, 1999.

The Supreme Court, New York County, Robert Lippmann, J., denied plaintiff's motion to vacate a prior order granting defendants' motions to dismiss the complaint for plaintiff's failure to comply with disclosure orders, and plaintiff appealed. The Supreme Court, Appellate Division, held that plaintiff was not entitled to relief from default judgment.

Affirmed.

West Headnotes

[1] Judgment 228 ⇨143(2)

228 Judgment

228IV By Default

228IV(B) Opening or Setting Aside Default

228k143 Excuses for Default

228k143(2) k. Necessity for Excuse.

Most Cited Cases

Party seeking to vacate a default judgment must satisfy the two-pronged burden of showing a meritorious claim or defense and a reasonable excuse for the default.

[2] Judgment 228 ⇨143(3)

228 Judgment

228IV By Default

228IV(B) Opening or Setting Aside Default

228k143 Excuses for Default

228k143(3) k. Mistake, Surprise, or
Excusable Neglect in General. Most Cited Cases

Judgment 228 ⇨145(1)

228 Judgment

228IV By Default

228IV(B) Opening or Setting Aside Default

228k145 Meritorious Cause of Action or Defense

228k145(1) k. In General. Most Cited
Cases

Plaintiff was not entitled to relief from default judgment; mere fact that there was accident causing plaintiff's injuries was insufficient to show liability on the part of any of the defendants, and plaintiff's failure to maintain contact with his attorney and to keep himself apprised of the progress of his lawsuit did not constitute a reasonable excuse for his default.

****223** David Jaroslawicz, for Plaintiff-Appellant.

Steven I. Brizel, Andrew Sapon and Thomas Torto,
for Defendants-Respondents.

Liza Berliner-Fleissig, for Third Party Plaintiffs.

ROSENBERGER, J.P., NARDELLI, TOM and
ANDRIAS, JJ.

MEMORANDUM DECISION.

***348** Order, Supreme Court, New York County (Robert Lippmann, J.), entered on or about November 19, 1997, which denied plaintiff's motion to vacate a prior order, entered May 30, 1997, granting defendants' motions to dismiss the complaint for plaintiff's failure to comply with disclosure orders, unanimously affirmed, without costs.

[1][2] A party seeking to vacate a default must satisfy the two-pronged burden of ****224** showing a meritorious claim or defense and a reasonable ex-

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cuse for the default (*Goncalves v. Stuyvesant Dev. Assocs.*, 232 A.D.2d 275, 648 N.Y.S.2d 441). The mere fact that there was an accident causing plaintiff's injuries is insufficient to show liability on the part of any of the defendants (*Shkoditch v. One Hundred & Fifty William St. Corp.*, 17 A.D.2d 168, 233 N.Y.S.2d 179, *aff'd.* 16 N.Y.2d 609, 261 N.Y.S.2d 61, 209 N.E.2d 107). Nor does plaintiff's failure to maintain contact with his attorney and to keep himself apprised of the progress of his lawsuit constitute a reasonable excuse for his default (*see, Dudley v. Steese*, 228 A.D.2d 931, 644 N.Y.S.2d 824; *compare, Reyes v. New York City Hous. Auth.*, 236 A.D.2d 277, 653 N.Y.S.2d 585).

N.Y.A.D. 1 Dept., 1999.
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