

At a term of the Appellate Term of the Supreme Court
of the State of New York for the 2nd, 11th & 13th Judicial Districts

FEB 24 2015

MICHAEL L. PESCE, P.J.
MICHELLE WESTON
THOMAS P. ALIOTTA, JJ.

JANUARY 8, 2015 TERM
2013-02330 Q C

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NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Appellant,

-against-

Lower Court #
2093/11

ABDO KORIN,

Respondent.
-----X

The above named appellant having appealed to this court from an **ORDER** of the **CIVIL COURT OF THE CITY OF NEW YORK, QUEENS COUNTY** entered on **NOVEMBER 7, 2013** and the said appeal having been **submitted** by **GENE W. ROSEN, ESQ.** counsel for the appellant and **NO BRIEF SUBMITTED** for the respondent and due deliberation having been had thereon; it is hereby,


ORDERED AND ADJUDGED that the order is reversed, without costs, the respondent's motion to vacate the default judgment and to restore the proceeding to the calendar is denied, and the petitioner is awarded the sum of \$750 as additional attorney's fees for the litigation of this appeal.

Pesce, P.J., Weston and Aliotta, JJ., concur.

GENE W. ROSEN, ESQ.
KIRSCHENBAUM & KIRSCHENBAUM, P.C.
200 GARDEN CITY PLAZA, SUITE 500
GARDEN CITY, N.Y. 11530

ENTER:

ABDO KORIN
1611 AVENUE U
BROOKLYN, N.Y. 11229


PAUL KENNY
CHIEF CLERK
APPELLATE TERM

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : 2nd, 11th & 13th JUDICIAL DISTRICTS

-----X

PRESENT : PESCE, P.J., WESTON and ALIOTTA, JJ.

-----X

NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Petitioner-Appellant,

FEB 24 2015

-against-

NO. 2013-2330 Q C

DECIDED

ABDO KORIN,

Respondent-Respondent.

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Appeal from an order of the Civil Court of the City of New York, Queens County (Carmen R. Velasquez, J.), entered November 7, 2013. The order granted respondent's motion to vacate a default judgment and to restore the proceeding to the calendar.

ORDERED that the order is reversed, without costs, respondent's motion to vacate the default judgment and to restore the proceeding to the calendar is denied, and petitioner is awarded the sum of \$750 as additional attorney's fees for the litigation of this appeal.

Petitioner commenced this special proceeding to confirm an arbitrator's award in the total sum of \$6,458.71, made after respondent had failed to appear at the

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arbitration. The Civil Court granted the unopposed petition to confirm the arbitrator's award, and a judgment in the principal sum of \$6,458.71 was entered on March 2, 2011.

On October 28, 2013, respondent moved, by order to show cause, to vacate the default judgment and to restore the proceeding to the calendar. His motion was granted, over petitioner's opposition, by order entered November 7, 2013, from which petitioner appeals.

A review of the record on appeal indicates that respondent failed to establish that he did not receive notice of the proceeding in time to defend, so as to come within the purview of CPLR 317 (see Stevens v Charles, 102 AD3d 763 [2013]). Moreover, respondent failed to establish a reasonable excuse for his default or a meritorious defense to the proceeding (see CPLR 5015 [a] [1]). Accordingly, it was an improvident exercise of discretion for the Civil Court to grant respondent's motion to vacate the default judgment.

Since the agreement between the parties provides for an award of attorney's fees in the event that petitioner prevails "in any litigation between the parties," we agree with petitioner's contention on appeal that it is entitled to an award of \$750 as additional reasonable attorney's fees in connection with the litigation of this appeal (see Matter of New York Merchants Protective Co., Inc. v RW Adart Poly, LLC, 108 AD3d 554 [2013]).

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Accordingly, the order is reversed, respondent's motion to vacate the default judgment and to restore the proceeding to the calendar is denied, and petitioner is awarded the sum of \$750 as additional attorney's fees for the litigation of this appeal.

Pesce, P.J., Weston and Aliotta, JJ., concur.