

DISTRICT COURT OF THE COUNTY OF SUFFOLK, FIRST DISTRICT

Present:

HON PHILIP GOGLAS  
JUDGE

Motion Date APRIL 25, 2011

SOUTH SHORE ALARMS, INC.  
Plaintiff,

PEO'S/PLTF'S/PET'S ATTY:

AGAINST

FAEK ZHRAR a/k/a FRANK ZOHRAN  
a/k/a FRANK ZHRAN  
Defendant.

DEFT'S/RESP'S/ATTY:

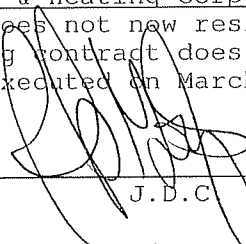
Upon the following papers numbered 1 to 3 read on this motion by defendant to vacate default judgement Notice of Motion/Order to Show Cause and supporting papers 1 ; Notice of Cross Motion and supporting papers      ; Answering Affidavits and supporting papers 2 ; Replying Affidavits and supporting papers      ; Filed papers      ; Other exhibits 3 . ( and after hearing counsel in support of and opposed to the motion) it is,

**ORDERED** that this motion is denied.

In order to vacate a default judgment, a defendant must establish a reasonable excuse for the default as well as the possibility of a meritorious defense (CPLR 5015[a][1]; Schiavetta v. McKeon, 190 AD2d 724). The defendant has failed to meet either requirement.

Initially, the Court finds the defendant's claim that he "was out of town" wholly insufficient to constitute a reasonable excuse for his default nor is it sufficient to warrant a traverse hearing as he wholly failed to refute the presumption of proper service raised in the affidavit of service (see, Thattil v. Mondesir, 275 AD2d 408; Carrenard v. Mass, 11 AD3d 501; Citibank, N.A. v. Lee, NYLJ, 5/12/99, at 33, col 2 [App. Term, 2d & 11<sup>th</sup> Jud. Dists.]; Genway Corp. v. Elgut, 177 AD2d 467). Consequently, the Court need not consider whether the defendant has established the existence of a meritorious defense (see, Phillips, Nizer, Benjamin, Krim & Ballon v. Matteo, 271 AD2d 422). In any event, even assuming the defendant's application was treated as having been made pursuant to CPLR 317, the defendant has failed to demonstrate that he did not receive actual notice of the summons in time to defend this action (see, Capital One Bank v. Bostinto, 25 Misc.3d 138[A] [App. Term, 9<sup>th</sup> & 10<sup>th</sup> Jud. Dists.]). Furthermore, the defendant has failed to demonstrate the possibility of a meritorious defense as his claim that "it looks like someone forged my signature" on the alarm monitoring contract is self-serving and conclusory and, in any event, belied by the affidavit of plaintiff's president as well as the copy of the contract (see, Amity Plumbing & Heating Supply Corp. V. Zito Plumbing & Heating Corp., 110 AD2d 863). Moreover, the fact that the defendant does not now reside at the subject premises covered by the alarm monitoring contract does not relieve him from liability as the agreement, which was executed on March 19, 2009, was for a five year term.

Dated: APR 27 2011

  
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J.D.C.

Mailed: MAY 07 2011

**HON. PHILIP GOGLAS**