

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21557
Y/prt

_____AD3d_____

Argued - November 14, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-11602

DECISION & ORDER

Deborah Fuchs Pemberton, respondent,
v Daniel Fuchs, appellant.

(Index No. 24616/02)

Arnold B. Firestone, P.C., Hauppauge, N.Y. (Robert H. Montefusco of counsel), for appellant.

Goldstein, Rubinton, Goldstein & DiFazio, P.C., Huntington, N.Y. (R. Russ DiFazio of counsel), for respondent.

In an action to enforce a provision of the parties' separation agreement dated October 8, 1985, which directed the defendant to pay the plaintiff 27½% of his monthly pension at the time he retires, the defendant appeals from an order of the Supreme Court, Suffolk County (Cohalan, J.), dated October 25, 2007, which denied his motion to vacate an order of the same court dated June 7, 2006, granting the plaintiff's unopposed motion to hold him in contempt for failing to pay a money judgment to the extent of directing entry of a qualified domestic relations order.

ORDERED that the order dated October 25, 2007, is affirmed, with costs.

The defendant was properly served with the plaintiff's motion to hold him in contempt (*see Corpuel v Galasso*, 240 AD2d 531; *Rothkopf v Rothkopf*, 191 AD2d 685). On this motion to vacate his default in opposing that motion, he was required to demonstrate both a reasonable excuse for his default in opposing the motion and a meritorious opposition to the motion (*see Raciti v Sands Pt. Nursing Home*, 54 AD3d 1014; *Ayiku v Viteritti*, 54 AD3d 789; CPLR 5015[a][1]). He failed to do either.

December 23, 2008

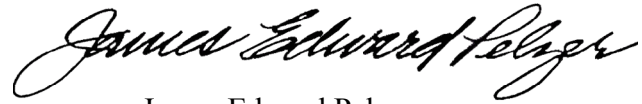
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The defendant's remaining contentions are without merit.

MASTRO, J.P., FLORIO, ENG and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court