

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
SECOND JUDICIAL DEPARTMENT

Anthony Albano v. Heidi E. Roehrig

Albano v. Roehrig, 2025 NY Slip Op 06839 (N.Y. Ct. App. 2025) · No. 2024-01507 · Decided December 10, 2025

SUMMARY

The Appellate Division, Second Department, held that the defendant failed to establish a reasonable excuse for her default and therefore was not entitled to vacate the default order. However, the court vacated the \$385,000 judgment because the plaintiff's vague inquest testimony was insufficient to support the damages award, and remitted the matter for a new damages inquest.

CASE DETAILS

|                       |                                                                                                                                                                                              |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                       |
| WRITING FOR THE COURT | Cheryl E. Chambers, J.P.; Paul Wooten, J.; Helen Voutsinas, J.; Laurence L. Love, J.                                                                                                         |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                       |
| DECIDED               | December 10, 2025                                                                                                                                                                            |
| DOCKET                | 2024-01507                                                                                                                                                                                   |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Defendant appealed from an order denying her motion to vacate a prior order granting plaintiff leave to enter a default judgment and a subsequent damages judgment entered after an inquest. |
| STANDARD OF REVIEW    | The determination of what constitutes a reasonable excuse for a default is reviewed for abuse of discretion; the Appellate Division reviewed the order on the law and the facts.             |
| PRECEDENTIAL VALUE    | Published opinion                                                                                                                                                                            |
| PARTIES               | Heidi E. Roehrig v. Anthony Albano                                                                                                                                                           |

TOPICS

- default judgment
- default
- damages
- appellate procedure
- civil procedure

## PRACTICE AREAS

civil procedure

personal injury

remedies

## QUESTIONS PRESENTED

1. Whether defendant established a reasonable excuse and potentially meritorious defense sufficient to vacate the default judgment under CPLR 5015(a)(1).
2. Whether the damages judgment entered after the inquest should be vacated because the evidence was insufficient to determine whether the award was warranted.

## HOLDINGS

1. Defendant was not entitled to vacatur of the default because she failed to demonstrate a reasonable excuse for her failure to appear or answer the complaint; consequently, the court did not need to consider whether she had a potentially meritorious defense.
2. The damages judgment had to be vacated because plaintiff's vague inquest testimony was insufficient to determine the extent to which his injuries were attributable to the accident and therefore whether the \$385,000 award was warranted.

## KEY QUOTATIONS

*"A party seeking to vacate a default judgment pursuant to CPLR 5015(a)(1) must demonstrate a reasonable excuse for its delay in appearing and answering the complaint and a potentially meritorious defense to the action" (\*2)*

*"An unwarranted and excessive award after inquest will not be sustained, as to do otherwise 'would be tantamount to granting the plaintiffs an open season at the expense of a defaulting defendant'" (\*2)*

## FACTUAL BACKGROUND

On April 25, 2019, Anthony Albano allegedly was injured while making an oil delivery to Heidi Roehrig's home when he stepped into a sinkhole, twisted his right foot, and fell. Albano sought damages for personal injuries and obtained a default judgment after Roehrig failed to appear or answer. Following a damages inquest, the Supreme Court awarded Albano \$385,000, but the Appellate Division found that Albano's vague inquest testimony did not adequately establish the extent to which his injuries were attributable to the accident.

## PROCEDURAL HISTORY

Plaintiff commenced a personal-injury action in June 2022. After defendant failed to appear or answer, the Supreme Court granted plaintiff's unopposed motion for leave to enter a default judgment on January 25, 2023. Following an inquest on damages, the court entered a judgment for plaintiff in the principal sum of \$385,000 on June 1, 2023. The Supreme Court denied defendant's motion to vacate the default order and judgment, and defendant appealed. The Appellate Division affirmed the refusal to vacate the default but modified the order to vacate the damages judgment and remanded for a new damages inquest.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Vacate the damages judgment, conduct a new inquest on the issue of damages, and enter an appropriate amended judgment thereafter. The defendant's default remains in place.

## CASES CITED

- Cerullo v. City of New York, 230 AD3d 560, 561
- Byung Ha Lee v. Mascarenas, 219 AD3d 928, 929
- Logan v. 250 Pac., LLC, 210 AD3d 1064, 1066
- Austin 26 Dental Group, PLLC v. Sino Northeast Metals (U.S.A.), Inc., 230 AD3d 545, 547
- Simpson v. Clough, 232 AD3d 645, 646
- Kokolis v. Wallace, 202 AD3d 948, 950-951
- Neuman v. Greenblatt, 260 AD2d 616, 617
- Quigley v. Coco's Water Café, Inc., 43 AD3d 1132, 1133-1134

## OPINION

### PER CURIAM.

Albano v Roehrig (2025 NY Slip Op 06839) Albano v Roehrig 2025 NY Slip Op 06839 Decided on December 10, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 10, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department CHERYL E. CHAMBERS, J.P.

PAUL WOOTEN HELEN VOUTSINAS LAURENCE L. LOVE, JJ. 2024-01507 (Index No. 608504/22) [\*1]Anthony Albano, respondent, v Heidi E. Roehrig, appellant. Joseph, Terracciano & Lynam LLP, Syosset, NY (Janine T. Lynam and Peter J. Terracciano of counsel), for appellant. Edelman, Krasin & Jaye, PLLC, Westbury, NY (Monica P. Becker of counsel), for respondent. DECISION & ORDER In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Nassau County (Christopher G. Quinn, J.), entered October 30, 2023.

The order denied the defendant's motion to vacate (1) a prior order of the same court dated January 25, 2023, granting the plaintiff's unopposed motion for leave to enter a default judgment against the defendant, and (2) a judgment of the same court entered June 1, 2023, which, after an inquest on the issue of damages, was in favor of the plaintiff and against the defendant in the principal sum of \$385,000.

ORDERED that the order entered October 30, 2023, is modified, on the law and the facts, by deleting the provision thereof denying that branch of the defendant's motion which was to vacate the judgment, and substituting therefor a provision granting that branch of the motion; as so modified, the order entered October 30, 2023, is affirmed, without costs or disbursements, and the matter is remitted to the Supreme Court, Nassau County, for a new inquest on the issue of damages, and for the entry of an appropriate amended judgment thereafter.

On April 25, 2019, the plaintiff allegedly was injured while making an oil delivery to the defendant's home when he stepped into a sinkhole, causing him to twist his right foot and fall. In June 2022, the plaintiff commenced this action against the defendant to recover damages for personal injuries. Thereafter, the plaintiff moved for leave to enter a default judgment against the defendant based upon the defendant's failure to appear or answer the complaint.

In an order dated January 25, 2023, the Supreme Court granted the plaintiff's unopposed motion. On June 1, 2023, following an inquest on the issue of damages, the Supreme Court entered a judgment in favor of the plaintiff and against the defendant in the principal sum of \$385,000.

The defendant subsequently moved to vacate the order dated January 25, 2023, and the judgment. In an order entered October 30, 2023, the court denied the defendant's motion. The defendant appeals. "A party seeking to vacate a default judgment pursuant to CPLR 5015(a)(1) must demonstrate a reasonable excuse for its delay in appearing and answering the complaint and a [\*2]potentially meritorious defense to the action" ( *Cerullo v City of New York*, 230 AD3d 560, 561). "'The determination of what constitutes a reasonable excuse lies within the sound discretion of the [motion] court'" ( *Byung Ha Lee v Mascarenas*, 219 AD3d 928, 929, quoting *Logan v 250 Pac., LLC*, 210 AD3d 1064, 1066).

Here, the Supreme Court providently exercised its discretion in determining that the defendant failed to demonstrate a reasonable excuse for her default in appearing or answering the complaint ( see *Austin 26 Dental Group, PLLC v Sino Northeast Metals [U.S.A.], Inc.*, 230 AD3d 545, 547). Since the defendant failed to establish a reasonable excuse for her default, we need not consider whether she demonstrated a potentially meritorious defense ( see *Simpson v Clough*, 232 AD3d 645, 646).

Nevertheless, although this Court is not relieving the defendant of her default, "[a]n unwarranted and excessive award after inquest will not be sustained, as to do otherwise 'would be tantamount to granting the plaintiffs an open season at the expense of a defaulting defendant'" ( *Kokolis v Wallace*, 202 AD3d 948, 950-951 [internal quotation marks omitted], quoting *Neuman v Greenblatt*, 260 AD2d 616, 617).

Here, the plaintiff's vague testimony at the inquest was insufficient to determine to what extent the plaintiff's injuries were attributable to the subject accident and, therefore, whether the amount

awarded was warranted.

Thus, under the circumstances of this case, the Supreme Court should have granted that branch of the defendant's motion which was to vacate the judgment, and we remit the matter to the Supreme Court, Nassau County, for a new inquest on the issue of damages, and for the entry of an appropriate amended judgment thereafter ( see *Quigley v Coco's Water Café, Inc.*, 43 AD3d 1132, 1133-1134).

In light of our determination, we need not address the parties' remaining contentions.  
CHAMBERS, J.P., WOOTEN, VOUTSINAS and LOVE, JJ., concur. ENTER: Darrell M. Joseph  
Clerk of the Court

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