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**Off The Record**  
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Defaults

Hon. Peter Wendt, J.C.C.

**Default Not Vacated When Standards Not Met**

According to the court in *666 Properties, LLC v. Elsevis*, a default cannot be vacated when the applicable legal standard for granting such relief cannot be met.

Respondent in this nonpayment proceeding resided in the subject premises with the tenant of record. At some point, the tenant of record vacated leaving Respondent in possession, who was served with a petition and named as "Jane Doe" after the rent went unpaid. Respondent testified in support of her application to vacate her default and to restore her to possession.

Having reviewed the file, the court found that service had already been sustained at an earlier return date. As a result, the court discredited Respondent's testimony that she never saw or received any one of the nine copies of the pleadings served in this matter. Similarly, the court noted that Respondent could not testify as to the rent having been paid, was unable to remit rent to Petitioner at the hearing, and no other defense was raised or testified to.

Based on the foregoing, the court, citing *NYCHA v. Torres*, found no basis to vacate the default, denied Respondent's motion, and vacated the stay of eviction.

**Case:** *666 Properties, LLC v. Elsevis* (Civ. Ct. N.Y. Co.; \*\*040505; 1 page).

*Our thanks to **Adam Leitman Bailey**, of the Law Firm of Adam Leitman Bailey for providing us with this decision to share with our readers. Mr. Bailey represented the Petitioner in this case.*

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