

**COURT DENIED DEFENDANT’S APPEAL
FROM AN ORDER TO VACATE JUDGMENT
ENTERED AFTER DEFENDANT FAILED TO APPEAR AT TRIAL**

Andrade v. Companion Animal Network, Inc., 64 Misc. 3d 144 (N.Y. 2019)

BASIS OF THE COMPLAINT:

In a small claims action, plaintiff, Andrade, sought to recover damages for alleged veterinary malpractice involving treatment of her pet dog in the Civil Court of New York, Queens County.

LEGAL PROCEEDINGS:

Defendant failed to appear at trial and the Civil Court entered a judgment of \$1,800 against her. Defendant filed a motion to vacate the judgment, claiming that she had not received notice of the claim, and the court entered an order denying that motion. Defendant appealed that order to the Supreme Court, Appellate Term, New York.

DISCUSSION OF THE COURT:

A defendant seeking to vacate a default judgment must demonstrate that he or she did not receive personal notice of the summons in time to defend and has a potentially meritorious defense.

It is undisputed that the Civil Court notified Andrade by ordinary first class mail of the pendency of the action and her obligation to appear in court on a certain date. After the expiration of 21 days, the first class mail had not been returned as undeliverable. Andrade’s conclusory denial of service was inadequate to establish either her lack of actual notice of the action in time to defend, or that she had a reasonable excuse for her default.

We therefor conclude that the denial of Defendant’s motion to vacate the default judgment rendered substantial justice between the parties and it is unnecessary to consider whether she sufficiently established the existence of a potentially meritorious defense to the action.

JUDGMENT:

The order of the Civil Court to vacate judgment is affirmed.