

DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT: CIVIL PART 3

-----X
SLOMIN'S INC.,

Plaintiff,

against

MARIE BELIZARE,

Defendant.
-----X

INDEX NO. 40182/10

Present:

Hon. Fred J. Hirsh

The following named papers numbered 1 - 3
submitted on this motion on March 24, 2011

	Papers Numbered
Notice of Motion and Affidavits Annexed	
Order to Show Cause and Affidavits Annexed	1-2
Affirmation in Opposition	3
Replying Affidavits	

Defendant moves to vacate a default judgment entered on December 2, 2010.

The motion must be denied for two reasons. First, the defendant did not serve the order to show cause in the manner directed by the court. The order to show cause was to be served upon plaintiff's attorney by certified mail, return receipt requested by March 8, 2011. The affidavit of service indicates service was made by personally delivering a copy to plaintiff's attorney on March 9, 2011. Additionally, service was made by the defendant.

"The method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with." Scharmman's Inc. v. 388 West Broadway, L.L.C., 258 A.D.2d 262 (1st Dept. 1999), citing Matter of Zambelli v. Dillon, 242 A.D.2d 353 (2nd Dept. 1997).

Since service was not made in the manner directed by the court, the motion to vacate the default judgment must be denied.

Additionally, defendant has not demonstrated a basis for vacating the default judgment. Defendant does not contest service. Defendant further admits she owes the money. She avers she faces financial hardship and cannot pay at the present time.

Financial hardship or inability to pay is not a defense to an action. 407 East 61st St Garage, Inc. v. Savoy Fifth Avenue Corp., 23 N.Y.2d 275 (1968); and Sumarni, Inc. v. Levicon Development Associates, L.P., 194 A.D.2d 535 (2nd Dept. 1993).

For the foregoing reasons, defendant's motion to vacate the default judgment is denied.

SO ORDERED:



Hon. Fred J. Hirsh
District Court Judge

Dated: May 9, 2011

cc: Kirschenbaum & Kirschenbaum, P.C.
Marie Belizaire, Pro se