

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY**

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|--------------------------------|---|-------------------------|
| APRIL BLACK AND |) | |
| CYDNEE MARTIN, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | C.A. No. CPU6-18-000721 |
| ADVANCED EXTERIORS, A COMPANY |) | |
| DOING BUSINESS IN THE STATE OF |) | |
| DELAWARE, AND DAVID MONCAVAGE |) | |
| |) | |
| Defendants. |) | |

Submitted December 3, 2018
Decided January 11, 2019

Taylor Elizabeth Trapp, Esq., Attorney for Plaintiff
David Moncavage, pro se, for Defendant

**ORDER ON DEFENDANTS’ APPEAL FROM COMMISSIONER’S FINDING OF FACT
AND RECOMMENDATIONS**

Defendants Advanced Exteriors and David Moncavage (“Defendants”) appeal the Commissioner’s Recommendation to deny Defendants’ Motion to Vacate Default Judgment. For the reasons discussed below, Defendants’ appeal is **DISMISSED**, and the Commissioner’s Recommendation is **ACCEPTED** and entered as the **ORDER** of the Court.

Procedural and Factual History

Plaintiffs April Black and Cydnee Martin (“Plaintiffs”) filed a complaint against Defendants on May 2, 2018 seeking damages resulting from Defendants’ breach of contract, anticipatory breach of contract, conversion and fraud for failing to complete contracted upon home improvements. Defendants never filed a response to Plaintiffs’ Complaint. Plaintiffs were awarded default judgment in the amount of \$49,403.50 on June

8, 2018. Defendants then filed a Motion to Vacate Default Judgment on June 13, 2018. A motion hearing before the Commissioner was scheduled for August 30, 2018 at 9:30 a.m. Notice of the motion hearing was sent by mail to the parties on July 11, 2018. Plaintiffs' Response in Opposition to Defendants' Motion to Vacate Default Judgment was filed on August 26, 2018.

The motion hearing was held on August 30, 2018 at 9:30 a.m. Defendants failed to appear at the hearing and the Commissioner recommended to deny Defendants' motion. The Commissioner filed his Recommendation on September 11, 2018. On September 25, 2018 Defendant David Moncavage filed an Appeal of the Commissioner's Recommendation, arguing that Defendants never received written notice of the scheduled hearing date.¹ Plaintiffs filed their response to Defendant David Moncavage's appeal on October 11, 2018. Defendant David Moncavage filed the motion hearing transcript and his appeal was formally submitted to this Court for decision on December 3, 2018. Defendant Advanced Exteriors has not retained counsel.

Standard of Review

A Commissioner's decision to deny a motion to vacate a default judgment is case dispositive.² The Court reviews objections made to case dispositive determinations *de novo*.³

Discussion

When reviewing an appeal from commissioner's finding of facts and recommendations,

(iv) A judge of the Court shall make a *de novo* determination of those

¹ Motion to Appeal All Commissioner's Recommendations at 5, Black v. Advanced Exteriors, CPU6-18-000721.

² *Platinum Fin. Servs. v. Huffman*, 2001 WL 1555537, at *1 (Del. Com. Pl. Oct. 31, 2001).

³ Ct. Com. Pl. Civ. R. 112(A)(4)(iv).

portions of the report or specified proposed findings of fact or recommendations to which an objection is made. A judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner.⁴

Defendant David Moncavage's Motion to Appeal All Commissioner's Recommendations avers that his failure to appear at the motion hearing was due to the fact that he never received written notice of the scheduled hearing date. Defendant Moncavage further states that "weeks" after filing his June 13, 2018 motion he contacted the court to inquire about the status of the hearing and was told "it hadn't been reviewed yet...and [he] would receive a letter in the mail."⁵ Defendant Moncavage's averments are contradicted by the Court docket's recordation that written notice was mailed to all parties on July 11, 2018. Furthermore, at the motion hearing, the Commissioner specifically noted that Defendant Moncavage had called the Court on August 29, 2018 (the day prior to the hearing) to confirm both the time and date of the motion hearing.⁶ Therefore, the Court finds no basis for relief.

Conclusion

For the foregoing reasons, Defendants' appeal is **DISMISSED**, and the Commissioner's Recommendation is **ACCEPTED** and entered as the **ORDER** of the Court.

IT IS SO ORDERED this 11th day January, 2019.

Kenneth S. Clark, Jr.
Judge

⁴ *Id.*

⁵ Motion to Appeal All Commissioner's Recommendations at 5, Black v. Advanced Exteriors, CPU6-18-000721.

⁶ Transcript of Civil Motion Proceedings at 17-20, Black v. Advanced Exteriors, CPU6-18-000721.