

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 08-22791-CIV-MORENO

ALLSTATE INDEMNITY COMPANY and
ALLSTATE PROPERTY AND CASUALTY
INSURANCE COMPANY,

Plaintiffs,

vs.

FATHER & SON AUTO SALES, INC., et al.,

Defendants.

ORDER DENYING MOTION TO VACATE DEFAULT FINAL JUDGMENT

THIS CAUSE came before the Court upon Defendant Jerold Kaminsky's Amended Motion to Vacate Default Judgment (**D.E. No. 445**), filed on **October 22, 2009**.

THE COURT has considered the motion and the pertinent portions of the record, and notes the following:

Defendant Kaminsky was first served with process on **October 21, 2008 (D.E. No. 61)**. Defendant Kaminsky failed to respond, and a default judgment was entered against him on November 13, 2008 (**D.E. No. 106**). Now, almost a year later, Defendant Kaminsky seeks to vacate the default final judgment on the ground that his brother, an attorney not admitted to practice in Florida or the United States District Court for the Southern District of Florida, assured him that the "matter was being taken care of."

The Court finds that this is an insufficient ground for vacating the default final judgment. Notwithstanding Defendant Kaminsky's claim that he believed his brother was taking care of his

defense of this action, Defendant Kaminsky had a duty to act with some diligence to ensure that his interests were being protected. *Sloss Indus. Corp. v. Eurisol*, 488 F.3d 922, 935-36 (11th Cir. 2007); *Florida Physician's Ins. Co., Inc. v. Ehlers*, 8 F.3d 780, 784 (11th Cir. 1993). The record is devoid, however, of any fact demonstrating that Defendant Kaminsky did anything to ensure that his interests were being protected. Accordingly, it is

ADJUDGED that the motion to vacate is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 05 day of November, 2009.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

Counsel of Record