

CIVIL COURT OF THE CITY OF NEW YORK

CIVIL COURT DIRECTION

Subject: Entry of Default Judgments

Class: DRP-154

Category: GP-20

Eff. Date: January 20, 2000

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BACKGROUND:

Recently a number of judges have been vacating default judgment entered by the Clerk following CPLR §3215. The issue raised by the judges is the insufficiency of a judgment entered based on a complaint verified by the plaintiff's attorney, without any further affidavit of facts from a party. A series of cases beginning with Joosten v. Gale, 129 AD2d 531 [First Department, 1987] at 534 requires that there be an affidavit of facts *from a party*. New York Practice annotation, C 3215:16 also speaks to this issue, citing Mullins v. DeLorenzo, 199 AD2d 218 [First Department, 1993.]

It has long been our practice, following CPLR §3020(d)(3), that if a complaint was verified by the attorney for the party, it would be acceptable for the entry of a default judgment.

Given the above cases and practice annotation, we now direct the following rules:

DIRECTIVE:

1. A default judgment entered by the Clerk following CPLR §3215 requires that there be an affidavit of facts *from a party to the action*.
2. A complaint verified by *the party's attorney is not sufficient* for the entry of a default judgment, unless the attorney has personal knowledge of the facts and says this is the affidavit.
3. The affidavit of default may be made by the attorney.

/s/ Fern A. Fisher
Administrative Judge