

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
MICHAEL BUONINCONTRO AND  
BRANDON ELLER,

Plaintiffs,

-against-

EDISON BALLROOM, LLC,

Defendant.  
-----X

NOTICE OF  
MOTION FOR  
DEFAULT JUDGMENT  
Index No. 654844/2020

Return Date: 12/15/20  
Motion Seq. 1

Justice to be Assigned

**PLEASE TAKE NOTICE** that upon the Summons and Verified Complaint, the Affidavit of Michael Buonincontro sworn to on November 18, 2020, the Affirmation of Laurie Sayevich Horz, Esq., dated November 18, 2020, together with the exhibits annexed thereto, and upon all the pleadings and proceedings heretofore had herein, plaintiffs Michael Buonincontro and Brandon Eller (“Plaintiffs”) will move this Court before the motion submission part, Room 130, to be held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York on the 15<sup>th</sup> day of December 2020 at 9:30 a.m. or as soon thereafter as counsel may be heard, for an Order, pursuant to CPLR §3215 as follows:

- (a) Directing the Judgment Clerk of the Supreme Court, New York County to enter a default judgment in favor of Plaintiffs and against defendant Edison Ballroom LLC in the amount of \$39,991.71, representing the plaintiff’s refundable deposit paid to defendant, plus costs and interest; and
- (b) Such other and further relief as this Court deems just and proper under the circumstances.

**PLEASE TAKE FURTHER NOTICE** that answering papers and/or cross-motions, if any, must be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated: Edgewood, New York  
November 19, 2020

STUART M. STEINBERG, P.C.

By: *ls Laurie Sayevich Horz*  
Stuart M. Steinberg, Esq.  
Laurie Sayevich Horz, Esq., Of Counsel  
Attorneys for Plaintiff  
2 Rodeo Drive  
Edgewood, New York 11717  
(631) 715-4160  
[ssteinberg@steinbergpc.net](mailto:ssteinberg@steinbergpc.net)  
[lsayevich@steinbergpc.net](mailto:lsayevich@steinbergpc.net)

To: Edison Ballroom LLC  
1560 Broadway  
Suite 610  
New York, New York 10036

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AFFIRMATION IN  
SUPPORT  
Index No. 654844/2020

LAURIE SAYEVICH HORZ, an attorney duly admitted to practice law before the  
Courts of the State of New York, hereby affirms the following under penalty of perjury:

1. I am an attorney acting Of Counsel to the firm of Stuart M. Steinberg, P.C.,  
attorneys for plaintiffs Michael Buonincontro and Brandon Eller in this action (the "Plaintiffs").

As such, I am fully familiar with the facts and circumstances set forth below, based upon the  
facts known to me to be true, my review of the books and records maintained by the plaintiffs  
and conversations had with the plaintiffs.

2. This affirmation is respectfully submitted in support of Plaintiffs' motion for an  
order, pursuant to CPLR §3215, directing the judgment clerk of the Supreme Court, New York  
County ("Judgment Clerk") to enter a default judgment in favor of Plaintiffs and against  
defendant Edison Ballroom LLC ("Defendant") in the amount of \$39,999.71<sup>1</sup> plus costs and  
interest.

3. As will be more fully explained herein, Plaintiffs are entitled to the entry of a  
default judgment as (i) Defendant was properly served with the Summons and Verified

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<sup>1</sup> The amount of the deposit set forth in the complaint contains a typographical error, and should read \$39,991.71 not \$39,999.71.

Complaint in this action and has failed to timely interpose an answer; and (ii) the damages requested by Plaintiffs are liquidated.

4. This action was commenced on September 30, 2020 by the filing of a Summons and Verified Complaint for, among other things, sums due by Defendant to Plaintiffs for the return of their down payments made to Defendant for Plaintiff's wedding, which did not occur. A copy of the Summons and Complaint are annexed hereto as Exhibit A.

5. On October 7, 2020, Plaintiffs properly effectuated service upon Defendant by causing a true copy of the Summons and Complaint and Notice of Commencement of Action Subject to Mandatory Electronic Filing to be delivered to the New York Secretary of State pursuant to Section 303 of the Limited Liability Company Law. A copy of the Affidavit of Service is annexed hereto as Exhibit B.

6. In addition, on November 18, 2020 Plaintiffs effectuated service on the Defendant pursuant to CPLR 3215 by serving on it a copy of the Summons and Verified Complaint together with a Notice to Corporation. Accordingly, Plaintiffs deposited true copies thereof in a postage paid properly addressed wrapper, in an official depository under the care of the U.S. Postal Service within the State of New York, in an envelope bearing the legend "Personal and Confidential" and not indicating on the outside of the envelope that the communication was from an attorney or concerned a legal proceeding, with postage prepaid thereon. The second mailing was addressed to the Defendant at its last known address of 1560 Broadway, Suite 610, New York, New York 10036. A copy of the Affidavit of Second Service upon Defendant is annexed hereto as Exhibit C.

7. Defendant's time to plead, answer or move with respect to the Summons and Verified Complaint expired as of November 6, 2020. Defendant has neither answered nor moved to extend its time to serve an answer and no extensions have been given. Accordingly, since

Defendant's time to plead, answer or move with respect to the Summons and Verified Complaint has not been extended and since Defendant has not moved or answered, Defendant is in default in pleading.

8. In accordance with CPLR §3215(f), accompanying this submission is the Affidavit of Michael Buonincontro ("Moving Affidavit") one of the Plaintiffs, providing proof of facts constituting the claims against Defendant and the amount due to Plaintiffs.

9. As detailed in the Moving Affidavit, on or about April 26, 2019, plaintiffs entered into a contract with defendant (hereinafter the "Agreement") to hold and cater the plaintiffs' wedding (the "Event") which was to occur on June 6, 2020. Pursuant to the terms of the Agreement, plaintiffs paid to defendant the total sum of Thirty-Nine Thousand Nine Hundred Ninety-One and 71/100 (\$39,991.71) Dollars (collectively referred to herein as the "Deposit") in periodic payments as deposits towards the cost of the Event. A copy of the Agreement is annexed hereto as Exhibit D.

10. Due to the COVID-19 pandemic, Defendant informed Plaintiffs in or about April 2020 that Defendant could not host or cater the Event on its scheduled date, June 6, 2020, due to restrictions on indoor dining and catering within the State of New York. In light of the same, the parties agreed to postpone the Event to October 31, 2020. In or about July 2020, Defendant advised Plaintiffs that Defendant could not predict when it would be able to reopen, let alone guarantee its ability to perform its obligations under the Agreement for the Event scheduled for October 31, 2020.

11. While Defendant encouraged Plaintiffs to reschedule the Event a second time, the Defendant could not provide Plaintiffs with any information or guarantee that the wedding could go forward on any future rescheduled date. As a result, Plaintiffs advised Defendant that they did not desire to reschedule the Event and instead requested the return of their Deposit. Defendants

refused and have failed to return the Deposit to Plaintiffs, despite due demand for the same and defendant's obligation to do so under the express written terms of the Agreement.

12. The Agreement provides that either party may terminate the Agreement "due to 'Force Majeure or Acts of God', including, but not limited to Force Majeure, *circumstances beyond its reasonable control*, strike, *governmental authority*, terrorism, war in the United States, or unavailability of mass transportation, that make it illegal, impractical or impossible for the affected party to hold the event or enjoy the benefits of this contract. . . . For the avoidance of doubt, in the event of an failure to perform or termination due to such Force Majeure or Acts of God, *Edison Ballroom shall promptly refund 100% of all payments made by Client to Edison Ballroom including the otherwise non-refundable deposit* and Client shall have no further obligations to Edison Ballroom *unless the Client wishes to reschedule* the event within 12 months of the event date as stated above." Exhibit D (emphasis added).

13. The Agreement called for over 200 guests to attend the Event to witness and celebrate the plaintiffs' wedding. Under New York State and New York City Executive Orders, Administrative Orders, rules and regulations governing catering and event facilities such as the Defendants', it is illegal, impractical and/or impossible for Defendant to perform its obligations under the Agreement on the date of the rescheduled Event, October 31, 2020.

14. Resultantly, Plaintiffs are entitled to a refund of the entire deposit under its claims for breach of contract and unjust enrichment as interposed against Defendant.

WHEREFORE, Plaintiffs respectfully request that this Court grant this motion in its entirety and issue an Order, pursuant to CPLR §3215, (a) directing the Judgment Clerk of the Supreme Court, New York County to enter a default judgment in favor of the Plaintiffs and against the Defendants, jointly and severally, in the amount of \$39,991.17 plus costs and

interest; and (b) awarding such other and further relief as this Court deems just and proper under the circumstances.

Dated: Edgewood, New York  
November 18, 2020

*/s/ Laurie Sayevich Horz*  
Laurie Sayevich Horz, Esq.

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AFFIDAVIT IN  
SUPPORT  
Index No. 654844/2020

-----X  
STATE OF CALIFORNIA                    )  
  )SS.:  
COUNTY OF LOS ANGELES            )

MICHAEL BUONINCONTRO, being duly sworn, deposes and says:

1. I am one of the plaintiffs in the above captioned action. I am fully familiar with the facts and circumstances set forth below, based upon facts known to me to be true and my review of books and records of me and my co-plaintiff, Brandon Eller.

2. I submit this Affidavit on behalf of me and my fiancé, Brandon Eller who is also a plaintiff in this action, in support of our motion, pursuant to CPLR 3215 for a default judgment against the defendant Edison Ballroom, LLC (“Defendant”). For purposes of this Affidavit, references to “plaintiffs”, “we” or “our” refer to me and plaintiff Brandon Eller.

3. Our attorneys advise us that we are entitled to the entry of a default judgment as (i) Defendant was properly served with the Summons and Verified Complaint in this action and has failed to timely interpose an answer; and (ii) the damages requested by Plaintiffs are liquidated.

4. We commenced this action in order to recover the sum of \$39,991.71, which we paid to Defendant as deposits towards our wedding to be held at Defendant’s catering and event facility.



5. Thus, on or about April 26, 2019, plaintiffs entered into a contract with defendant (hereinafter the “Agreement”) to hold and cater the plaintiffs’ wedding (the “Event”) which was to occur on June 6, 2020. Pursuant to the terms of the Agreement, plaintiffs paid to defendant the total sum of Thirty-Nine Thousand Nine Hundred Ninety-One and 71/100 (\$39,991.71) Dollars (collectively referred to herein as the “Deposit”) in periodic payments as deposits towards the cost of the Event. A copy of the Agreement is annexed hereto as Exhibit D.

6. Due to the COVID-19 pandemic, Defendant informed us in or about April 2020 that we could not host or cater the Event on its scheduled date, June 6, 2020, due to restrictions on indoor dining and catering within the State of New York. In light of the same, the parties agreed to postpone the Event to October 31, 2020. A copy of the confirmation of the postponement from Defendant, which acknowledges that we paid to it the sum of \$39,991.71 is annexed hereto as Exhibit E. In or about July 2020, Defendant advised Plaintiffs that Defendant could not predict when it would be able to reopen, let alone guarantee its ability to perform its obligations under the Agreement for the Event scheduled for October 31, 2020.

7. While Defendant encouraged us to reschedule the Event a second time, the Defendant could not provide us with any information or guarantee that the wedding could go forward on any future rescheduled date. As a result of this uncertainty we advised Defendant that we did not desire to reschedule the Event and instead requested the return of our Deposit. Defendants refused and have failed to return the Deposit, despite several demands by us and Defendant’s obligation to do so under the express written terms of the Agreement.

8. The Agreement provides that either party may terminate the Agreement “due to ‘Force Majeure or Acts of God’, including, but not limited to Force Majeure, *circumstances beyond its reasonable control*, strike, *governmental authority*, terrorism, war in the United States, or unavailability of mass transportation, that make it illegal, impractical or impossible for the

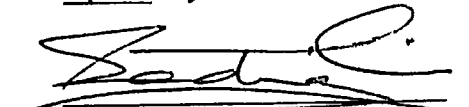
the affected party to hold the event or enjoy the benefits of this contract. . . . For the avoidance of doubt, in the event of an failure to perform or termination due to such Force Majeure or Acts of God, *Edison Ballroom shall promptly refund 100% of all payments made by Client to Edison Ballroom including the otherwise non-refundable deposit* and Client shall have no further obligations to Edison Ballroom *unless the Client wishes to reschedule* the event within 12 months of the event date as stated above.” Exhibit D (emphasis added).

9. The Agreement called for over 200 guests to attend the Event to witness and celebrate our wedding. Under New York State and New York City Executive Orders, Administrative Orders, rules and regulations governing catering and event facilities such as the Defendants’, it was illegal, impractical and/or impossible for Defendant to perform its obligations under the Agreement on the date of the rescheduled Event, October 31, 2020. Despite these facts and the clear language of the Agreement that provides that we are entitled to the return of our deposit, Defendant refused to abide by its obligation.

10. I am advised by counsel that Plaintiffs are entitled to a default judgment in our favor in the sum of our deposit of \$39,991.17, plus interest and costs, and respectfully request that judgment be so entered.

  
Michael Buonincontro

Sworn to before me this  
18<sup>th</sup> day of November, 2020

  
Notary Public

