

CIVIL COURT OF THE CITY OF NEW YORK

ADVISORY NOTICE

Subject: Vacating Stay of Eviction of a
Warrant Under CPLR § 2221

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Effec. Date: June 18, 2002

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Recently an order to show cause was filed by a respondent in a summary proceeding. The OSC was signed by a judge and included a stay of the execution of the warrant. Prior to the return date, the petitioner moved before the Court requesting that the stay be lifted and the execution of the warrant permitted without notice to the respondent under CPLR § 2221(a)(2). The motion was granted, the stay lifted and the warrant executed prior to the return date of the original order to show cause. In the instant case, the respondent suffered from a psychiatric condition and was evicted by surprise without his psychiatric medicine. The respondent was ultimately forced to be hospitalized in a Veteran's Administration psychiatric ward for weeks thereafter.

While lifting a stay without notice is permitted by CPLR § 2221(a)(2), the results can have serious consequences, and should be used with great care. In a situation such as the one described above, where the eviction will be carried out while the respondent is relying on the stay provided for in the order to show cause, a judge should carefully consider requiring notice to the respondent via service of a new Marshal's notice or by some other manner that will afford the respondent notice that the stay has been lifted prior to the execution of the warrant.

June 18, 2002

Date



Fern A. Fisher
Administrative Judge