

159 Misc.2d 350  
Supreme Court, Nassau County, New York,  
Trial/IAS, Part 27.

Stanley YOUSHAH, Plaintiff,  
v.  
Robert J. STAUDINGER, Defendant.

Sept. 23, 1993.

**Synopsis**

Plaintiff brought action to recover money expended in escort and dating service. Upon defendant's default, the Supreme Court, Nassau County, Winick, J., held that admissions deemed to have been made by defendant's failure to answer complaint did not entitle plaintiff to damages sustained in **illegal** enterprise.

Dismissed.

West Headnotes (3)

**[1] Damages**

↪ Nature and Form of Proceeding

**Pleading**

↪ Admissions by Failure to Traverse or Deny

By defaulting, defendant admits all allegations in complaint, conceding liability, but not damages.

Cases that cite this headnote

**[2] Contracts**

↪ Particular **Contracts**

**Contracts**

↪ Immorality

Plaintiff's **default judgment** was unenforceable against former business partner who excluded him from participating in their escort and dating service business, which **illegally** fostered prostitution; court would not, on public policy grounds, enter judgment awarding damages for money expended in **illegal** business.

1 Cases that cite this headnote

**[3] Contracts**

↪ Public Policy in General

State has public policy prohibiting profit from criminal enterprise. McKinney's CPLR 1310 et seq.; McKinney's Penal Law § 60.27.

Cases that cite this headnote

**Attorneys and Law Firms**

**\*350 \*\*479** David W. Chefec, Hicksville, for plaintiff.

No appearance by any attorney for defendant.

**Opinion**

ALLAN L. WINICK, Justice.

An inquest, as a result of a default, was ordered by another Justice of this court. Testimony was taken in open court which revealed that plaintiff invested money in an escort and dating service. A corporation, Perry Blais, Inc. was formed to **\*351** carry on the business. The service was known as L'Image. Plaintiff rented an apartment in Manhattan, paid the rent and charges for the telephones. Plaintiff also paid for the furnishings in the apartment. He advertised and hired "personnel" for the business. The business expanded to another apartment in another building. In September of 1987, he was excluded from the business by defendant and denied access to the apartment.

Plaintiff testified to expending \$27,752.34 for the operation of this enterprise.

This so called enterprise was, in actuality, a business fostering prostitution in violation of the penal law. The defendant "disappeared" and did not defend this action. The defendant was a victim of the alleged crime of an attempted murder in New York County, the defendant in the criminal case being one of the "escorts".

**[1]** It is well established that by defaulting, a defendant admits all traversable allegations contained in the complaint, and this concedes liability, although not damages. *McClelland v. Climax Hosiery Mills*, 252 N.Y.

347, 351, 169 N.E. 605; *Rokina Optical Co. v. Camera King*, 63 N.Y.2d 728, 730, 480 N.Y.S.2d 197, 469 N.E.2d 518; *Boorman v. Deutsch*, 152 A.D.2d 48, 54, 547 N.Y.S.2d 18, lv. dismissed, 76 N.Y.2d 889, 561 N.Y.S.2d 550, 562 N.E.2d 875; *Christian v. Hashmet Mgt. Corp.*, 189 A.D.2d 597, 598, 592 N.Y.S.2d 306. However, this court is being asked to give “aid of the court” to an **illegal** enterprise, which it will not do.

PL § 230.15(1) contains the following definition:

“1. ‘Advance prostitution.’ A person ‘advances prostitution’ when, acting other than as a prostitute or as a patron thereof, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to **\*\*480** institute, aid or facilitate an act or enterprise of prostitution.”

PL § 230.20 states that a person is guilty of promoting prostitution in the fourth degree when he knowingly advances or profits from prostitution. A violation of this section is a Class A misdemeanor.

PL § 230.25(1) states that a person is guilty of promoting prostitution in the third degree when he knowingly:

“Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association **\*352** with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes”.

A violation of this section is a Class D felony.

[2] Although the defendant by defaulting admits all traversable allegations contained in the complaint, this court will not “close its eyes” to an enterprise which is **illegal** in nature and grant a judgment for money expended in conducting a business that is **illegal** under the Penal Law of our State. In many situations, the courts denied relief to a litigant due to the fact the relief sought was against

public policy. For example, an agreement to participate in an unlawful raffle was void and unenforceable. *Harris v. Economic Opportunity Commission of Nassau Cty.*, 171 A.D.2d 223, 575 N.Y.S.2d 672; *General Obligations Law*, § 5–417. Another example is that the courts will not enforce restrictive covenants of employment which are against public policy. *Matter of Sprinzen*, 46 N.Y.2d 623, 415 N.Y.S.2d 974, 389 N.E.2d 456. Nor will they enforce provisions of agreements which are patently **illegal** when public policy is at issue. See *Mendelsohn v. A & D Catering*, 100 A.D.2d 209, 473 N.Y.S.2d 481. Also, the court will not enforce agreements between professionals that are patently unethical and therefore **illegal**. *Matter of Toffler*, 157 Misc.2d 703, 598 N.Y.S.2d 445. Education Law § 6509–a. The court also will not enforce usurious **contracts** and notes as against public policy and will declare such **contract** or note void (except as exempt by statute) see *General Obligations Law*, 5–517. Finally, all wagers or stakes dependent upon any race, chance or unknown or contingent event whatever are void in New York and the courts will not enforce any right to recover the winnings. GOL § 5–401, 5–411.

This court will not aid a party who came in with unclean hands by creating an **illegal** enterprise and then suing to recover money expended in fostering this **illegal** enterprise.

[3] It is the public policy of this State that no person shall profit from a criminal enterprise. See CPLR Article 13–A—Proceeds of a crime, Forfeiture PL § 60.27. Our courts have historically refused to aid **illegal** enterprises. Should this court now close its eyes to the exact nature of the damages allegedly suffered by the plaintiff in an obviously **illegal** enterprise?

**\*353** Therefore, plaintiff is awarded no damages despite the admissions deemed to have been made by the defendant's failure to answer.

Judgment will be entered dismissing the complaint.

#### All Citations

159 Misc.2d 350, 604 N.Y.S.2d 479