IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION - LAW

BERNIE O'HARE, **Plaintiff,** **vs.** **TRICIA MEZZACAPPA,** **Defendant.**	**No.: C-48-CV-2012-3442**

OPINION OF THE COURT

This matter is before the Court on the post-trial motion filed by Defendant Tricia Mezzacappa ("Mezzacappa") following a March 11, 2014 non-jury trial limited to the issue of damages on claims asserted by Plaintiff Bernie O'Hare ("O'Hare") for defamation and false-light invasion of privacy. Mezzacappa seeks an Order vacating or reducing the Verdict or granting a new trial on the ground that she did not receive notice of the trial date and therefore failed to appear and did not present a defense. For the reasons that follow, Mezzacappa's post-trial motion is denied.

BACKGROUND

I. The Complaint

O'Hare is the author and publisher of Lehigh Valley Ramblings ("LVR"), a blog that focuses primarily on local politics and government in the Lehigh Valley. *See* Complaint ¶ 4, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442

(C.P. Northampton Co. Apr. 16, 2012) ("Compl."). On April 16, 2012, O'Hare filed a Complaint against Mezzacappa, with whom he had become acquainted through his involvement in local government and community affairs. *See id.* ¶¶ 5-9. O'Hare averred that Mezzacappa had made numerous false and defamatory statements that (1) were intended to damage O'Hare's reputation, lower him in the estimation of the community, and deter third parties from associating with him; (2) had caused potential advertisers to decline to advertise on LVR; and (3) had prevented O'Hare from expanding his services as a freelance writer for profit. *See id.* ¶¶ 53-55, 62-64, 74-76. O'Hare asserted claims for defamation and false-light invasion of privacy. *See id.* ¶¶ 36-80.

On May 14, 2012, acting *pro se*, Mezzacappa filed Preliminary Objections, asserting, *inter alia*, that the statements identified in the Complaint were not defamatory, were lacking in specificity, and/or were protected by absolute privilege. *See* Preliminary Objections, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442, (C.P. Northampton Co. May 14, 2012). On December 27, 2012, the Court overruled Mezzacappa's Preliminary Objections except for those relating to paragraphs 57 and 71 of the Complaint, which it sustained. The Court held that all of the statements identified in the Complaint except those in paragraphs 57 and 71 were defamatory. *See O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442, slip op. at

1-2 (C.P. Northampton Co. Dec. 27, 2012). The Court stated:

> Mezzacappa's statements relate to, *inter alia*, (1) animal abuse against her pig; (2) alleged assaults against her; (3) burglary of her house; (4) O'Hare forcibly raping her; (5) tax fraud; (6) O'Hare's perpetration of child abuse; (7) O'Hare stalking her; and (8) O'Hare's commission of sexual assault against her. . . . Contrary to Mezzacappa's contention, these statements do not merely appear to be expressions of non-actionable opinion. Instead, these statements not only appear to be defamatory; they appear to be defamatory *per se*.

Id., slip op. at 21. The Court ordered that O'Hare could file an Amended Complaint within twenty days and that Mezzacappa could file an Answer to the Amended Complaint within twenty days thereafter. *See id.* at 1-2.

II. Default Judgment on the Issue of Liability

On January 14, 2013, O'Hare filed an Amended Complaint. *See* Amended Compl., *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Jan. 14, 2013). Mezzacappa did not file an Answer to the Amended Complaint.

On March 27, 2013, O'Hare filed a motion for summary judgment limited to the issue of liability and a motion for default judgment based on Mezzacappa's failure to answer the Amended Complaint. *See* Motion for Summary Judgment on Liability Only, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Mar. 27, 2013); Motion for Default Judgment, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Mar. 27, 2013). On May 8, 2013, the Court denied the two motions but held that because Mezzacappa was in default for failing to

answer the Amended Complaint, the Prothonotary had authority to enter a default judgment on praecipe. *See O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442, slip op. at 6 (C.P. Northampton Co. May 8, 2013). Accordingly, on May 16, 2013, O'Hare filed a Praecipe for Default Judgment. *See* Praecipe for Judgment, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. May 16, 2013). The Prothonotary entered a default judgment on the issue of liability, indicating that the amount of damages was "to be determined." *Id.*

On September 20, 2013, Mezzacappa filed a motion for relief from the default judgment. *See* Defendant's Motion for Relief from Judgement (sic) of Non Pros or By Default, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Sept. 20, 2013). On September 25, 2013, the Court denied Mezzacappa's motion as untimely "because the default judgment was entered in excess of four months ago." *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Sept. 25, 2013).

III. The First Trial Listing

On September 30, 2013, O'Hare filed a Praecipe to place the matter on the Non-Jury Trial List for December 16, 2013 for a trial on the issue of damages. *See* Praecipe, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Sept. 30, 2013). Mezzacappa acknowledges that O'Hare's counsel properly served her with a copy of the Praecipe and that she was ready to proceed with the trial on December 16, 2013. *See*

Concurrent Petition for Post Trial Relief/Review and/or Rehearing To Vacate, Reverse or Modify Judgement (sic) in Favor of O'Hare, Entered on 3/28/14 at 2-4, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Apr. 7, 2014) ("Post-Trial Motion").

On December 11, 2013, the Court held the preliminary call of the Non-Jury Trial List for December 16, 2013. *See* Docket Entry, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Dec. 11, 2013). Because O'Hare failed to appear at the preliminary call, the case was removed from the trial list. *See id.* at 5.

IV. The Second Praecipe for Trial

Although the case had been removed from the Non-Jury Trial List for December 16, 2013, under the Local Rules for the Northampton County Court of Common Pleas (the "Local Rules"), O'Hare was permitted to relist the matter for trial upon notice to all opposing parties. *See* Local Rule N212A(f) ("Any party may file a praecipe for either a pre trial conference list or a trial list, giving notice thereof to all opposing parties."). Accordingly, on December 24, 2013, O'Hare filed a Praecipe to place the matter on the Non-Jury Trial List for January 14, 2014. *See* Praecipe, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Dec. 24, 2013) (the "December 24, 2013 Praecipe").

Under Local Rule N212A(f) and the Pennsylvania Rules of Civil Procedure, O'Hare was required to serve Mezzacappa with the December 24, 2013 Praecipe. *See* Pa.R.C.P. 440(a)(1) ("Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action."). Under the Pennsylvania Rules of Civil Procedure, a *pro se* party may be served by mail at his or her address of record or place of residence. *See* Pa.R.C.P. 440(a)(2)(i) ("If there is no attorney of record, service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the [party's] residence or place of business . . . ."). Service is complete upon mailing. *See* Pa.R.C.P. 440(b) ("Service by mail of legal papers other than original process is complete upon mailing.").

In accordance with Pa.R.C.P. 440 and Local Rule N212A(f), O'Hare served the December 24, 2013 Praecipe on Mezzacappa by United States First-Class Mail at her place of residence, which was her address of record. *See* Certificate of Service for December 24, 2013 Praecipe, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Dec. 24, 2013) ("Certificate of Service"). The Certificate of Service, which was signed by O'Hare's counsel, stated:

CERTIFICATE OF SERVICE

I, Richard J. Orloski, HEREBY CERTIFY that I served a true and correct copy of the foregoing document upon the following

person(s) by depositing same in the United States Mail, regular, first-class mail, postage prepaid, addressed as follows:

TRICIA MEZZACAPPA
817 Ridge Street
Easton, PA 18042

DATE: December 24, 2013

Id. Mezzacappa acknowledges that 817 Ridge Street, Easton, Pennsylvania, 18042 is both her place of residence and her address of record. *See* Post-Trial Motion at 18.

V. Notice of the Second Trial Date

Under the Local Rules, the Northampton County Court Administrator is required to create the Non-Jury Trial List and send notices of scheduled trial dates to the parties. *See* Local Rule N212A(b) ("The Court Administrator shall prepare jury and non jury trial lists in accordance with orders entered at the status or pre trial conference and forward the same to each party or attorney of record at least thirty (30) days prior to the preliminary call of the list."). In accordance with Local Rule N212A(b), the Court Administrator placed the matter on the next available trial list, *i.e.*, the Non-Jury Trial List for March 10, 2014. *See* Mar. 10, 2014 Non-Jury Trial List, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Mar. 10, 2014) (the "March 10, 2014 Non-Jury Trial List"). On February 7, 2014, the Court Administrator timely served a copy of the March 10, 2014 Non-Jury Trial List on Mezzacappa at her address of record by United States Certified Mail,

Return Receipt Requested. *See* Envelope Containing Mar. 10, 2014 Non-Jury Trial List, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Feb. 7, 2014).

On February 12, 2014, the United States Postal Service ("USPS") attempted to deliver the Certified Mail envelope to Mezzacappa at her place of residence, but because she was unavailable to sign for the envelope, the mail carrier left a notice that USPS was holding the envelope for her at the post office. *See* USPS, https://tools.usps.com/go/TrackConfirmAction.action?tRef=fullpage&tLc=1&text28777=&tLabels=71969008911506599878 (last visited July 7, 2014). Mezzacappa did not travel to the post office to claim the Certified Mail envelope, and on March 7, 2014, USPS returned the envelope to the Court Administrator marked "unclaimed." *See id.*

VI. Trial and Verdict on the Issue of Damages

On March 10, 2014, the case was called ready for trial and was scheduled to proceed on March 11, 2014. *See* Docket Entry, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Mar. 10, 2014). Although Mezzacappa had been properly served with notice that the matter had been relisted for trial, both by O'Hare's counsel through United States First-Class Mail and by the Court Administrator through United States Certified Mail, when the case was called for trial at 9:00 a.m. on March 11, 2014, Mezzacappa did not appear. *See* Notes of Testimony at 1, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Mar. 11, 2014)

("N.T."). The Court delayed the start of the trial and paged Mezzacappa, but she did not appear. *See id.* Thus, at 9:26 a.m., the trial proceeded in her absence. *See id.*

O'Hare testified that he is employed full-time as a title searcher in the Northampton County Courthouse. *See id.* at 5. In 2006, O'Hare started LVR, which he described as "a labor of love." *Id.* at 6. The blog currently has approximately 5,000 readers on weekdays. *See id.* In addition to writing and publishing LVR, O'Hare works as a freelance writer for news organizations. *See id.* at 13-14. He covers local government meetings for the Bethlehem Free Press, a weekly newspaper in Bethlehem, Pennsylvania. *See id.* at 13. In 2011, he began writing a weekly column for Patch, an internet news site with offices throughout the Lehigh Valley. *See id*.

O'Hare is close to his friend's 14-year-old grandson, with whom he has been actively involved since the child was an infant. *See id.* at 9 ("[S]ince he had no real father I was basically the -- the male figure in his life for many years."). O'Hare refers to this child as "my grandson." *Id.* As a result of Mezzacappa's internet postings in which she asserted that O'Hare was a pedophile, O'Hare lost stature among his grandson's coaches and his grandson's friends and their parents. *See id.*

> [W]hen I would go to a game, I notice people would stop talking. I had to explain myself to a couple of my grandson's basketball coaches. I also noticed that before this happened, often times I would be asked to take some of my grandson's friends to different events, to practices, to baseball practice, basketball practice, football practice. That stopped. People would not ask

> me any more to take -- to pick up their son or, you know, to bring their son or even to take them to the movies. Sometimes I would do that or take them to a batting cage.

Id. at 9-10. O'Hare testified that these experiences made him feel "humiliated" and "sick to my stomach." *Id.* at 10.

As a result of Mezzacappa's accusations that O'Hare was a rapist and a burglar, he suffered embarrassment and social isolation among his business associates at the Northampton County Courthouse, many of whom are women. *See id.* at 10-11.

> I'm very uncomfortable when I have a conversation with a woman. You know, I -- I'm very careful if I have to meet somebody to make sure I meet them in a setting where there's other people around so people can't -- so that nobody can say anything. It's just -- it's just -- it's disturbed me in that way. As far as how it's affected me at the courthouse, I can tell you that after this first happened I would walk into the Recorder of Deeds office where I search titles, and they're largely women, the other title searchers are largely women, and they like to talk to each other and usually when you come in they're carrying on conversations but when I would come in I would notice they would stop. They would stop talking. And after this happened . . . the Recorder of Deeds . . . called me in because of concerns that had been raised by members of her own staff about whether they had anything to worry about.

Id. at 11-12. O'Hare said this conversation made him feel, "[t]errible, terrible." *Id.* at 12.

Mezzacappa's accusations disrupted O'Hare's work life at the Bethlehem Free Press. *See id.* at 14-15. He said, "[Mezzacappa] began contacting the newspaper and basically repeating the defamation that is the subject of the complaint and on several occasions, three occasions that I can

think of, I had to explain -- we had to go through major explanations, myself and my editor, to the publisher as to why he was still using me." *Id.*

Mezzacappa's defamatory comments led to so many difficulties for O'Hare at Patch that he felt he could not continue working there, and he ultimately stopped writing for the organization in 2011. *See id.* at 13-14.

> [A]fter these allegations started to surface Ms. Mezzacappa began posting these comments on Patch where I have no control over the comments, and I threatened her with libel at the time and the matter went into the legal department at Patch, it went into -- it basically caused all kinds of problems with me at Patch and I became so disgusted at having to deal with these allegations all the time in a forum where I have no control over what is being said, unlike my blog where I do have control, that I just couldn't write for them anymore. I just couldn't write.

Id. As a result of terminating his relationship with Patch, O'Hare lost income of sixty dollars per week that he had earned for writing his weekly column. *See id.* at 13-14. He said that Patch has since closed some of its operations in the Lehigh Valley but that because he was a regional columnist, had he remained employed with Patch, his employment status and income would have continued despite the closings in the Lehigh Valley. *See id.* at 14.

Many of Mezzacappa's defamatory remarks about O'Hare included accusations of criminal conduct, and she repeatedly reported him to the Easton Police. *See id.* at 15. "She reported some of the supposed burglaries to the Easton Police. She never reported a rape to the Easton Police. She reported the pig poisoning to the Easton Police." *Id.* The police

never filed any charges against O'Hare as a result of Mezzacappa's reports. *See id.*

O'Hare said he has suffered depression, sleeplessness, and social inhibition as a result of Mezzacappa's defamatory statements. *See id.* at 17. In addition, he said he has feared for his personal safety because of the violent nature of some of Mezzacappa's remarks. *See id.* at 15-16.

> [MR. ORLOSKI]: Now at some point you learned she had -- she had the right to carry a gun, correct?
>
> A: Yes, sir, yes.
>
> Q: And she was accusing you of various crimes?
>
> A: That's correct.
>
> Q: Did that cause you any concern?
>
> A: The fact that she was armed, the fact that I felt that she was mentally unstable, the fact that she was posting Internet comments on the Express-Times website three times stating that if somebody that matches my description came to her house she would put a hollow point bullet through my skull, yeah, that kind of scared me.
>
> Q: I think you have that -- read that.
>
> . . . .
>
> A: Okay. This is at the Express-Times web page on January 30, 2013. As Tricia Mezzacappa, she says, Hi Jimp. I don't usually respond to anons but here it goes. Maybe I'm scared, but I don't think I'm paranoid or a nut. See, law enforcement doesn't always work for insignificant nobody's like myself. They don't always serve and protect either. When Armageddon comes a-running toward my house I stand armed and ready. I picture Armageddon about 5 foot 9 inches and balding, little eyeglasses on the tip of his nose and enough fat flaps to insulate a bull. Deep breath, aim, shoot and one hollow

> point goes through his skull. He's dead before he hits the ground. Ker-splat [phonetic]. Perfect.
>
> Q: And that same piece appeared in multiple venues, correct?
>
> A: She posted it repeatedly.

Id.

O'Hare noted that Mezzacappa continued making defamatory remarks about him even after the Court ruled that her remarks were defamatory and a default judgment was entered against her on the issue of liability. *See id.* at 18-19.

> This thing has lasted for two years. Some of the defamation is still out there. If you Google my name you will still see many of the allegations that are still out there on the Internet. She has been asked to retract what she said. She refused. She's been asked to apologize. She refuses.
>
> . . . .
>
> [I]t continued after Judge Smith entered his ruling that this was defamation per se. It continued after the entry of a judgment, the defamation continued. It did not stop under her name until it became apparent to her that there really was a judgment against her because apparently that did not sink in to her for a long period of time, so she has stopped under her own name defaming me for about, I'd say, since December.

Id. at 18-19.

O'Hare noted that on three occasions when Mezzacappa came to the Northampton County Courthouse to file papers, she saw O'Hare in the building and sought to have him restrained from stalking her. *See id.* at 19.

In addition, on two occasions after Court rulings were issued against Mezzacappa, O'Hare's attorney's office was fire bombed. *See id.* at 19-20.

The Court found O'Hare's testimony credible.

On March 28, 2014, the Court issued a Verdict in favor of O'Hare and against Mezzacappa awarding (1) $15,000 in general compensatory damages for impairment of O'Hare's reputation and standing in the community, personal humiliation, and mental anguish and suffering; (2) $7,380 in special compensatory damages for loss of O'Hare's Patch income for part of 2011 and all of 2012 and 2013; and (3) $44,760 in punitive damages, calculated by trebling the general and special compensatory damages, for a total award of $67,140, plus costs. *See* Verdict, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Mar. 28, 2014).

VII. Mezzacappa's Post-Trial Motion

On April 7, 2014, Mezzacappa filed the instant Post-Trial Motion requesting that the Court either (1) reduce the damage award to $1.00; (2) vacate the Verdict and grant a new trial; or (3) arrest the judgment pending resolution of a lawsuit Mezzacappa filed against O'Hare on April 1, 2014. In addition, Mezzacappa asked the Court to impose sanctions against O'Hare and his attorney and refer the matter to the Disciplinary Board of the Supreme Court of Pennsylvania. *See* Post-Trial Motion at 16-18. The grounds of Mezzacappa's Post-Trial Motion are set forth below.

A. Lack of Notice of Trial Date

Mezzacappa asserted that the Verdict should be vacated and she should be granted a new trial, because she did not receive notice of the March 11, 2014 trial date. *See id.* at 2-6. First, Mezzacappa asserted that after the case was removed from the December 16, 2013 Non-Jury Trial List, certain unnamed "employees in Court Administration" told her that the case could not be relisted for trial unless O'Hare filed a motion or petition to reopen the case. *See id.* at 5.

> Mezzacappa relied upon her conversation with employees in Court Administration, sometime after 12/11/2013, but before 12/16/2013, that the case for damages was stricken and dismissed, because parties failed to appear at calling of list on 12/11/2013. Employees told Mezzacappa that the case could not be brought back to docket after being stricken and dismissed, unless Plaintiff filed motions (and/or) a petition to re-open the case.

Id. Nothing in the record indicated that the case had been "dismissed." Mezzacappa did not explain why she relied on this purported advice from Court Administration employees when the Local Rules permit any party to file a praecipe for trial upon notice to all opposing parties. *See* Local Rule N212A(f) ("Any party may file a praecipe for either a pre trial conference list or a trial list, giving notice thereof to all opposing parties.").

Second, Mezzacappa asserted that O'Hare and his counsel had deliberately failed to serve her with the December 24, 2013 Praecipe. *See id.* at 4 ("[O'Hare and his counsel] deliberately failed to copy Mezzacappa on praecipe for re-hearing which was entered in docket on December 24,

2013."). Mezzacappa's Post-Trial Motion did not mention the Certificate of Service signed by O'Hare's counsel affirming that he had served her with the December 24, 2013 Praecipe by United States First-Class Mail at her address of record on December 24, 2013. Mezzacappa proffered no evidence to support her contention that O'Hare's counsel had "deliberately" failed to serve her. Rather, Mezzacappa speculated that because she had refused to accept a purportedly unreasonable settlement offer, O'Hare had sought to "extort" a settlement by proceeding to trial without notifying her and obtaining a damage award in her absence. *See id.* at 6. ("By virtue of wholesale extortion, O'Hare, and through his attorney, Rick Orloski, held a secret trial, to deliberately game the courts into a monetary award.").

Third, Mezzacappa asserted that the Court Administrator served her with the March 10, 2014 Non-Jury Trial List only by United States Certified Mail rather than United States First-Class Mail, which, she asserted, was insufficient to comply with the Pennsylvania Rules of Civil Procedure.

Fourth, Mezzacappa asserted that she received neither (1) the March 10, 2014 Non-Jury Trial List that the Court Administrator had sent to her by United States Certified Mail on February 7, 2014; nor (2) the Certified Mail notice that USPS had left in her mailbox on February 12, 2014. *See id.* at 4. Mezzacappa asserted that her mail service had been interrupted during the month of February 2014 due to the presence of ice and snow on her front walk. *See id.* at 4.

> Mezzacappa received no mail for an entire week following the snow storms in February 2014, and only limited mail several weeks following the snow storms because [the] mail carrier slipped and fell on Mezzacappa's property during inclement weather. . . . Mezzacappa spoke to [the] mail carrier on or about 2/18/2014 about her lack of mail delivery. Mail carrier stated that he fell on Mezzacappa's porch, and that the continued run off of ice and snow on the steep slope outside her home made her home hazardous and inaccessible. . . . Mezzacappa apologized to mail carrier and set up a make-shift mail bag, duck-taped [sic] to a chair, and labeled "mail" which she placed on the edge of her porch, after this conversation with mail carrier. . . . Mezzacappa regularly receives and signs certified mail from mail carriers relating to her ongoing litigation with West Easton Borough, that is heard in Northampton County Court. When and if, the mail is not signed, Mezzacappa receives these notifications through regular mail. When Mezzacappa is not present to sign for certified mail, she is alerted to attempted delivery by finding pink slips in her mailbox but contends that no pink slips were found in the timeframe of O'Hare's non-jury trial. . . . [T]he only reasonable explanation for the unclaimed trial list is that the post office failed to make delivery, failed to leave pink slips, and failed to make 3 attempts because of snow, ice and hazardous sidewalk/property conditions.

Id. at 2-4. Thus, Mezzacappa asserted, "Mezzacappa received no communication on this matter from [O'Hare] or Court Administration until 3/18/2014, when she received via regular mail, 'Closing Argument in Support of Damages,' from [O'Hare's counsel]. It was only at this time that Mezzacappa realized a non-jury trial had been held secretly, on 3/11/2014." *Id.* at 5.

Mezzacappa's Post-Trial Motion did not explain why, after her mail carrier purportedly told her that her mail service had been interrupted in February 2014, she did not (1) contact the post office to ask whether any mail, including certified mail, was being held for her; (2) contact the Court

Administrator to inquire whether O'Hare had relisted the matter for trial, as he was permitted to do under the Local Rules, and, if so, whether a new trial date had been set; (3) contact the Prothonotary to inquire whether O'Hare had filed a motion or petition to re-open the case, as she asserted she had been told he was permitted to do by Court Administration employees; or (4) contact O'Hare's counsel to inquire whether O'Hare had filed any recent Court papers.

B. Verdict Not Supported By the Evidence

Mezzacappa asserted that the testimony O'Hare presented at trial (1) was insufficient to prove that he had suffered any damages; and (2) would have been contradicted by Mezzacappa's evidence had she participated in the trial. *See id.* at 6-7, 9-13. She further asserted that the Court's damage award would trigger various economic consequences for her and would therefore constitute an unreasonable hardship. *See id.* at 8-9.

C. Mezzacappa's Claims for Sanctions Against O'Hare and His Attorney

Mezzacappa asserted that "O'Hare, and through his attorney, Richard Orloski, took advantage of Mezzacappa's lack of knowledge in tort law, intentionally failed to send Mezzacappa proper service of proceedings, gamed the court system so trial was heard in secrecy, and fraudulently obtained monetary damages." *Id.* at 8. In addition, Mezzacappa asserted that after the Verdict was entered, O'Hare engaged in abusive and harassing conduct toward her, in violation of the Fair Debt Collection and Practices Act,

15 U.S.C.A. § 1692 *et seq.* *See id.* at 13-18. Accordingly, Mezzacappa requested that the Court impose sanctions on O'Hare and his attorney and refer the matter to the Disciplinary Review Board of the Pennsylvania Supreme Court. *See id.* at 7-9, 13.

> Mezzacappa asks this Court to hold Plaintiff O'Hare and his [counsel] in contempt of court for perpetrating fraud in obtaining monetary damages, declare sanctions on [O'Hare's counsel] for purposely failing to notify Mezzacappa of re-hearing, and purposely failing to properly serve Mezzacappa with the amended complaint due on or about 1/27/2013, and purposely presenting false testimony at time of non-jury trial that occurred on 3/11/2014. Additionally, Mezzacappa asks this court to refer the matter to the Disciplinary Board of the Supreme Court of PA.

Id. at 13.

VIII. Mezzacappa's Appeal

On April 22, 2014, Mezzacappa filed a Notice of Appeal to the Pennsylvania Superior Court. *See* Notice of Appeal, *O'Hare v. Mezzacappa*, No. C-48-CV-2012-3442 (C.P. Northampton Co. Apr. 22, 2014). On May 22, 2014, the Superior Court quashed her appeal as premature. *See Mezzacappa v. O'Hare*, No. 1295 EDA 2014 (Pa. Super. May 22, 2014) (*per curiam*).

DISCUSSION

I. Standard of Review on Motions for Post-Trial Relief

Motions for post-trial relief are governed by Pa.R.C.P. 227.1.

Rule 227.1. Post-Trial Relief

(a) After trial and upon the written Motion for Post-Trial Relief filed by any party, the court may

(1) order a new trial as to all or any of the issues; or

(2) direct the entry of judgment in favor of any party; or

(3) remove a nonsuit; or

(4) affirm, modify or change the decision; or

(5) enter any other appropriate order.

. . . .

(b) Except as otherwise provided by Pa.R.E. 103(a), post-trial relief may not be granted unless the grounds therefor,

(1) if then available, were raised in pre-trial proceedings or by motion, objection, point for charge, request for findings of fact or conclusions of law, offer of proof or other appropriate method at trial; and

Note: If no objection is made, error which could have been corrected in pre-trial proceedings or during trial by timely objection may not constitute a ground for post-trial relief.

. . . .

(2) are specified in the motion. The motion shall state how the grounds were asserted in pre-trial proceedings or at trial. Grounds not specified are deemed waived unless leave is granted upon cause shown to specify additional grounds.

Pa.R.C.P. 227.

When considering a request for a new trial under Pa.R.C.P. 227.1(a)(1), the trial court must undertake a two-step process. *See Harman v. Borah,* 562 Pa. 455, 467, 756 A.2d 1116, 1122 (2000). First, the trial court must decide whether one or more mistakes occurred at trial. *See Huber v. Etkin,* 58 A.3d 772, 776 (Pa. Super. 2012); *Hodin v. Frekey,* 2011 WL 2552474, slip op. at * 5 (C.P. Lacka. Co. 2011). Second, if the trial court concludes that a mistake occurred, it must determine whether the mistake was a sufficient basis for granting a new trial. *See Lockley v. CSX Transportation, Inc.,* 5 A.3d 383, 388 (Pa. Super. 2010), *appeal denied,* 34 A.3d 831 (Pa. 2011). Since the harmless error doctrine underlies every decision to grant or deny a new trial, "[a] new trial is not warranted merely because some irregularity occurred during the trial or another trial judge would have ruled differently; the moving party must demonstrate to the trial court that he or she has suffered prejudice from the mistake." *Bennett v. A. T. Masterpiece Homes at Broadsprings, LLC*, 40 A.3d 145, 149-150 (Pa. Super. 2012).

Mezzacappa asserts that the Court erred in (1) permitting the trial to proceed in her absence, because, she alleges, she did not receive proper notice of the trial date; and (2) awarding damages to O'Hare, because, she alleges, his testimony was insufficient to prove that he had suffered any damages, and his testimony would have been contradicted by evidence she would have presented had she participated in the trial. In addition,

Mezzacappa argues that had she participated in the trial, she would have raised various claims against O'Hare and his counsel for their alleged misconduct. Mezzacappa requests that the Court either (1) vacate the verdict; (2) reduce the damage award to $1.00; (3) arrest the judgment pending resolution of a lawsuit Mezzacappa had filed against O'Hare on April 1, 2014; or (4) grant a new trial. *See* Post-Trial Motion at 16-18. We will now address whether the Court made mistakes at trial and, if so, whether any such mistakes provide a sufficient basis for granting a new trial.

II. Procedure To Be Followed When a Party Fails To Appear for Trial

When a party fails to appear for trial, the procedure to be followed depends on (1) whether the absent party is the plaintiff or the defendant; and (2) whether the Court knows the absent party's excuse for its non-appearance. *See* Pa.R.C.P. 218.

> Rule 218. Party Not Ready When Case is Called for Trial
>
> (a) Where a case is called for trial, if without satisfactory excuse a plaintiff is not ready, the court may enter a nonsuit on motion of the defendant or a non pros on the court's own motion.
>
> (b) If without satisfactory excuse a defendant is not ready, the plaintiff may
>
> (1) proceed to trial . . . .
>
> . . . .
>
> (c) A party who fails to appear for trial shall be deemed to be not ready without satisfactory excuse.
>
> *Note:* The mere failure to appear for trial is a ground for the entry of a nonsuit or a judgment of non pros or the

> reinstatement of a compulsory arbitration award.
>
> A nonsuit is subject to the filing of a motion under Rule 227.1(a)(3) for post-trial relief to remove the nonsuit and a judgment of non pros is subject to the filing of a petition under Rule 3051 for relief from a judgment of non pros.
>
> A decision of the court following a trial at which the defendant failed to appear is subject to the filing of a motion for post-trial relief which may include a request for a new trial on the ground of a satisfactory excuse for the defendant's failure to appear.

Pa.R.C.P. 218.

If the absent party has not previously provided its excuse for its non-appearance, the Court cannot make a finding at the time of trial as to whether the excuse is satisfactory; however, subsection (c) creates a presumption that the excuse is not satisfactory and permits the Court to proceed in the party's absence, subject to the party's opportunity to file a post-trial motion to reopen the proceedings and overcome the presumption by demonstrating that its excuse was satisfactory. *See* Pa.R.C.P. 218, Explanatory Comment--1993.

> The rule has been amended by adding new subdivision (c), which provides that a "party who fails to appear for trial shall be deemed to be not ready without satisfactory excuse." The trial court may grant relief under the rule without a separate determination that the failure to appear was without satisfactory excuse.
>
> Of course, if the court has before it information which demonstrates that the failure to appear is satisfactorily excused, then the presumption of subdivision (c) would not be warranted and the court would not exercise its powers under the rule.
>
> . . . .

> The revised procedure was characterized by the dissent in [*Christopher's Auto Parts v. Gilmore*, 600 A.2d 585, 589 (Pa. Super. 1991)] as follows:
>
> [N]either an innocent party who is present for trial nor the trial court will be prevented from proceeding at the time set for trial, and the burden will be placed upon the party who has failed to appear to show cause why the trial court should reopen the proceedings.

Id.

Where, as here, the non-appearing party is the defendant, subsection (b) permits the plaintiff to proceed to trial, put on its case, and secure a verdict. *See Melvin v. Melvin*, 580 A.2d 811, 818 (Pa. Super. 1990) ("When a defendant receives proper notice and nonetheless fails to appear or provide a satisfactory excuse for non-appearance at, or prior to, the time set for trial, the trial may proceed properly in the defendant's absence.").

Despite the non-appearance of the defendant, in order for the plaintiff to secure a verdict in its favor, the plaintiff must present its evidence and carry its burden of proof. *See Commonwealth v. 1992 Chevrolet*, 844 A.2d 583, 586 (Pa. Cmwlth. 2004) ("[J]udgment against a defendant who fails to appear for a hearing or trial is not automatic. The party with the burden of proof must still sustain its burden.").

Where a party files a post-trial motion to reopen the proceedings but does not request a hearing, the trial court has discretion to decide the motion with or without a hearing. *See Masthope Rapids Property Owners Council v. Ury*, 687 A.2d 70, 72 (Pa. Comwlth. 1996).

> [Defendants] argue that the explanatory comment to Pa.R.C.P. No. 218, although not binding, states that a record needs to be developed for the appellate court to consider. In this case, the post-trial motion, the trial court's opinion and orders, and Appellants' statement of matters complained of are all matters of record which fully discuss the issues and arguments involved. There is no language in Pa.R.C.P. No. 218 suggesting that the court shall automatically schedule a hearing on the matter, and it is evident from the record in this case that the trial court considered and rejected all of Appellants' arguments regarding the failure to appear. A hearing would not have altered Appellants' position or the arguments presented to the trial court. Thus, the error in the failure to hold a hearing, if any, is harmless error since the state of the record is sufficient for appellate review.

Id. Here, Mezzacappa did not request a hearing, and the record was sufficient to decide her motion.

III. Post-Trial Petition To Strike or Open Judgment

Where the defendant's excuse for its nonappearance is lack of notice, the defendant may petition to strike the judgment as void as a matter of right; alternatively, where there is no lack of notice or other ground to strike, the defendant may move to open the judgment and seek a new trial based on equitable grounds addressed to the sound discretion of the trial Court. *See Melvin v. Melvin*, 580 A.2d 811, 818 (Pa. Super. 1990).

> In [*Horning v. David*, 8 A.2d 729 (Pa. Super. 1939)], the judgment was opened upon timely demonstration that summons had not been served on the defendant until *after* the verdict against him had been rendered. The ground stated as the basis upon which to *open* was inadequacy of notice, *which sought in actuality to strike the judgment as void, rather than to have it opened as a matter of grace.*
>
> Likewise, in [*Carey v. Carey*, 183 A. 371 (Pa. Super. 1936)], a court granted a rule to show cause why a divorce decree should

> not be struck as void when no notice was given to the wife of the divorce proceedings, and when the husband had committed extrinsic fraud to prevent his wife from learning of the divorce proceedings so as to defend. Again, *the rule sought to strike the judgment as being void, rather than to open judgment as a matter of grace.*
>
> The only other case which we have discovered on this obscure point is [*Mazi v. McAnlis*, 74 A.2d 108 (1950)]. In *Mazi,* . . . [b]ecause it was uncontested that plaintiff's failure to appear was the result of plaintiff's sincere but erroneous belief that a continuance had been granted as the result of his discharge of prior counsel, plaintiff was deemed not to have been at fault. The trial court, consequently, *exercised its discretion to grant a new trial on equitable grounds.* Our Supreme Court, noting the trial court's broad discretion to grant new trials, found no abuse of discretion and affirmed.
>
> . . . .
>
> From the foregoing, we conclude the following. Judgment entered following a trial held under Pa.R.C.P. 218, but without proper notice to one of the parties, may be struck as void on proper post-judgment petition. When a defendant receives proper notice and nonetheless fails to appear or provide a satisfactory excuse for non-appearance at, or prior to, the time set for trial, the trial may proceed properly in the defendant's absence. Following an adverse verdict in such proceedings, a defendant may file post-verdict motions which may include a request for a new trial on equitable grounds similar to those which permit the opening of a default or confessed judgment.

Id. (emphasis in original) (citations omitted).[1]

[1] The *Melvin* Court noted that default-judgment cases are not directly applicable, because they involve failure to file a responsive pleading rather than failure to attend trial. *See id.* at 19 n.9 ("While there is abundant authority regarding the manner in which a default or confessed judgment should be opened, we do not find judgment entered following a trial in the defendant's absence under Pa.R.C.P. 218 to be sufficiently analogous to warrant reliance upon such authorities.").

The only excuse Mezzacappa has asserted for her failure to appear at trial is lack of notice of the trial date. *See* Post-Trial Motion at 2-6. As noted above, Mezzacappa asserts that the notice she received was insufficient, because (1) O'Hare deliberately did not serve her with the December 24, 2013 Praecipe, notwithstanding his counsel's representation in the Certificate of Service; (2) the Court Administrator served her with the March 10, 2014 Non-Jury Trial List only by United States Certified Mail rather than United States First-Class Mail, which was insufficient to comply with the Pennsylvania Rules of Civil Procedure; (3) she received neither the March 10, 2014 Non-Jury Trial List nor the Certified Mail notice that USPS left in her mailbox on February 12, 2014, because her mail service was interrupted during the month of February 2014 due to the presence of ice and snow on her front walk, and the Certified Mail envelope was returned to the Court Administrator marked "unclaimed"; (4) she did not know that she should be expecting notice of a rescheduled trial date, because she relied on advice from Court Administration personnel that the case had been dismissed and could not be relisted for trial unless O'Hare filed a petition or motion to reopen the case; and (5) O'Hare and his counsel took advantage of her lack of legal sophistication as a *pro se* litigant to reschedule the trial without providing notice to her. We must now determine whether Mezzacappa was given proper notice of the trial date.

IV. Motion to Strike Based on Insufficiency of Notice

A. Service By Mail

"Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action." Pa.R.C.P. 440(a)(1). "If there is no attorney of record, service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the [party's] residence or place of business . . . ." Pa.R.C.P. 440(a)(2)(i).

The Pennsylvania Supreme Court has held that service by mail under Pa.R.C.P. 440 may be made through United States Certified Mail rather than United States First-Class Mail. *See Sklar v. Harleysville Ins. Co.*, 587 A.2d 1386, 1387 (Pa. 1991) (where defendant's counsel served *pro se* plaintiff with notice of trial date by United States Certified Mail, service complied with Pa.R.C.P. 440, and Court properly denied plaintiff's motion to reopen judgment of non pros).

The federal courts have held that the presumption of effective service is even stronger when service is made by United States Certified Mail. *See Santana Gonzalez v. Attorney General*, 506 F.3d 274, 278 (3d Cir. 2007).

> We have long recognized a presumption that ordinary regular mail properly sent is presumed to be received. . . . Such a presumption in the case of ordinary regular mail is to be contrasted with the 'strong presumption' required in *Matter of Grijalva*, 21 I. & N. Dec. 27, 37 (BIA), Interim Decision 3246,

> 1995 WL 314388 (Apr. 28, 1995) in the case of certified mail, particularly since certified mail carries with it extra assurances of effective delivery that are absent when letters are sent via ordinary means. The difference in the strength of presumption, and in its effect when applied, is a difference which we recognize and approve, as have other courts of our sister circuits. . . . The Ninth Circuit in *Sembiring v. Gonzalez*, 499 F.3d 981 (9th Cir. 2007) [held] that "a weaker presumption" of effective service applies to service by regular mail. The court stated as follows: . . . "This lower evidentiary standard makes good sense. If a letter is sent by certified mail, there is a paper trail in Postal Service records showing both mailing and receipt (or non-receipt). By contrast, there is no Postal Service paper trail for regular mail. There is seldom any administrative paper trail either, other than a copy of the notice in question and, sometimes, a copy of the envelope in which the notice was sent." [499 F.3d] at 986.

Id. (citations omitted).[2]

Here, the December 24, 2013 Praecipe was served by United States First-Class Mail. The March 10, 2014 Non-Jury Trial List was served by United States Certified Mail. Both documents were served on Mezzacappa at her place of residence, which was also her address of record. Under the above-cited authorities, both of these methods of service were sufficient to satisfy Rule 440.

B. Proof of Mailing and the Presumption of Receipt

"Service by mail of legal papers other than original process is complete upon mailing." Pa.R.C.P. 440(b). "Pa.R.C.P. 440(b) establishes a rebuttable presumption that the notice was received. This shifts the burden to the

[2] Decisions of the federal courts are not binding on this Court but may be persuasive. *See Huber v. Etkin*, 58 A.3d 772, 779 (Pa. Super. 2012); *Umbelina v. Adams,* 34 A.3d 151, 159 (Pa. Super. 2011).

recipient to prove that the notice was not received. Notably, testimony alone will not rebut the presumption." *Wheeler v. Red Rose Transit Auth.*, 890 A.2d 1228, 1231 (Pa. Cmwlth. 2006); *accord Szymanski v. Dotey*, 52 A.3d 289, 292 (Pa. Super. 2012). The Court in *Szymanski* stated:

> The mailbox rule provides that "depositing in the post office a properly addressed, prepaid letter raises a natural presumption, founded in common experience, that it reached its destination by due course of mail." *Jensen v. McCorkell*, 154 Pa. 323, 325, 26 A. 366, 367 (Pa. 1893) (citation omitted). As the Pennsylvania Supreme Court noted: "The overwhelming weight of statistics clearly indicates that letters properly mailed and deposited in the post office are received by the addressees." *Meierdierck v. Miller*, 394 Pa. 484, 487, 147 A.2d 406, 408 (Pa. 1959). Thus, "[e]vidence that a letter has been mailed will ordinarily be sufficient to permit a jury to find that the letter was in fact received by the party to whom it was addressed." *Shafer v. A.I.T.S., Inc.*, 285 Pa. Super. 490, 428 A.2d 152, 156 (1981) (citations omitted).

52 A.3d at 292.

Proof of mailing may be made by documentary evidence. *See Szymanski*, 52 A.3d at 292.

> "[E]vidence of actual mailing is not required." *Commonwealth, Dep't of Transp. V. Brayman Constr. Corp.*, 99 Pa. Cmwlth. 373, 513 A.2d 562, 566 (1986). . . . Documentary evidence of mailing or testimony from the author that a document was mailed may establish the presumption of receipt. *See Commonwealth Dep't of Transp. V. Grasse,* 146 Pa. Cmwlth. 17, 606 A.2d 544, 546 (1992) (holding appellees met burden of proof of mailing by producing certified driving record which included document showing notice was mailed); *cf. Meierdierck*, 394 Pa. at 487, 147 A.2d at 408 (holding that "[w]here the use of the mails as a means of acceptance is authorized or implied from the surrounding circumstances, the acceptance is complete by posting the letter in normal mail channels, without more.").

Id. The Court in *Grasse* stated:

> The trial court admitted into evidence [Defendant's] certified driving record which included a document showing that the notice of the special driver's examination was mailed to [Defendant] on March 28, 1988, and further included a document showing that official notice of suspension was mailed on June 27, 1988. We hold that these documents are competent to establish that notice of the special driver's examination and notice of the suspension were mailed to [Defendant] and, therefore, a presumption is raised that [Defendant] received the notices.

606 A.2d at 546.

In the case of Certified Mail, where there is proof of attempted delivery of Certified Mail and actual delivery of a Certified Mail notice, "a strong presumption of effective service arises." *Matter of Grijalva*, 21 I. & N. Dec. 27, 37 (BIA), Interim Decision 3246, 1995 WL 314388 (Apr. 28, 1995), *superseded by statute as stated in Adovic v. United States Attorney General*, 542 Fed. Appx. 767 (11th Cir. 2013).

> We find that in cases where service of a notice of a deportation proceeding is sent by certified mail through the United States Postal Service and there is proof of attempted delivery and notification of certified mail, a strong presumption of effective service arises. There is a presumption that public officers, including Postal Service employees, properly discharge their duties.

Id.

The Certificate of Service signed by O'Hare's counsel provides documentary evidence that the December 24, 2013 Praecipe was mailed to Mezzacappa by United States First Class Mail at her address of record on December 24, 2013 and triggers the presumption of receipt. *See Szymanski*, 52 A.3d at 292 ("Documentary evidence of mailing or testimony

from the author that a document was mailed may establish the presumption of receipt.").

Similarly, the postmarked Certified Mail envelope containing the March 10, 2014 Non-Jury Trial List provides documentary evidence that notice of the trial date was mailed to Mezzacappa at her address of record by United States Certified Mail on February 7, 2014. The USPS tracking website provides documentary evidence that the mail carrier left a notice in Mezzacappa's mailbox that the post office was holding a Certified Mail envelope for her on February 12, 2014. Together, the postmarked Certified Mail envelope and the USPS tracking website are sufficient to trigger the presumption of receipt. *See Matter of Grijalva*, 21 I. & N. Dec. 27, 37 ("[Where] there is proof of attempted delivery and notification of certified mail, a strong presumption of effective service arises.").

C. Rebutting the Presumption of Receipt

As noted above, "Pa.R.C.P. 440(b) establishes a rebuttable presumption that the notice was received. This shifts the burden to the recipient to prove that the notice was not received. Notably, testimony alone will not rebut the presumption." *Wheeler v. Red Rose Transit Auth.*, 890 A.2d 1228, 1231 (Pa. Cmwlth. 2006). We will now address whether Mezzacappa has rebutted the presumption of effective service with respect to the December 24, 2013 Praecipe and the March 10, 2014 Non-Jury Trial List.

1. The December 24, 2013 Praecipe

Mezzacappa has presented no evidence of nondelivery of the December 24, 2013 Praecipe other than her own testimony that she did not receive it and her speculation that O'Hare and his counsel deliberately chose not to send it to her. Her assertion that her residence was inaccessible due to snow and ice pertained only to the month of February 2014, not December 2013. Because Mezzacappa relies solely on her own testimony of non-receipt, the Court finds that she has failed to rebut the presumption of effective service. *See Wheeler*, 891 A.2d at 1231 ("Notably, testimony alone will not rebut the presumption."). Accordingly, the Court finds that Mezzacappa received the December 24, 2013 Praecipe and that she was therefore on notice that O'Hare had asked the Court Administrator to place the matter on the next available trial list.

2. The March 10, 2014 Non-Jury Trial List

Where there has been proof of attempted delivery and notification of Certified Mail, the presumption of effective service cannot be overcome without "substantial and probative evidence." *Matter of Grijalva*, 21 I. & N. Dec. 27, 37 (BIA), Interim Decision 3246, 1995 WL 314388 (Apr. 28, 1995), *superseded by statute as stated in Adovic v. United States Attorney General*, 542 Fed. Appx. 767 (11th Cir. 2013).

> A bald and unsupported denial of receipt of certified mail notices is not sufficient to support a motion to reopen to rescind an in absentia order under section 242B(c)(3)(A) or (B) of the Act.

> This presumption of effective service may be overcome by the affirmative defense of nondelivery or improper delivery by the Postal Service. However, in order to support this affirmative defense, the respondent must present substantial and probative evidence such as documentary evidence from the Postal Service, third party affidavits, or other similar evidence demonstrating that there was improper delivery or that nondelivery was not due to the respondent's failure to provide an address where he could receive mail.

Id.

Mezzacappa asserts that she received neither the March 10, 2014 Non-Jury Trial List mailed on February 7, 2014 nor the Certified Mail notice left in her mailbox on February 12, 2014. In support of these assertions, Mezzacappa asserts that (1) her mail service was interrupted during the month of February 2014 due to the presence of ice and snow on her front walk; and (2) the Certified Mail envelope was returned to the Court Administrator marked "unclaimed." We find that these assertions are insufficient to rebut the presumption of effective service.

First, Mezzacappa has presented neither "documentary evidence from the Postal Service" nor "third party affidavits" to rebut the strong presumption of effective service. *Id.* She has offered only her own uncorroborated testimony concerning a hearsay statement by her mail carrier that he could not deliver mail to her home for a period of time in February 2014 due to the presence of ice and snow on her front walk. This indefinite and uncorroborated hearsay statement, unsupported by documentary evidence from the Postal Service or an affidavit from the mail

carrier himself, is insufficient to overcome the postmarked Certified Mail envelope and the USPS tracking website. *See id.* ("A bald and unsupported denial of receipt of certified mail notices is not sufficient to overcome [the strong presumption of effective service].").

Second, where a party properly serves legal papers by Certified Mail at the opposing party's record address but the mail is returned as "unclaimed," the serving party is not required to make extraordinary efforts to locate the other party and secure that party's presence. *See Sklar v. Harleysville Ins. Co.*, 587 A.2d 1386, 1386-89 (Pa. 1991); *Matter of Grijalva*, 21 I. & N. Dec. 27, 37 (BIA), Interim Decision 3246, 1995 WL 314388 (Apr. 28, 1995), *superseded by statute as stated in Adovic v. United States Attorney General*, 542 Fed. Appx. 767 (11th Cir. 2013). In *Sklar*, the defendant's counsel served the *pro se* plaintiff with notice of the trial date by United States Certified Mail, Return Receipt Requested, at the plaintiff's address of record, but the plaintiff failed to receive actual notice, because she had moved to a new address without informing the Court. *See* 587 A.2d at 1387. The trial Court entered a judgment of non pros against the plaintiff for her failure to appear at the trial. *See id.* The plaintiff moved to strike or open the judgment, asserting that she had not received actual notice of the trial date, because she had moved to a new address. *See id.* The Court stated:

> The trial court found that [Defendant] had complied with the notice requirements of Rule 440, and held that [Plaintiff's] explanation—lack of actual notice—was not a reasonable excuse for her failure to appear. [Plaintiff] appealed the denial of her

> petition, and the Superior Court affirmed the judgment. . . . [W]e must decide if the trial notice sent by certified mail pursuant to Rule 440 neglected [due process]. . . . [Plaintiff] argues that [Defendant] should have contacted the postal service "to trace the certified letters and to secure any forwarding address." We cannot subscribe to such a requirement. . . . We think any such requirement would mandate *extraordinary* efforts on the part of a litigant. In view of the fact that service of all legal papers in a case other than original process can be made upon a pro se party by mail at his or her residence or last known address, *see* Pa.R.C.P. 440(a)(1) and (2), it was obviously incumbent upon appellant to keep the court and opposing counsel apprised of her address. That her failure to do so resulted in her failure to receive actual notice of her own trial should not require the adverse party to take *extraordinary* steps in order to secure her presence. The lower courts evidently believed that appellant's own neglect was the underlying cause of her failure to receive actual notice of the trial. We agree.

Sklar v. Harleysville Ins. Co., 587 A.2d 1386, 1386-89 (Pa. 1991) (emphasis in original); *accord Matter of Grijalva*, 21 I. & N. Dec. 27, 37 (BIA), Interim Decision 3246, 1995 WL 314388 (Apr. 28, 1995), *superseded by statute as stated in Adovic v. United States Attorney General*, 542 Fed. Appx. 767 (11th Cir. 2013) (service of a notice of deportation to the defendant's record address by United States Certified Mail was effective even though the mail was returned by the post office as "unclaimed") (quoted with approval in *Santana-Gonzalez v. Attorney General*, 506 F.3d 274, 278 (3d Cir. 2007)).

Third, where, as here, a party has been placed on notice that his or her mail service is unreliable, the burden is on that party, not opposing counsel or the Court, to take steps to ensure that he or she continues to receive service of legal papers. *See Rose v. Allentown Morning Call*, 628

A.2d 441, 444 (Pa. Super. 1993) (denying petition to open judgment of non pros after plaintiff failed to attend pretrial conference).

> Testimony at the hearing on [Plaintiff's] petition revealed that the court mailed previous correspondence and legal papers to [Plaintiff] at his address without incident. N.T. 6/20/91 at 4. If [Plaintiff] did have trouble receiving mail at this address, and his exhibits indicate that he did in the past, he made no effort to inform the court of the problem. Under the authority of *Sklar* [*v. Harleysville Ins. Co.*, 587 A.2d 1386, 1386-89 (Pa. 1991)] the party responsible for serving notice, in this instance the court, was only obligated to make a reasonable effort to notify [Plaintiff] of the upcoming status conference. The court complied with Pa.R.C.P. 440 by mailing the notice to his proper address; we do not know what more could be expected. When [Plaintiff] failed to receive notice, he was the party, as between himself, opposing counsel, and the court, in the best position to avoid the harm he suffered. He cannot be heard now to complain.

Id.

Here, Mezzacappa acknowledges that, well in advance of the trial date, she knew that snow and ice might have interfered with delivery of her mail. Thus, she was on notice that she might have missed delivery of important filings and legal notices in her case. Under the above-cited authorities, it was her responsibility to retrieve her mail from the post office and inform herself of ongoing developments in her litigation. However, despite Mezzacappa's awareness that she might not be receiving all of her mail, she did not (1) contact the post office to ask whether any mail, including notices of certified mail, was being held for her; (2) contact the Court Administrator to inquire whether O'Hare had relisted the matter for trial, as he was permitted him to do under the Local Rules, and, if so, whether a new trial date had been set; (3) contact the Prothonotary to inquire whether O'Hare

had filed a motion or petition to re-open the case, as she asserted she had been told he was permitted to do by Court Administration employees; or (4) contact O'Hare's counsel to inquire whether O'Hare had filed any papers in the case after the matter had been removed from the December 16, 2013 Non-Jury Trial List. Thus, she has failed to present "substantial and probative evidence" that her failure to receive the March 10, 2014 Non-Jury Trial List was not due to her own inexcusable failure to retrieve her mail or find other ways to inform herself of developments in her case. *Matter of Grijalva*, 21 I. & N. Dec. 27, 37. Under the above-cited authorities, Mezzacappa has presented insufficient evidence to overcome the presumption of effective service and warrant the granting of a new trial.

The Court finds that Mezzacappa received proper notice that this matter had been placed on the March 10, 2014 Non-Jury Trial List. Because Mezzacappa received notice of the trial date, there is no basis for her motion to strike the Verdict as void as a matter of right.

V. Motion To Reopen Addressed to the Court's Discretion

Mezzacappa raises two arguments for reopening the proceedings that are addressed to the Court's discretion. First, she asserts that she did not know she should be checking to determine whether her case had been relisted for trial, because she relied upon the purported advice of Court Administration employees that O'Hare could not relist the matter for trial without filing a motion or petition to reopen the case. *See* Post-Trial Motion

at 5. Second, she asserts that O'Hare and his attorney "took advantage of [her] lack of knowledge in tort law, intentionally failed to send Mezzacappa proper service of proceedings, gamed the court system so trial was heard in secrecy, and fraudulently obtained monetary damages." *Id.* at 8. We find neither of these arguments persuasive.

A. Reliance on Purported Advice from Court Personnel

A party is required to be familiar with the rules and procedures governing notice of court proceedings and may not rely on the advice of court personnel. *See Titmar, Inc. v. Sulka*, 586 A.2d 1372, 1373 (Pa. Super. 1991) (denying defendants' petition to reopen judgment based on their assertion that they failed to appear for trial because they failed to read published notice of trial date), *appeal denied*, 608 A.2d 31 (Pa. 1992).

> [Defendants] request this Court to shift the duty to make sure they are personally aware of the date and time of trial to the trial court or opposing counsel. This argument is unsupportable. . . . The Pittsburgh Legal Journal is the official court publication of Allegheny County as authorized by the local rules of court. [Defendants'] counsel, choosing to practice in the forum, was duty bound to identify this rule, and reliance on the telephone opinion of an unidentified clerk does not relieve him of the obligation to be aware of notice procedure.

Id.; *accord Masthope Rapids Property Owners Council v. Ury*, 687 A.2d 70, 72 (Pa. Comwlth. 1996) (denying defendants' petition to reopen judgment based on their counsel's assertion that he failed to appear at trial because he was ignorant of procedure for scheduling trial date; "[The scheduling procedures] should have been known by counsel for [defendants], and

would have been provided to him if he had either attended the pre-trial conference or returned the telephone calls of the court. It is the duty of the parties to ascertain the schedule of the court.").

Under these authorities, Mezzacappa was required to know that Local Rule N212(f) permitted O'Hare to relist the case for trial upon written notice. She was not permitted to rely on the purported advice of Court Administration employees that her case could not be relisted for trial unless O'Hare filed a motion or petition to reopen the case. Even if she accepted this purported erroneous advice of Court Administration employees, it does not excuse her failure to appear at trial, because she took no steps to determine whether O'Hare had filed a motion or petition to reopen the case. Thus, her purported reliance on advice of Court Administration employees does not provide a satisfactory excuse for her failure to appear for trial.

B. No Lower Standard for a *Pro Se* Party

A party who fails to appear at trial is entitled to no indulgence by the Court because he or she has decided to proceed *pro se*. *See Abraham Zion Corp. v. After Six, Inc.*, 607 A.2d, 1105, 1109-10 (Pa. Super. 1992).

> "When a party decides to act on his own behalf, he assumes the risk of his own lack of professional legal training." *Wiegand v. Wiegand*, [525 A.2d 772, 774 (1987)]. Moreover, as Zion had already had one judgment of non pros entered against it in the same case, it was well aware of the risks involved in neglecting an ongoing legal action.
>
> . . . .

> Appellant apparently labors under the *false* assumption that by proceeding *pro se* he is absolved of all responsibility to comply with procedural rules, and that the appellee and/or the court had some affirmative duty to walk him through the procedural requirements, or to ignore the procedural requirements in order to reach the merits of his claim. Such is not the case. The United States Supreme Court has explained: "The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Faretta v. California*, [422 U.S. 806, 834 n.46 (1975)] (emphasis in original).

Id. (emphasis in original). Thus, Mezzacappa's suggestion that O'Hare and his counsel perpetrated a fraud on her by taking advantage of her purported ignorance of legal procedures does not provide a satisfactory excuse for her failure to appear at trial.

Even if Mezzacappa were held to a lower standard of familiarity with the rules due to her *pro se* status, the Court would find that she has failed to meet that standard. First, when notice was delivered to Mezzacappa's mailbox indicating that the post office was holding a piece of Certified Mail for her, she knew or should have known that the Certified Mail might pertain to a notice concerning a rescheduled trial date in her litigation. If she deliberately chose not to travel to the post office to retrieve the Certified Mail envelope, she cannot claim lack of notice as an excuse for her failure to appear at trial. *See Hutchison v. Hutchison*, 422 A.2d 501, 504 (Pa. 1980) (affirming denial of defendant's motion to open judgment based on his failure to receive notice of child support proceeding where defendant deliberately avoided service of notice).

> [Defendant's] failure to appear at the support proceedings cannot be excused. [Defendant] left Pennsylvania after being personally served with a complaint, knowing that support proceedings were pending and that the hearing had only been postponed. He did not notify his counsel or appellant of his departure or whereabouts, and then engaged in conduct obviously designed to conceal the same and insure that he would not be found. Yet [defendant] now complains that he did not receive notice of the proceedings subsequent to his departure, and that they were ex parte. The affidavits contained in the record, however, establish without contradiction that [defendant's] counsel of record was notified of all proceedings up through the first rule to show cause why the arrearages should not be reduced to judgment (after which, he was permitted to withdraw his appearance). This is all that is required by the Pennsylvania Rules of Civil Procedure, see Pa.R.C.P. Nos. 233 and 1027. After having been personally served with process and then concealing himself from [plaintiff], the courts, and his own counsel, [defendant] cannot now be heard to assert a lack of personal notice as an excuse for his failure to appear.

Id. Mezzacappa's lack of diligence is particularly inexcusable in light of the fact that she had previously had a default judgment entered against her on the issue of liability in the same case. *Cf. Abraham Zion Corp. v. After Six, Inc.*, 607 A.2d, 1105, 1109-10 (Pa. Super. 1992) (affirming denial of plaintiff's petition to open judgment of non pros for failure to appear at trial; "[A]s [plaintiff] had already had one judgment of non pros entered against it in the same case, it was well aware of the risks involved in neglecting an ongoing legal action.").

Because the Court finds that Mezzacappa received proper notice of the trial date and has not presented a satisfactory excuse for her failure to appear at trial, the Court holds that her purported failure to receive actual

notice of the trial date does not require that the Verdict be vacated as void and does not entitle Mezzacappa to a new trial based on equitable grounds.

VI. Evidence and Claims Mezzacappa Would Have Asserted at Trial

Rule 227(b)(1) provides that no post-trial relief will be granted unless the grounds therefore "if then available, were raised in pre-trial proceedings or by motion, objection, point for charge, request for findings of fact or conclusions of law, offer of proof or other appropriate method at trial." Pa.R.C.P. 227(b)(1). The Rule further provides: "The motion shall state how the grounds were asserted in pre-trial proceedings or at trial. Grounds not specified are deemed waived unless leave is granted upon cause shown to specify additional grounds." Pa.R.C.P. 227(b)(2). Thus, if a defendant fails to attend and present its defenses at trial and fails to provide a satisfactory excuse for its failure to attend, it waives the right to challenge the Verdict based on evidence it would have presented if it had participated in the trial. *See Hutchison v. Hutchison*, 422 A.2d 501, 504 n.6 (Pa. 1980) ("As we find that [defendant] did not promptly petition to open the judgment, and that his failure to appear cannot be excused, it is not necessary to address the merits of [his] defenses."). Accordingly, Mezzacappa's challenges to the Verdict based on evidence she would have presented had she participated in the trial are waived.

VII. Mezzacappa's Challenge to the Sufficiency of the Evidence

A. Failure to Appear at Trial Does Not Waive Challenge to Sufficiency

As noted above, despite the non-appearance of the defendant, in order for the plaintiff to secure a verdict in its favor, the plaintiff must present its evidence and carry its burden of proof. *See Commonwealth v. 1992 Chevrolet*, 844 A.2d 583, 586 (Pa. Cmwlth. 2004) ("[J]udgment against a defendant who fails to appear for a hearing or trial is not automatic. The party with the burden of proof must still sustain its burden."). Failure to participate in the trial does not waive a defendant's right to challenge the sufficiency of the evidence to support the Verdict. *See Criswell v. King*, 834 A.2d 505, 512 (Pa. 2003) ("[A] claim challenging the weight of the evidence is not the type of claim that must be raised before the jury is discharged. Rather, it is a claim which, by definition, ripens only after the verdict, and it is properly preserved so long as it is raised in timely post-verdict motions."); *Titmar, Inc. v. Sulka*, 586 A.2d 1372, 1374 (Pa. Super. 1991) (affirming trial court's decision to proceed to trial in defendant's absence but allowing defendant to challenge sufficiency of the evidence to support the Verdict and holding that the evidence was sufficient). Thus, Mezzacappa's challenge to the sufficiency of the evidence supporting the Verdict is not waived, and the Court will address it.

B. Sufficiency of the Evidence

1. Compensatory Damages

"Courts adjudicating libel cases as triers of fact should be guided by the same general rules regarding damages that govern other types of tort recovery." *Joseph v. Scranton Times LP*, 959 A.2d 322, 344 (Pa. Super. 2008) (citing *Sprague v. Walter*, 656 A.2d 890, 923 (Pa. Super. 1995)). "The plaintiff bears the burden of proving damages by a preponderance of the evidence; the amount of damages may be proven by the plaintiff furnishing a reasonable amount of information from which the trial court may fairly estimate the damages without engaging in speculation." *Id.* (citing *Bolus v. United Penn Bank*, 525 A.2d 1215, 1225-26 (Pa. Super. 1987)).

In a defamation case, the plaintiff may recover (1) "presumed" or "nominal" compensatory damages, which require no proof; and (2) "actual" compensatory damages, which do require proof. *See Sprague v. American Bar Ass'n*, 276 F. Supp.2d 365, 368 (E.D. Pa. 2003) (cited with approval in *Joseph*, 959 A.2d at 344). Actual compensatory damages fall into two categories: (1) "general compensatory damages," *i.e.*, impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering; and (2) "special compensatory damages," *i.e.*, specific out-of-pocket monetary losses resulting from the defamation. *See Sprague v. American Bar Ass'n*, 276 F. Supp. At 368.

> There are two major categories of compensatory damages relevant to a defamation claim: "presumed" and "actual." "Presumed" damages are those that are expected to result from defamation; they require no proof, but instead, as reflected in their name, are presumed under the law. In contrast, actual damages require competent proof. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974). "Actual" damages are further divided into two types: general and special. "General" damages refer to those that typically flow from defamation, such as "impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." [*Marcone v. Penthouse Int'l Magazine,* 754 F.2d 1072, 1079 (3d Cir. 1985) (citing *Gertz*, 418 U.S. at 350)]; *see also Walker v. Grand Central Sanitation, Inc.*, 634 A.2d 237, 243-44 (Pa. Super. 1993) (measuring whether plaintiff suffered loss of reputation or "adverse emotional reaction" to determine general actual damages); Restatement (Second) of Torts §§ 621, 623 ("One who is liable for a defamatory communication is liable for the proved, actual harm caused to the reputation of the person defamed . . . [and] is liable also for emotional distress . . . that is proved to have been caused by the defamatory communication."). These are distinguished from "special" actual damages which are economic or pecuniary losses.

Id.

Damage to reputation may be proven through evidence of circulation of the defamatory statements and by the plaintiff's own testimony concerning damage to his reputation. *See Joseph*, 959 A.2d at 344.

> Where damage of reputation is claimed, evidence concerning the circulation and contents of the defamatory publication may support an inference that it was read by its intended recipients and caused damage to the plaintiff's reputation. . . . Additionally, the plaintiff in a defamation action may also present testimony concerning his loss of reputation.

Id. (citation omitted). Damages for injury to reputation may be based solely on the testimony of the plaintiff. *See id.* at 345 ("[T]he trial court did not commit error by awarding damages to Appellee Joseph that were based

solely on his and his families' testimony."). Emotional injury requires no expert testimony but may be proven solely through the testimony of the plaintiff. *See id.* ("[T]estimony regarding the humiliation and emotional stress that resulted from the Defamatory Articles was sufficient to prove compensable damages.").

O'Hare's testimony established that he suffered both (1) general compensatory damages, *i.e.*, impairment of his reputation and standing in the community and personal humiliation, mental anguish, and suffering; and (2) special compensatory damages, *i.e.*, specific monetary losses attributable to the defamatory statements.

a. General Compensatory Damages

As to general compensatory damages, O'Hare testified that many of Mezzacappa's defamatory statements were posted on the internet and were therefore widely circulated and presumed to have been read by a large audience. O'Hare further testified that he had lost standing not only with his business associates but also with his grandson's coaches and his grandson's friends and their parents. Thus, O'Hare proved damage to his reputation and standing in the community. As to emotional injury, O'Hare testified concerning his own humiliation, depression, social inhibition, sleeplessness, and fear for his personal safety. The Court found that O'Hare was credible and had carried his burden of proof. Thus, O'Hare proved emotional injury.

The Court placed a value of $15,000 on these injuries. Accordingly, the Court awarded O'Hare general compensatory damages of $15,000.

b. Special Compensatory Damages

O'Hare's testimony established that he suffered special compensatory damages, *i.e.*, specific monetary losses attributable to the defamation. He testified that as a result of the termination of his relationship with Patch, he lost income of sixty dollars per week for the latter part of 2011 and all of 2012 and 2013. The Court placed a value of $7,380 on this injury. Accordingly, the Court awarded O'Hare special compensatory damages of $7,380.

2. Punitive Damages

"[I]n order to recover punitive damages, a defamation plaintiff must show that a defendant acted with common law malice." *Sprague v. American Bar Ass'n*, 276 F. Supp. 2d 365, 375 n.14 (E.D. Pa. 2003). "'Common law malice' involves conduct that is outrageous (because of the defendant's evil motive or his reckless indifference to the rights of others), and is malicious, wanton, reckless, willful, or oppressive." *Sprague v. Walter*, 656 A.2d 890, 922 (Pa. Super. 1995); *accord DiSalle v. P.G. Publishing Co.*, 544 A.2d 1345, 1369 (Pa. Super. 1988). The Court in *DiSalle* stated:

> Pennsylvania has adopted the guideline of Section 908(2) of the Restatement (Second) of Torts on the question of punitive damages in general, and has developed the requirement of common law malice around conduct which has variously been

> described as "outrageous," "malicious," "wanton," "reckless," "willful," "oppressive," the result of "bad motive," or "reckless indifference to the rights of others." *Feld v. Merriam*, [485 A.2d 742, 747-48 (Pa. 1984)]. Thus, when a defendant acts with common law malice, and thereby becomes susceptible to punitive damages, he does so with a necessary degree of evil volition toward the plaintiff.

544 A.2d at 1369. The plaintiff must prove common law malice by a preponderance of the evidence. *See Sprague v. American Bar Ass'n*, 276 F. Supp. 2d 365, 376 (E.D. Pa. 2003) ("Pennsylvania courts have seen fit to apply the default 'preponderance of the evidence' standard to proof of common law malice for purposes of punitive damages, regardless of whether the plaintiff is a public figure.") (citing *Sprague v. Walter*, 656 A.2d 890, 923 (Pa. Super. 1995)).

In addition to common law malice, the plaintiff must also show actual malice. *See Sprague v. American Bar Ass'n*, 276 F. Supp. 2d at 375 n.14 ("[Common law malice] is a distinct concept from the First Amendment requirement of 'actual malice' which is required for liability in a public figure's defamation action as well as for any defamation plaintiff seeking presumed or punitive damages.") (citing *Sprague v. Walter*, 656 A.2d 890, 922 (Pa. Super. 1995); *accord Marcone v. Penthouse Int'l Magazine for Men*, 754 A.2d 1072, 1079 (3d Cir. 1985) ("[Defamation plaintiffs] may recover compensation for 'actual injury' but not presumed or punitive damages unless the heightened *New York Times* actual malice standard is used."). A statement is made with actual malice if it was made "with knowledge that it

was false or with reckless disregard of whether it was false or not." *Sprague v. Walter*, 656 A.2d 890, 923 (Pa. Super. 1995).

O'Hare's evidence established that Mezzacappa acted with actual malice and common law malice. With respect to many of her statements, the Court found that Mezzacappa acted with reckless disregard as to the truth or falsity of her statements and that her conduct was extreme, outrageous and intended to harm O'Hare. Accordingly, the Court determined that O'Hare was entitled to an award of punitive damages.

The amount of a punitive damage award is within the discretion of the factfinder. *See Empire Trucking Co., Inc. v. Reading Anthracite Coal Co.*, 71 A.3d 923, 938 (Pa. Super. 2013).

> Under Pennsylvania law the size of a punitive damages award must be reasonably related to the State's interest in punishing and deterring the particular behavior of the defendant and not the product of arbitrariness or unfettered discretion. In accordance with this limitation, the standard under which punitive damages are measured in Pennsylvania requires analysis of the following factors: (1) the character of the act; (2) the nature and extent of the harm; and (3) the wealth of the defendant.

Id. (citations and quotations omitted); *accord Signora v. Liberty Travel, Inc.*, 886 A.2d 284, 299 (Pa. Super. 2005).

> The purpose of punitive damages is to punish a tortfeasor for outrageous conduct and to deter him or others from similar conduct. An award of punitive damages need not bear a reasonable relationship to the amount of compensatory damages awarded. The degree of reprehensibleness of the defendant's conduct is the primary indicator of the reasonableness of a punitive damages award. Punitive damages are awarded for acts committed with a bad motive or with a reckless indifference to

> the interests of others. The amount of an award of punitive damages will not be reversed unless it shocks the conscience of the court.

Signora, 886 A.2d at 299 (citations omitted).

As noted above, "[c]ourts adjudicating libel cases as triers of fact should be guided by the same general rules regarding damages that govern other types of tort recovery." *Joseph v. Scranton Times LP*, 959 A.2d 322, 344 (Pa. Super. 2008) (citing *Sprague v. Walter*, 656 A.2d 890, 923 (Pa. Super. 1995)). As noted in *DiSalle*, Pennsylvania follows the Restatement (Second) of the Law of Torts § 908 on punitive damages. 544 A.2d at 1369. The comment to section 908 states: "In many states statutes have been enacted with reference to certain types of conduct, such as intentional trespass to land, under the terms of which double or treble damages or designated amounts can be recovered." Section 908, cmt. a. In Pennsylvania, for example, the Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. §§ 201-1 to 201-92, provides for treble damages. *See Johnson v. Hyundai Motor America*, 698 A.2d 631, 639 (Pa. Super. 1997) ("It is undisputed that the imposition of exemplary or treble damages is essentially punitive in nature.").

In accordance with the recognized practice of employing double or treble damages as a means of calculating a punitive damage award, the Court trebled O'Hare's compensatory damages of $22,380 for a total award of $67,140. The Court concluded that the punitive damage award was

reasonable, proportional to Mezzacappa's misconduct, and large enough to deter future misconduct by Mezzacappa and others. Thus, the Court holds that the Verdict was supported by the evidence.

CONCLUSION

For the foregoing reasons, we hold that Mezzacappa has not provided a satisfactory excuse for her failure to appear at the March 11, 2014 trial; that the evidence was sufficient to support the Verdict; and that all other issues Mezzacappa has raised were waived by her failure to appear and assert them at trial.

WHEREFORE we enter the following:

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION - LAW

BERNIE O'HARE, **Plaintiff,** **vs.** **TRICIA MEZZACAPPA,** **Defendant.**	**No.: C-48-CV-2012-3442**

ORDER OF COURT

AND NOW, this 8th day of July, 2014, upon consideration of Defendant Tricia Mezzacappa's ("Mezzacappa") "Concurrent Petition for Post Trial Relief/Review and/or Rehearing To Vacate, Reverse or Modify Judgement (sic) in Favor of O'Hare, Entered on 3/28/14" ("Post-Trial Motion"), the response thereto of Plaintiff Bernie O'Hare ("O'Hare"), and the briefs and argument submitted thereon, it is hereby **ORDERED** and **DECREED** that Mezzacappa's Post-Trial Motion is **DENIED**. The Prothonotary is directed to enter judgment in favor of O'Hare and against Mezzacappa in the amount of $67,140 plus costs.

BY THE COURT:

MICHAEL J. KOURY, JR., JUDGE