

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Acosta, P.J., Webber, González, Scarpulla, JJ.

12856

NICOLE WALSH, etc.,
Plaintiff-Appellant,

Index No. 805125/16
Case No. 2020-01603

-against-

RICHARD PISANO, M.D., et al.,
Defendants,

JENNY DELFIN, M.D., et al.,
Defendants-Respondents.

Queller, Fisher, Washor, Fuchs & Kool and The Law Office of William A. Gallina, LLP,
New York (Matthew J. Maiorana of counsel), for appellant.

Aaronson Rappaport Feinstein & Deutsch, LLP, New York (Deirdre E. Tracey of
counsel), for respondents.

Judgment, Supreme Court, New York County (Eileen A. Rakower, J.), entered
February 4, 2020, granting summary judgment and dismissing the action as against
defendants Jenny Delfin, M.D. and New York University (NYU), unanimously affirmed,
without costs.

Defendants Dr. Delfin and NYU argue that the appeal should be dismissed
because plaintiff's appeal from the underlying summary judgment order has been
deemed dismissed. However, after the judgment was entered, terminating the right of
direct appeal from the order, plaintiff properly appealed from the judgment (*see Matter*
of Aho, 39 NY2d 241, 248 [1976]; CPLR 5501[a][1]) without any improper delay.

Plaintiff's medical malpractice claim against Dr. Delfin is barred by the Workers'
Compensation Law because it is undisputed that Dr. Delfin's services were made

available to plaintiff's decedent, an employee of defendant JPMorgan Chase & Co., at JPMorgan's expense and on its premises and that the services provided by Dr. Delfin at JPMorgan's health center were made available to the decedent as an employee of JPMorgan (*Garcia v Iseron*, 33 NY2d 421 [1974]; accord *Marange v Slivinski*, 257 AD2d 427 [1st Dept 1999]). The fact that Dr. Delfin is employed by NYU, which acts as an independent contractor of JPMorgan, does not change this determination since Dr. Delfin's services are offered and paid for by JPMorgan (*Feliciano-Delgado v New York Hotel Trades Council & Hotel Assn. of N.Y. City Health Ctr.*, 281 AD2d 312 [1st Dept 2001]; *Carman v Abter*, 300 AD2d 160 [1st Dept 2002]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: January 14, 2021



Susanna Molina Rojas
Clerk of the Court