

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12087
G/cb

_____AD3d_____

Argued - May 25, 2006

DANIEL F. LUCIANO, J.P.
REINALDO E. RIVERA
ROBERT A. LIFSON
JOSEPH COVELLO, JJ.

2005-04420

DECISION & ORDER

In the Matter of Stephanie H. Goodman, et al., appellants,
v Estate of Anna Druck, respondent.

(File No. 5035/02)

McCanliss & Early, LLP, New York, N.Y. (Philip M. Chiappone of counsel), for appellants.

Capell Vishnick, LLP, Lake Success, N.Y. (Bernard Vishnick and Christopher J. L. Deziel of counsel), for respondent.

Eliot Spitzer, Attorney-General, New York, N.Y. (Robert R. Molic of counsel), for ultimate charitable beneficiaries.

In a proceeding pursuant to SCPA 1809 to determine the validity of a claim against the respondent, the petitioners appeal, as limited by their brief, from so much of an order of the Surrogate's Court, Kings County (Tomei, A.S.), dated March 18, 2005, as, upon a decision of the same court (Feinberg, S.) dated February 17, 2005, granted the respondent's motion for summary judgment dismissing the petition to the extent that it sought reimbursement of certain moneys.

ORDERED that the order is affirmed insofar as appealed from, with costs.

After the respondent made out its prima facie case for summary judgment dismissing the petitioners' claim pursuant to SCPA article 18, the petitioners failed to come forward with evidentiary proof demonstrating the existence of a triable issue of fact. Accordingly, the respondent was properly awarded summary judgment dismissing the petition to the extent that it sought

October 10, 2006

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reimbursement of certain moneys (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851; *Zuckerman v City of New York*, 49 NY2d 557; *Matter of Casessa*, 298 AD2d 518, 519).

The petitioners' remaining contentions are without merit.

LUCIANO, J.P., RIVERA, LIFSON and COVELLO, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court