

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

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Submitted - June 19, 2006

HOWARD MILLER, J.P.
DANIEL F. LUCIANO
REINALDO E. RIVERA
ROBERT A. SPOLZINO, JJ.

2005-10577

DECISION & ORDER

James Abenante, et al., plaintiffs, v Star Gas Corporation, d/b/a Coleman Gas Service, defendant; William M. Weisberg, nonparty-appellant; Meiselman, Denlea, Packman & Eberz, P.C., nonparty-respondent.

(Index No. 6525/97)

William M. Weisberg, New York, N.Y. (Elizabeth Anne Bannon of counsel), nonparty-appellant pro se.

Meiselman, Denlea, Packman, Carton & Eberz, P.C., White Plains, N.Y. (Myra I. Packman and James R. Denlea of counsel), for nonparty-respondent Meiselman, Denlea, Packman & Eberz, P.C.

In an action to recover damages for personal injuries, William M. Weisberg, the plaintiff James Abenante's outgoing attorney, appeals from an order of the Supreme Court, Orange County (Berry, J.), dated September 30, 2005, which granted his motion to apportion an attorney's fee between himself and Meiselman, Denlea, Packman & Eberz, P.C., the plaintiff James Abenante's incoming attorney, only to the extent of awarding him 1% of the net attorney's fee, i.e., the sum of \$10,699.64.

ORDERED that the order is affirmed, with costs.

When there is a fee dispute between outgoing and incoming attorneys, "[t]he outgoing attorney may elect to take compensation on the basis of a presently fixed dollar amount based upon

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quantum meruit for the reasonable value of services or, in lieu thereof, the outgoing attorney has the right to elect a contingent percentage fee based on the proportionate share of the work performed on the whole case” (*Lai Ling Cheng v Modansky Leasing Co.*, 73 NY2d 454, 458). There is no dispute that William M. Weisberg elected to receive a contingent percentage fee. When considering the amount of time spent by each attorney on the case, the work performed, and the amount of recovery for the client (*see Lai Ling Cheng v Modansky Leasing Co.*, *supra* at 458), the Supreme Court providently exercised its discretion in fixing Weisberg’s fee at \$10,699.64, which was 1% of the total attorney’s fee.

The appellant’s remaining contentions are either improperly raised for the first time on appeal or without merit.

MILLER, J.P., LUCIANO, RIVERA and SPOLZINO, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court