

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

D12410  
O/mv

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - September 13, 2006

THOMAS A. ADAMS, J.P.  
GABRIEL M. KRAUSMAN  
REINALDO E. RIVERA  
ROBERT A. LIFSON, JJ.

---

2005-11431

DECISION & ORDER

2 North Broadway Food, Inc., respondent,  
v Steven Anduze, appellant.

(Index No. 6868/04)

---

Steven Anduze, Yonkers, N.Y., appellant pro se.

Brian R. Hoch, White Plains, N.Y., for respondent.

In an action to recover damages for legal malpractice, the defendant appeals from an order of the Supreme Court, Westchester County (Smith, J.), dated September 27, 2005, which, in effect, denied his motion to dismiss the complaint on the ground that the plaintiff lacked the capacity to sue.

ORDERED that the order is reversed, on the law, with costs, and the motion to dismiss the complaint is granted.

The plaintiff, a dissolved corporation, lacked the capacity to commence the present action because it does not relate to the plaintiff's winding up of its corporate affairs (*see* Business Corporation Law §§ 1005[a][1], 1006[a]; *Brandes Meat Corp. v Cromer*, 146 AD2d 666, 666-667; *Lorisa Capital Corp. v Gallo*, 119 AD2d 99, 110; *compare St. James Constr. Corp. v Long*, 253 AD2d 754, 755). Accordingly, the Supreme Court should have granted the defendant's motion to dismiss the complaint (*see* CPLR 3211[a][3]).

ADAMS, J.P., KRAUSMAN, RIVERA and LIFSON, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

October 31, 2006

2 NORTH BROADWAY FOOD, INC. v ANDUZE