

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

D12667
Y/nl

_____AD3d_____

Submitted - October 5, 2006

ANITA R. FLORIO, J.P.
GLORIA GOLDSTEIN
ROBERT J. LUNN
MARK C. DILLON, JJ.

2005-04901

DECISION & ORDER

Christine Sherman, appellant,
v Charles Sherman, respondent.

(Index No. 11963/95)

Jay Landa, Garden City, N.Y., for appellant.

Alexander Potruch, LLC, Garden City, N.Y., for respondent.

In a matrimonial action in which the parties were divorced by judgment entered August 21, 2001, the plaintiff appeals from an order of the Supreme Court, Nassau County (Gibson, Ct. Atty. Ref.), dated January 31, 2005, which denied her motion for an award of an attorney's fee.

ORDERED that the order is affirmed, with costs.

Absent substantial compliance with 22 NYCRR 1400.3, which requires the execution and filing of a retainer agreement setting forth, inter alia, the terms of compensation and the nature of services to be rendered, an attorney may not recover a fee from an adversary spouse (*see Bishop v Bishop*, 295 AD2d 382, 383; *Mulcahy v Mulcahy*, 285 AD2d 587, 588; *Flanagan v Flanagan*, 267 AD2d 80, 81; 22 NYCRR 1400.3). Here, the retainer agreement between the appellant and her attorney terminated by its own terms upon entry of the judgment of divorce. Contrary to the appellant's contention, the filing of a new retainer agreement in support of the instant motion for a postjudgment attorney's fee, which purportedly ratified the former agreement, did not amount to substantial compliance with the matrimonial rules (*see Wagman v Wagman*, 8 AD3d 263). Accordingly, the Supreme Court properly concluded that the appellant's attorney was not entitled to recover a fee for postjudgment services rendered to the appellant.

November 21, 2006

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The appellant's remaining contention regarding the award of an attorney's fee incurred following the submission of the second retainer agreement in support of the instant motion is not properly before this court.

FLORIO, J.P., GOLDSTEIN, LUNN and DILLON, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court