

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

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Submitted - December 20, 2006

HOWARD MILLER, J.P.  
ROBERT A. SPOLZINO  
GABRIEL M. KRAUSMAN  
STEVEN W. FISHER  
MARK C. DILLON, JJ.

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2006-05780

DECISION & ORDER

Victor Nunez, respondent, v City of New York,  
et al., appellants.

(Index No. 23827/04)

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Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and Pamela Seider Dolgow of counsel), for appellant City of New York.

Jeffrey Samel & Partners, New York, N.Y. (Judah Z. Cohen of counsel), for appellants New York City Transit Authority and Judlau Contracting, Inc.

Raskin & Kremins, LLP (Alexander J. Wulwick, New York, N.Y., of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant City of New York, and the defendants New York City Transit Authority and Judlau Contracting, Inc., separately appeal from an order of the Supreme Court, Kings County (Solomon, J.), dated May 17, 2006, which granted the plaintiff's motion pursuant to CPLR 3126 to strike their separate answers for failure to comply with court-ordered disclosure.

ORDERED that the order is affirmed, with one bill of costs.

A court is authorized to strike the pleadings of a party who "refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed" (CPLR 3126[3]). Striking a pleading is appropriate where a party's conduct in resisting

disclosure is shown to be willful and contumacious (*see Kryzhanovskaya v City of New York*, 31 AD3d 717; *Mendez v City of New York*, 7 AD3d 766; *Alto v Gilman Mgt. Corp.*, 7 AD3d 650). The willful and contumacious character of the defendants' failure to produce their witnesses for deposition can be inferred from their continuing noncompliance with three court orders directing their depositions, five adjournments of the scheduled deposition dates in defiance of the orders, and inadequate excuses for their failures to produce their witnesses for deposition (*see Kryzhanovskaya v City of New York*, 31 AD3d 717; *Careccia v Metropolitan Suburban Bus Auth.*, 18 AD3d 793; *Beneficial Mtge. Corp. v Lawrence*, 5 AD3d 339). Accordingly, the court providently exercised its discretion in granting the motion.

MILLER, J.P., SPOLZINO, KRAUSMAN, FISHER and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer  
Clerk of the Court