

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

D13768
G/hu

_____AD3d_____

Submitted - January 10, 2007

STEPHEN G. CRANE, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
MARK C. DILLON
RUTH C. BALKIN, JJ.

2006-04760

DECISION & ORDER

Carmen Delgado, respondent, v Jewish Child
Care Assoc. of New York, et al., appellants.

(Index No. 4439/98)

Callan, Koster, Brady & Brennan, LLP, New York, N.Y. (Michael P. Kandler and
Joshua C. Weisberg of counsel), for appellants.

Figman & Epstein, LLP, New York, N.Y. (Alan H. Figman of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants appeal from an
order of the Supreme Court, Kings County (Schmidt, J.), dated April 6, 2006, which granted the
plaintiff's motion, inter alia, to restore the action to active status.

ORDERED that the order is affirmed, without costs or disbursements.

Contrary to the defendants' contention, the compliance conference order dated
February 15, 2001, could not be deemed a 90-day demand pursuant to CPLR 3216 since it gave the
plaintiff only 89 days within which to file the note of issue (*see Wollman v Berliner*, 29 AD3d 786;
Delgado v New York City Hous. Auth., 21 AD3d 522; *Vasquez v Big Apple Constr. Corp.*, 306 AD2d
465). Because the compliance conference order did not meet the statutory preconditions pursuant
to CPLR 3216, there was a failure of a condition precedent, and the court was not authorized to

February 6, 2007

Page 1.

DELGADO v JEWISH CHILD CARE ASSOC. OF NEW YORK

dismiss the action on its own motion (*see Schwartz v Nathanson*, 261 AD2d 527). Accordingly, the plaintiff's motion to restore the action to active status was properly granted (*cf. Lopez v Imperial Delivery Serv.*, 282 AD2d 190, 199-200).

CRANE, J.P., SANTUCCI, FLORIO, DILLON and BALKIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court