

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

D14073
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_____AD3d_____

Argued - January 30, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
ROBERT A. LIFSON, JJ.

2005-09353

DECISION & ORDER

Harlan Frankel, appellant, v Yeshiva University,
respondent.

(Index No. 3392/05)

Wolf & Wolf, LLP, Bronx, N.Y. (Jason M. Wolf of counsel), for appellant.

Sive, Paget & Riesel, P.C., New York, N.Y. (Kate Sinding, Daniel Riesel, and Megan Ludwig of counsel), for respondent.

In an action, inter alia, for a judgment directing the plaintiff's reinstatement to the defendant's clinical psychology program, the plaintiff appeals from an order of the Supreme Court, Westchester County (Dillon, J.), entered August 22, 2005, which granted those branches of the defendant's motion which were pursuant to CPLR 3211(a)(5) and (7) to dismiss the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court correctly determined that the plaintiff's challenge to his termination from the defendant's clinical psychology program for academic deficiencies should have been brought in the context of a proceeding pursuant to CPLR article 78 (*see Maas v Cornell Univ.*, 94 NY2d 87, 92-93; *Diehl v St. John Fisher Coll.*, 278 AD2d 816; *Klinge v Ithaca Coll.*, 244 AD2d 611; *see also Matter of Lusardi v State Univ. of N.Y. at Buffalo*, 284 AD2d 992; *Matter of McDermott v New York Med. Coll.*, 228 AD2d 967; *Aranoff v Fordham Univ.*, 171 AD2d 434). Since the plaintiff's action was commenced nearly six years after he was terminated from the subject program, it was properly dismissed as untimely (*see CPLR 217[1]*; *Diehl v St. John Fisher Coll.*, *supra*; *Aranoff v Fordham Univ.*, *supra*).

February 27, 2007

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The plaintiff's remaining contentions are without merit.

MILLER, J.P., SPOLZINO, RITTER and LIFSON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court