

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

D14267
Y/cb

_____AD3d_____

Submitted - February 7, 2007

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
STEVEN W. FISHER
ROBERT A. LIFSON
THOMAS A. DICKERSON, JJ.

2006-01892

DECISION & ORDER

Kory Irushalmi, respondent, v Marci Ostroff, et al.,
defendants; Edward A. Lemmo, P.C., nonparty-appellant.

(Index No. 18976/01)

Sanford F. Young, P.C., New York, N.Y., for appellant.

Kory Irushalmi, Boca Raton, Florida, respondent pro se (no brief filed).

In an action to recover damages for medical malpractice, nonparty Edward A. Lemmo, P.C., the plaintiff's attorney, appeals, as limited by its notice of appeal and brief, from so much of an order of the Supreme Court, Queens County (Flug, J.), dated January 5, 2006, as disallowed reimbursement of its disbursements to Robert Bernstein Investigation and to Second Opinion Services.

ORDERED that on the court's own motion, the notice of appeal is treated as an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[b][1]); and it is further,

ORDERED that the order is reversed insofar as appealed from, on the law, without costs or disbursements, and the nonparty-appellant is awarded reimbursement for its disbursements to Robert Bernstein Investigation in the sum of \$1,500.84 and to Second Opinion Services in the sum of \$9,100.

March 13, 2007

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The appellant was entitled to recover disbursements for investigative or other services properly chargeable to the prosecution of this action (*see* Judiciary Law § 474-a[3]; *Yalango v Popp*, 84 NY2d 601, 610). The Supreme Court erred in disallowing reimbursement of certain documented disbursements from the proceeds of recovery (*see* *Guiliano v Carlisle*, 236 AD2d 364, 365; *Holskin v 22 Prince St. Assoc.*, 178 AD2d 347, 348-349).

RIVERA, J.P., SPOLZINO, FISHER, LIFSON and DICKERSON, 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