

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

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_____AD3d_____

Submitted - February 26, 2007

STEPHEN G. CRANE, J.P.
PETER B. SKELOS
JOSEPH COVELLO
THOMAS A. DICKERSON, JJ.

2006-03376

DECISION & ORDER

In the Matter of Frank Haley, a/k/a Frank R.
Haley, Jr., deceased. Mary Lou Haley, appellant;
Robert Gori, respondent.

(File No. 4292/02)

Morris Markowitz, Brooklyn, N.Y., for appellant.

Connors & Sullivan, P.C., Brooklyn, N.Y. (Edward R. Dorney of counsel), for
respondent.

In a contested probate proceeding, the objectant appeals from a decree of the Surrogate's Court, Kings County (Seddio, S.), dated March 23, 2006, which, upon an order of the same court dated January 9, 2006, granting the petitioner's motion for summary judgment dismissing her objections to probate of the will, admitted the will to probate. The notice of appeal from the order is deemed to be a notice of appeal from the decree (*see* CPLR 5512[a]).

ORDERED that the decree is affirmed, with costs.

On his motion for summary judgment dismissing the objections to probate of the decedent's will, the petitioner established his prima facie entitlement to judgment as a matter of law by showing, among other things, that the decedent possessed testamentary capacity, that no undue influence had been exercised upon the decedent, and that the will had been duly executed (*see Matter of Weltz*, 16 AD3d 428; *Matter of Rosen*, 291 AD2d 562; *Matter of Spinello*, 291 AD2d 406, 407;

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Matter of Bustanoby, 262 AD2d 407, 408; *Matter of Esberg*, 215 AD2d 655, 655-656). In opposition, the objectant failed to raise a triable issue of fact. Thus, the Surrogate's Court correctly granted the motion and properly admitted the will to probate.

CRANE, J.P., SKELOS, COVELLO 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