

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

D14590  
W/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - March 2, 2007

FRED T. SANTUCCI, J.P.  
GABRIEL M. KRAUSMAN  
ROBERT A. LIFSON  
MARK C. DILLON, JJ.

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2006-06121

DECISION & ORDER

Lisa Freihofner, respondent, v Gregory Freihofner,  
appellant.

(Index No. 5173/01)

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Fredman & Kosan, LLP, White Plains, N.Y. (E. Michael Kosan of counsel), for  
appellant.

Warner Partners, P.C., New York, N.Y. (Rita W. Warner of counsel), for respondent.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by his  
brief, from stated portions of a supplemental judgment of the Supreme Court, Westchester County  
(Montagnino, Ct. Atty. Ref.), entered June 5, 2006, which, after a nonjury trial, inter alia, valued his  
enhanced earning capacity at the sum of \$1,000,000.

ORDERED that the supplemental judgment is affirmed insofar as appealed from, with  
costs.

The Court Attorney Referee (hereinafter the Referee) providently exercised his  
discretion in valuing the defendant's enhanced earning capacity which, under the circumstances,  
constituted a marital asset that was subject to equitable distribution (*see McSparron v McSparron*,  
87 NY2d 275, 281-282; *O'Brien v O'Brien*, 66 NY2d 576, 583-589), at the sum of \$1,000,000.  
Furthermore, contrary to the defendant's contention, the Referee did not misconstrue the terms of  
the parties' stipulation dated June 27, 2003, in valuing the defendant's enhanced earning capacity (*see*  
*Torres v Livorno Rest. Corp.*, 221 AD2d 197).

April 3, 2007

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The defendant's remaining contentions are without merit.

SANTUCCI, J.P., KRAUSMAN, LIFSON and DILLON, 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