

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

D14657
C/cb

_____AD3d_____

Submitted - March 6, 2007

HOWARD MILLER, J.P.
WILLIAM F. MASTRO
DAVID S. RITTER
RUTH C. BALKIN, JJ.

2006-03051

DECISION &

ORDER

2006-03053

Evelyn M. Gravino, respondent, v Robert M. Gravino,
appellant.

(Index No. 10350/80)

Schlissel, Ostrow, Karabatos & Poepplein, PLLC, Garden City, N.Y. (Eyal Talassazan of counsel), for appellant.

Thomas K. Campagna, P.C., Ronkonkoma, N.Y., for respondent.

In a matrimonial action in which the parties were divorced in October 1980, the defendant appeals from (1) an amended order of the Supreme Court, Nassau County (Stack, J.), dated March 6, 2006, which, after a hearing, granted the plaintiff's motion for arrears in spousal support pursuant to a separation agreement in the sum of \$94,721.61, and (2) an order of the same court dated March 10, 2006, which granted the plaintiff's motion for an attorney's fee in the sum of \$11,373.

ORDERED that the amended order and the order are affirmed, with one bill of costs.

The Supreme Court did not err in finding that the plaintiff satisfied the condition precedent set forth in the separation agreement. At a hearing, the plaintiff demonstrated that the defendant was provided with written notice that the plaintiff's employment had been terminated. The defendant did not testify and presented no evidence to contradict the plaintiff's testimony. The failure of the defendant to testify allowed the court to draw the strongest inference against him that the opposing evidence permitted (*see Matter of Commissioner of Social Servs. v Philip De G.*, 59 NY2d

137, 141; *Matter of Cantina B.*, 26 AD3d 327, 328).

The court did not err in granting the plaintiff's motion for an attorney's fee (*see* Domestic Relations Law § 238).

The defendant's remaining contentions are without merit.

MILLER, J.P., MASTRO, RITTER and BALKIN, JJ., concur.

ENTER: 

James Edward Pelzer
Clerk of the Court