

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

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_____AD3d_____

Argued - March 9, 2007

REINALDO E. RIVERA, J.P.
MARK C. DILLON
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2005-10843

DECISION & ORDER

Yaakov Kanovsky, appellant, v Montefiore
Medical Center, et al., respondents.

(Index No. 30521/99)

Yaakov Kanovsky, Brooklyn, N.Y., appellant pro se.

McAloon & Friedman, P.C., New York, N.Y. (Timothy J. O'Shaughnessy of
counsel), for respondents.

In an action to recover damages for medical malpractice, the plaintiff appeals from an order of the Supreme Court, Kings County (Ruditsky, J.), dated October 6, 2005, which denied his motion, inter alia, to vacate a prior order of the same court (Garson, J.), dated April 20, 2005, granting the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

There is no merit to the plaintiff's contention that the order dated April 20, 2005, should be vacated because the defendants' motion for summary judgment was an improper, second motion for summary judgment (*see Wit's End Giftique v Ianniello*, 277 AD2d 684, 686; *Mount Vernon Fire Ins. Co. v Timm*, 237 AD2d 586, 587). Moreover, although the plaintiff and the Supreme Court treated the order dated April 20, 2005, as having been entered upon the plaintiff's default in appearing at oral argument, a reading of that order reveals that the Supreme Court

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considered the plaintiff's papers. Nowhere in the April 20, 2005, order is there any indication that it was entered on default. The order merely reflects that the plaintiff "failed to appear."

In view of our determination, we need not reach the defendants' remaining contentions.

RIVERA, J.P., DILLON, ANGIOLILLO 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