

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

D14781
X/cb

_____AD3d_____

Argued - March 13, 2007

HOWARD MILLER, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
ROBERT A. LIFSON, JJ.

2006-01996

DECISION & ORDER

Linda Alster, appellant, v Fitzgerald & Fitzgerald, P.C.,
respondent.

(Index No. 2470/05)

Floyd S. Weil, New York, N.Y., for appellant.

John M. Daly, Yonkers, N.Y. (Eugene S.R. Pagano and Mitchell L. Gittin of
counsel), for respondent.

In an action to recover damages for breach of an alleged fee-sharing agreement, the
plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Westchester
County (Rudolph, J.), entered January 13, 2006, as denied her motion for summary judgment on the
complaint.

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

In opposition to the plaintiff's prima facie showing of entitlement to judgment as a
matter of law, the defendant raised triable issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320,
324). The conflicting affidavits submitted by the parties reveal the existence of triable issues of fact
with respect to whether there existed a fee-sharing agreement that was sufficiently certain and specific
as to be enforceable, or an unenforceable agreement to agree (*see Stockland Martel, Inc. v Donald
J. Pliner of Fla, Inc.*, 32 AD3d 779, 782; *Maffea v Ippolito*, 247 AD2d 366, 367). The issues of
whether there was an enforceable agreement to share attorneys' fees, and, if so, the nature of the
terms of the agreement, are issues triable by a jury (*see Matter of Jacob D. Fuchsberg Law Firm v*

April 17, 2007

Page 1.

ALSTER v FITZGERALD & FITZGERALD, P.C.

Danzig, 248 AD2d 178, 179). Accordingly, the Supreme Court properly denied the plaintiff's motion for summary judgment on the complaint.

MILLER, J.P., SANTUCCI, FLORIO and LIFSON, 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