

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

D15117
C/hu

_____AD3d_____

Argued - April 9, 2007

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
ROBERT A. LIFSON
RUTH C. BALKIN, JJ.

2006-06820

DECISION & ORDER

Galina Pereloma, appellant, v Vadim
Valenteychik, defendant, Roman Veksler,
et al., respondents.

(Index No. 20777/01)

Leonard B. Sukherman & Associates, P.C., Brooklyn, N.Y., for appellant.

In an action, inter alia, to recover damages for fraud, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Barasch, J.H.O.), dated February 21, 2006, as, after an inquest, awarded her the principal sum of only \$45,000 in damages and \$23,000 in legal fees against the defendants Roman Veksler, Ludmila Martemyanova, Irene Martemyanova, and Sunshine Venture Corp.

ORDERED that on the court's own motion, the appellant's notice of appeal is treated as an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

Following an inquest on the issue of damages, the judicial hearing officer awarded the plaintiff, inter alia, compensatory damages in the sum of \$45,000 based on the plaintiff's testimony to the effect that she paid that amount for real property in Florida and a home to be constructed thereon. The plaintiff's contention on appeal, in effect, that the court should have utilized the current market value of the property to calculate damages is unpreserved for appellate review because she

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never requested to be compensated on the basis of market value in her motion for leave to enter a default judgment, but only requested repayment of the approximately \$45,000 she had paid as alleged in her complaint (*see R.D. Smithtown L.L.C. v Lucille Roberts Figure Salons*, 277 AD2d 439, 440; *cf. Lalani v Santiago*, 290 AD2d 494). In any event, the record reflects that the appraisal report for the property was not introduced into evidence at the inquest (*see generally City of New York v State of New York*, 27 AD3d 19; *Tamburello v Bensonhurst Car & Limo Serv.*, 305 AD2d 664, 665); thus, the record is devoid of any proof of such value.

CRANE, J.P., KRAUSMAN, LIFSON and BALKIN, 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