

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

D15624
Y/gts

_____AD3d_____

Argued - May 22, 2007

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
ROBERT A. LIFSON
DANIEL D. ANGIOLILLO, JJ.

2006-11496

DECISION & ORDER

Matthew Overgard, et al., respondents, v Kevin Hobbs, defendant, Birbrower, Montalbano, Condon & Frank, P.C., n/k/a Montalbano, Condon & Frank, P.C., appellant.

(Index No. 8832/05)

Steinberg & Cavaliere, LLP, White Plains, N.Y. (Neil W. Silberblatt of counsel), for appellant.

Stein Riso Mantel, LLP, New York, N.Y. (Gerard A. Riso and George L. Schwab of counsel), for respondents.

In an action to recover damages for legal malpractice, the defendant Birbrower, Montalbano, Condon & Frank, P.C., n/k/a Montalbano, Condon & Frank, P.C., appeals from an order of the Supreme Court, Rockland County (Liebowitz, J.), dated November 21, 2006, which denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The defendant Birbrower, Montalbano, Condon & Frank, P.C., n/k/a Montalbano, Condon & Frank, P.C. (hereinafter BMC&F) established its entitlement to judgment as a matter of law that no attorney-client relationship existed between it and the plaintiffs with regard to the plaintiffs' brother's estate (*see Carlos v Lovett & Gould*, 29 AD3d 847; *Volpe v Canfield*, 237 AD2d 282; *DeFalco v Cutaita*, 236 AD2d 358; *McGlynn v Gurda*, 184 AD2d 980).

June 19, 2007

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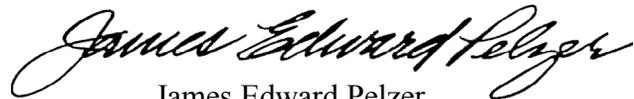
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In response, however, the plaintiffs raised triable issues of fact as to whether the defendant Kevin Hobbs was, or appeared to be, a member of BMC&F when he advised the plaintiffs in that matter (*see Tropp v Lumer*, 23 AD3d 550, 551; *John Grace & Co. v Tunstead, Schechter & Torre*, 186 AD2d 15; *Gardner v Jacon*, 148 AD2d 794). Summary judgment was therefore properly denied.

The remaining contentions of BMC&F are without merit.

SPOLZINO, J.P., RITTER, LIFSON and ANGIOLILLO, 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