

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

D15709
W/hu

_____AD3d_____

Argued - May 21, 2007

REINALDO E. RIVERA, J.P.
GLORIA GOLDSTEIN
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2006-04885

DECISION & ORDER

Estate of Regina Ort, etc., appellant, v
Amelia Manya Emily Ort, et al., respondents.

(Index No. 926/03)

Richard M. Lipsman, New York, N.Y. (Dori-Ellen S. Feltman of counsel), for appellant.

Moskowitz & Book, LLP, New York, N.Y. (Abraham C. Moskowitz of counsel), for respondent Amelia Manya Emily Ort, and Montalbano, Condon & Frank, P.C., New City, N.Y. (Richard H. Sarajian of counsel), for respondent Ira Adler (one brief filed).

In an action, inter alia, to recover damages for breach of fiduciary duty and conversion, the plaintiff appeals from an order of the Supreme Court, Rockland County (Garvey, J.), entered July 8, 2005, which granted the defendants' separate motions pursuant to CPLR 3126 to dismiss the complaint for failure to comply with court-ordered discovery.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in granting the defendants' separate motions pursuant to CPLR 3126 to dismiss the complaint. Although dismissal of a complaint is a drastic remedy for a plaintiff's failure to make disclosure, it is warranted where that party's conduct is shown to be willful or contumacious (*see Royal Caterers, LLC v Marine Midland*, 8 AD3d 549, 550; *Alto v Gilman Mgt. Corp.*, 7 AD3d 650; *Vanalst v City of New York*, 302 AD2d 515, 516). In this case, the plaintiff affirmatively stated that it would not comply with the several court orders directing it to provide the requested disclosure. This remained so, even after the

June 26, 2007

Page 1.

ESTATE OF REGINA ORT v ORT

Supreme Court denied its request to preclude the defendants from obtaining the disputed documents. In the absence of a reasonable excuse for the plaintiff's failures to comply with duly-issued court orders, and its continued noncompliance, the appropriate sanction was to dismiss the complaint.

RIVERA, J.P., GOLDSTEIN, SKELOS 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