

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

D15854
W/cb

_____AD3d_____

Submitted - June 13, 2007

STEPHEN G. CRANE, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
MARK C. DILLON
RUTH C. BALKIN, JJ.

2006-08642

DECISION & ORDER

William Watson, appellant, v Wayne Hall, Sr.,
respondent.

(Index No. 8801/05)

Thomas F. Liotti, Garden City, N.Y. (Jennifer L. McCann of counsel), for appellant.

Jillian A. Guthman, Village Attorney, Hempstead, N.Y. (Herbert J. Tamres of counsel), for respondent.

In an action to recover damages for defamation, the plaintiff appeals from an order of the Supreme Court, Nassau County (Feinman, J.), entered July 27, 2006, which granted the defendant's motion pursuant to CPLR 3126 to dismiss the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in dismissing the complaint. Although dismissal of a complaint for failure to comply with a disclosure order pursuant to CPLR 3126 is a drastic remedy, it is warranted where a party's conduct is shown to be willful and contumacious (*see Devito v J & J Towing, Inc.*, 17 AD3d 624, 625; *Schwartz v Suebsanguan*, 15 AD3d 565, 566; *cf. Prappas v Papadatos*, 38 AD3d 871, 872-873; *Russo v Tolchin*, 35 AD3d 431, 434-435). The plaintiff's willful and contumacious conduct can be inferred from his repeated failures to adequately respond to the defendant's discovery demands, even after he was directed to do so by

court order, as well as his inadequate explanation for his failures to comply (*see Devito v J & J Towing, Inc., supra; Schwartz v Suebsanguan, supra; Rowell v Joyce*, 10 AD3d 601).

CRANE, J.P., SANTUCCI, FLORIO, DILLON and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court