

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

D16337  
W/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - September 5, 2007

REINALDO E. RIVERA, J.P.  
GABRIEL M. KRAUSMAN  
ANITA R. FLORIO  
EDWARD D. CARNI  
RUTH C. BALKIN, JJ.

---

2006-10514

DECISION & ORDER

Clifford Barnes, respondent, v City of New York,  
appellant, et al., defendants.

(Index No. 5734/98)

---

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and  
Karen M. Griffin of counsel), for appellant.

In an action to recover damages for personal injuries, the defendant City of New York appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated June 29, 2006, which conditionally granted the plaintiff's motion pursuant to CPLR 3126 to strike its answer unless it produced a witness for a deposition with knowledge of the planning and installation of the stop sign at issue within 90 days of the date of the order.

ORDERED that the order is reversed, on the law, with costs, and the plaintiff's motion is denied.

In the instant case, the drastic remedy of striking the answer of the defendant City of New York was not warranted because there was no clear showing that its failure to provide the subject disclosure was willful and contumacious (*see* CPLR 3126; *Gateway Tit. & Abstract, Inc. v Your Home Funding, Inc.*, 40 AD3d 919; *Tine v Courtview Owners Corp.*, 40 AD3d 966; *Torres v*

*Lowinger*, 12 AD3d 363). Here, the City made a good faith effort to comply with the Supreme Court's discovery orders.

RIVERA, J.P., KRAUSMAN, FLORIO, CARNI and BALKIN, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court