

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

D16368  
W/kmg

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Submitted - September 6, 2007

A. GAIL PRUDENTI, P.J.  
FRED T. SANTUCCI  
STEVEN W. FISHER  
DANIEL D. ANGIOLILLO, JJ.

2006-11888  
2007-01351  
2007-01352

DECISION & ORDER

Margaret Ferguson, etc., plaintiff-appellant v I.H.B.  
Realty, Inc. et al., respondents; Ross Legan Rosenberg  
Selen & Flaks, LLP, nonparty-appellant.

(Index No. 15570/95)

Ross Legan Rosenberg Zelen & Flaks, LLP (Michael Flaks of counsel), appellant pro  
se and for appellant Margaret Ferguson.

In an action to recover damages for personal injuries, the plaintiff and her attorneys, Ross Legan Rosenberg Zelen & Flaks, LLP, appeal from (1) so much of an infant's compromise order of the Supreme Court, Kings County (Lewis, J.), dated June 2, 2006, as granted that branch of the plaintiff's motion which was for the award of an attorney's fee only to the extent of awarding a fee in the amount of \$113,125, (2) a decision of the same court dated September 20, 2006, and (3) so much of an order of the same court dated October 13, 2006, as, upon the decision and upon, in effect, reargument, inter alia, adhered to the prior determination in the infant's compromise order dated June 2, 2006.

ORDERED that the appeal from the order dated June 2, 2006, is dismissed, without costs or disbursements, as the portion of the order appealed from was superseded by the order dated October 13, 2006, made upon reargument; and it is further,

ORDERED that the appeal from the decision is dismissed, without costs or disbursements, as no appeal lies from a decision (*see Schicchi v J.A. Green Constr. Corp.*, 100 AD2d

October 2, 2007

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FERGUSON v I.H.B. REALTY, INC.

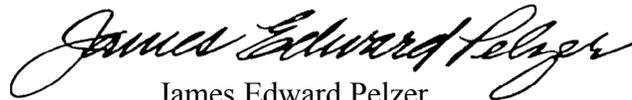
509, 509-510); and it is further,

ORDERED that the order dated October 13, 2006, is reversed insofar as appealed from, on the facts and as a matter of discretion, without costs or disbursements, upon reargument, that portion of the order dated June 2, 2006, awarding an attorney's fee in the amount of \$113,125 is vacated, that branch of the plaintiff's motion which was for an award of an attorney's fee in the amount of \$155,933.29 is granted, and the matter is remitted to the Supreme Court, Kings County, for entry of an amended infant compromise order.

Contrary to the Supreme Court's determination, the plaintiff's request for an award of an attorney's fee in the amount of \$155,933.29 should have been granted (*see* Judiciary Law § 474; 22 NYCRR § 691.20[e]; *Barretta v NBKL Corp.*, 298 AD2d 539, 540; *Brown v St. Mary's Hosp. of Brooklyn*, 293 AD2d 506, 507).

PRUDENTI, P.J., SANTUCCI, FISHER and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court