

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

D16668
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_____AD3d_____

Argued - October 5, 2007

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
THOMAS A. DICKERSON, JJ.

2006-08974

DECISION & ORDER

Albert Padovani, appellant, v Gerald E. Miller,
etc., et al., respondents.

(Index No. 922/03)

Gary Greenwald, Chester, N.Y. (Marc R. Leffler and David A. Brodsky of counsel),
for appellant.

Lutfy & Santora, Staten Island, N.Y. (James L. Lutfy of counsel), for respondents
Gerald E. Miller and Gerald E. Miller, D.M.D., P.C.

In an action to recover damages for dental malpractice, the plaintiff appeals from a
judgment of the Supreme Court, Westchester County (Smith, J.), dated August 25, 2006, which,
upon a jury verdict, is in favor of the defendants and against him dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

The Supreme Court erred in excluding from evidence a portion of the deposition
testimony of the defendant Gerald E. Miller (*see* CPLR 3117[a][2]; *Fanek v City of Yonkers*, 287
AD2d 683) and in prospectively precluding the parties from objecting to summations (*see Roma v*
Blaustein, 44 AD2d 576, 577). Nevertheless, we decline to reverse the judgment in favor of the
defendants because the errors were harmless (*see* CPLR 2002; *Maione v Pindyck*, 32 AD3d 827;
Gilbert v Luvin, 286 AD2d 600; *Sperin v Good Samaritan Hosp*, 250 AD2d 755; *Lauter v Village*
of Great Neck, 231 AD2d 553, 555; *see also Mullen v Eswar*, 233 AD2d 376).

October 23, 2007

PADOVANI v MILLER

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The plaintiff's remaining contentions are without merit.

SPOLZINO, J.P., SANTUCCI, BALKIN and DICKERSON, 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