

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

D17448
X/kmg

_____AD3d_____

Argued - December 4, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
THOMAS A. DICKERSON, JJ.

2006-10309

DECISION & ORDER

In the Matter of Nelly M. (Anonymous).
Silvercrest Extended Care Facility, et al.,
respondents; Luisa Espinoza, appellant.

(Index No. 8417/06)

Martin Vasquez, Corona, N.Y., for appellant.

Miller & Milone, P.C., Garden City, N.Y. (Tammy R. Lawlor of counsel), for
respondent Silvercrest Extended Care Facility.

In a proceeding pursuant to Mental Hygiene Law article 81 to appoint a guardian for the person and property of Nelly M., an alleged incapacitated person, Luisa Espinoza appeals, as limited by her brief, from so much of an order and judgment (one paper) of the Supreme Court, Queens County (Thomas, J.), dated September 28, 2006, as, after a hearing, appointed an independent guardian for the person and property of Nelly M. and revoked a power of attorney and a health care proxy, both dated October 22, 2003.

ORDERED that the order and judgment is affirmed insofar as appealed from, with costs.

The appellant argues that the Supreme Court erred in appointing a temporary guardian for Nelly M. without affording the appellant notice and an opportunity to be heard (*see* Mental Hygiene Law § 81.23; *Matter of Fosmire v Nicoleau*, 75 NY2d 218). However, the court subsequently made the appointment permanent after a hearing on notice to the appellant. Thus, the

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error complained of has been rendered academic (*see generally* *Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, *cert denied* 540 US 1017).

The appellant's remaining contentions are without merit.

MILLER, J.P., SPOLZINO, RITTER 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