

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

D19814
X/kmg

_____AD3d_____

Submitted - May 27, 2008

WILLIAM F. MASTRO, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
JOHN M. LEVENTHAL, JJ.

2007-10910

DECISION & ORDER

Richard A. Mohler, appellant, v Louis C.
Nardone III, d/b/a Nardone Consulting, respondent.

(Index No. 9170/07)

Peter B. Ackerman, White Plains, N.Y., for appellant.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Westchester County (Nastasi, J.), entered November 7, 2007, as, upon his motion for leave to enter a default judgment against the defendant, sua sponte directed that the complaint be dismissed and imposed a sanction in the sum of \$250 upon the plaintiff's counsel pursuant to 22 NYCRR 130-1.1.

ORDERED that the appeal is dismissed, without costs or disbursements.

The portion of the order appealed from sua sponte directed dismissal of the complaint and imposed a sanction. As no appeal lies as of right from that part of an order which does not decide a motion made on notice (*see* CPLR 5701[a][2]; *Young v Young*, 49 AD3d 720; *Matter of Davis v Venditto*, 45 AD3d 837), and leave to appeal has not been granted (*see* CPLR 5701[c]), the appeal must be dismissed. Further, the appeal from so much of the order as sua sponte imposed a sanction upon the plaintiff's counsel must be dismissed, in any event, as the plaintiff is not aggrieved by that portion of the order (*see* CPLR 5511; *Scopelliti v Town of New Castle*, 92 NY2d 944; *Zarecki & Assoc., LLC v Ross*, 50 AD3d 679).

MASTRO, J.P., SPOLZINO, RITTER and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

July 22, 2008

MOHLER v NARDONE, d/b/a NARDONE CONSULTING