

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

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_____AD3d_____

Argued - December 1, 2008

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2008-04357

DECISION & ORDER

Theresa Flotteron, et al., plaintiffs-appellants,
v JEL Realty, et al., defendants-appellants;
Harrison J. Snell, nonparty-respondent.

(Index No. 1058/04)

Gerard A. Imperato, Brooklyn, N.Y., for appellants.

Harrison J. Snell, New York, N.Y., nonparty respondent pro se.

In an action, inter alia, to dissolve certain partnerships, the plaintiffs and the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Dabiri, J.), dated April 3, 2008, as granted that branch of the motion of the permanent receiver, nonparty Harrison J. Snell, which was to fix the compensation to be paid to him to the extent of awarding him a commission in the sum of \$59,230.

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

Upon application of a receiver, the court may direct the parties who sought that appointment to pay necessary expenses and compensation which exceeds the money in the receiver's hands upon termination of the receivership (*see generally* CPLR 8004[b]). Here, after the Supreme Court disbursed the remaining funds in the receiver's account to the property manager, it discharged the receiver. Under the circumstances presented, the Supreme Court providently exercised its discretion in determining that special circumstances existed warranting a recovery in excess of five percent of the amount collected by the receiver in rents (*see Sun Beam Enters. v Liza Realty Corp.*,

210 AD2d 153; *Litho Fund Equities v Alley Spring Apts. Corp.*, 94 AD2d 13, 16; *see also CFTC v Korbean Intl. Inv. Corp.*, 1998 WL 770516, 1998 US Dist LEXIS 17206 [SD NY 1998]; *Resolution Trust Corp. v Volpe*, 912 F Supp 65, 67; *American Sav. Bank v Saleski Dev. Inc.*, 812 F Supp 28, 32; *Federal Home Loan Mtge. Corp. v S.E.A. Yonkers Assoc.*, 869 F Supp 187, 188). Thus, the court properly fixed the receiver's compensation "in accordance with the respective services [he] rendered" (CPLR 8004[b]).

The appellants' remaining contentions are without merit.

SKELOS, J.P., SANTUCCI, McCARTHY and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court