

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

D21790
W/kmg

_____AD3d_____

Submitted - December 17, 2008

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2008-01489

DECISION & ORDER

D'Agostino Law Office, P.C., respondent,
v Nicholas A. Parlante, et al., appellants.

(Index No. 24414/07)

Kieran J. Sullivan, White Plains, N.Y., for appellants.

Annette G. Hasapidis, South Salem, N.Y., for respondent.

In an action to recover unpaid legal fees, the defendants appeal from a judgment of the Supreme Court, Westchester County (Loehr, J.), dated January 17, 2008, which, upon an order of the same court entered January 16, 2008, granting the plaintiff's unopposed motion for summary judgment in lieu of complaint, is in favor of the plaintiff and against them in the principal sum of \$18,155.41.

ORDERED that the appeal is dismissed, with costs.

The defendants failed to submit papers in opposition to the plaintiff's motion for summary judgment in lieu of complaint within the time provided in the notice of motion (*see* CPLR 3213), and the plaintiff's motion for summary judgment in lieu of complaint was granted on default. No appeal lies from an order or judgment granted upon the default of the appealing party (*see* CPLR 5511; *Sanchez v Village of Ossining*, 271 AD2d 674; *Lumbermen's Mut. Cas. Co. v Fireman's Fund Am. Ins. Co.*, 117 AD2d 588). Since the judgment was entered pursuant to an order granting the plaintiff's motion for summary judgment upon the defendants' default in appearing and opposing the

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motion, the appeal must be dismissed (*see Lumbermen's Mut. Cas. Co. v Fireman's Fund Am. Ins. Co.*, 117 AD2d 588).

RIVERA, J.P., FLORIO, ANGIOLILLO, McCARTHY and CHAMBERS, 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