

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

D22574  
T/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - February 4, 2009

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
ANITA R. FLORIO  
RANDALL T. ENG, JJ.

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2008-04071

DECISION & ORDER

Caruso, Caruso & Branda, P.C., respondent,  
v Nachama Hirsch, appellant.

(Index No. 16598/04)

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Andrew Lavooott Bluestone, New York, N.Y., for appellant.

Littleton, Joyce, Ughetta, Park & Kelly, LLP, New York, N.Y. (Wendy B. Shepps  
of counsel), for respondent.

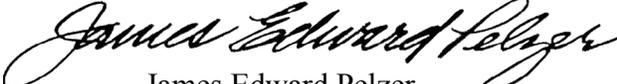
In an action to recover unpaid legal fees, the defendant appeals from an order of the Supreme Court, Kings County (Held, J.), dated April 10, 2008, which denied her motion pursuant to CPLR 4102(e) for leave to serve and file a late demand for a jury trial.

ORDERED that the order is affirmed, with costs.

The Supreme Court did not improvidently exercise its discretion in denying the defendant's motion pursuant to CPLR 4102(e) for leave to serve and file a late demand for a jury trial. A motion for such relief must be based upon a factual showing that the earlier waiver of that right was the result of either inadvertence or other excusable conduct indicating a lack of intention to waive such a right (*see Fischer v RWSP Realty, LLC*, 53 AD3d 595, 597; *Sumba v Sampaio*, 44 AD3d 648; *Hyatte v G.B.W. Glenwood Dental Admrs, Inc.*, 8 AD3d 233). The defendant failed to make such a factual showing (*see Matter of Bosco*, 141 AD2d 639).

MASTRO, J.P., FISHER, FLORIO and ENG, JJ., concur.

ENTER:

  
James Edward Pelzer

March 24, 2009

CARUSO, CARUSO & BRANDA, P.C. v HIRSCH

Clerk of the Court

March 24, 2009

CARUSO, CARUSO & BRANDA, P.C. v HIRSCH