

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

D23425
G/kmg

_____AD3d_____

Submitted - March 31, 2009

HOWARD MILLER, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2007-08016

DECISION & ORDER

Gassman & Keidel, P.C., etc., respondent,
v Joseph K. Adlerstein, appellant.

(Index No. 15835/06)

David A. Gabay, Holbrook, N.Y., for appellant.

Gassman, Baiamonte, Betts & Tannenbaum, P.C., Garden City, N.Y. (Stephen D. Kommor of counsel), for respondent.

In an action to recover payment for legal services rendered based on an account stated, the defendant appeals from a judgment of the Supreme Court, Nassau County (Feinman, J.), entered July 12, 2007, which, upon an order of the same court entered April 23, 2007, granting the plaintiff's motion, inter alia, in effect, for summary judgment on the complaint, is in favor of the plaintiff and against him in the principal sum of \$27,351.

ORDERED that the judgment is affirmed, with costs.

The plaintiff Gassman & Keidel, P.C., as successor in interest to the firm Stephen Gassman, P.C., commenced this action to recover payment for legal services rendered in the sum of \$27,351 based on an account stated.

The plaintiff established its prima facie entitlement to judgment as a matter of law by presenting evidence that the defendant not only received and retained, without objection, invoices for legal services rendered, but also made partial payments on the invoices (*see Mintz & Gold, LLP v Hart*, 48 AD3d 526, 528; *Thaler & Gertler v Weitzman*, 282 AD2d 522, 523; *Bracken & Margolin v Schambra*, 270 AD2d 221, 222). In opposition, the defendant failed to raise a triable issue of fact.

June 9, 2009

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The defendant failed to specify when he orally objected to the bills and the substance of the conversations in which he allegedly objected (*see Zanani v Schwimmer*, 50 AD3d 445; *Levisohn, Lerner, Berger & Langsam v Gottlieb*, 309 AD2d 668; *Fink, Weinberger, Fredman, Berman & Lowell v Petrides*, 80 AD2d 781).

The defendant's remaining contention is without merit.

MILLER, J.P., ANGIOLILLO, ENG and AUSTIN, 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