

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

D23553
Y/cb

_____AD2d_____

Argued - May 14, 2009

STEVEN W. FISHER, J.P.
MARK C. DILLON
JOSEPH COVELLO
THOMAS A. DICKERSON, JJ.

2008-06011
2008-10025

DECISION & ORDER

Miles Garnett, etc., appellant, v Charles Petri, et al.,
respondents.

(Index No. 07-000116)

Miles Garnett, Atlantic Beach, N.Y., appellant pro se.

Lindenbaum & Young, Brooklyn, N.Y. (Alan H. Young of counsel), for respondents.

In an action to recover damages for breach of fiduciary duty, the plaintiff appeals (1) from an order of the Supreme Court, Nassau County (Bucaria, J.), entered May 16, 2008, which granted the defendants' motion for summary judgment dismissing the complaint and denied, as academic, the plaintiff's cross motion to disqualify the defendants' attorney, compel the defendants to serve a verified bill of particulars, and compel the defendants to comply with certain demands for disclosure and subpoenas duces tecum, and (2), as limited by his brief, from so much of an order of the same court entered September 5, 2008, as denied that branch of his motion which was for leave to renew his cross motion and opposition to the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order entered May 16, 2008, is affirmed; and it is further,

ORDERED that the order entered September 5, 2008, is affirmed insofar as appealed from; and it is further,

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ORDERED that one bill of costs is awarded to the defendants.

The defendants satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law (*see Zuckerman v City of New York*, 49 NY2d 557, 562). In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint (*see Schneidman v Tollman*, 261 AD2d 289).

The Supreme Court also properly denied the plaintiff's motion for leave to renew, as the new evidence submitted constituted inadmissible hearsay (*see Zuckerman v City of New York*, 49 NY2d at 562; *P&N Tiffany Props., Inc. v Maron*, 16 AD3d 395, 396; *Platovsky v City of New York*, 275 AD2d 699, 700; *Young v Fleary*, 226 AD2d 454, 455).

FISHER, J.P., DILLON, COVELLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court