

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

D24885
C/kmg

_____AD3d_____

Submitted - October 9, 2009

FRED T. SANTUCCI, J.P.
CHERYL E. CHAMBERS
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2008-07727

DECISION & ORDER

In the Matter of Efraim Schwartz, appellant,
v Martin B. Tepper, respondent.

(Index No. 25604/07)

Alter and Barbaro, Brooklyn, N.Y. (B. Mitchell Alter of counsel), for appellant.

Richard Creditor LLC, Forest Hills, N.Y., for respondent.

In a proceeding to enforce a money judgment, the petitioner appeals from an order of the Supreme Court, Queens County (Markey, J.), dated July 17, 2008, which denied his motion for leave to enter a money judgment against the respondent.

ORDERED that the order is affirmed, with costs.

The petitioner commenced this proceeding in an attempt to collect from the respondent a money judgment which the petitioner allegedly obtained against a nonparty, Kingswood Management, Inc. (hereinafter Kingswood), in 1997. Thereafter the petitioner moved for leave to enter a money judgment against the respondent in the sum of \$42,000. The Supreme Court denied the motion. We affirm.

The record is devoid of any proof which would warrant the summary conclusion that the respondent is liable to the petitioner for the judgment which the petitioner allegedly obtained against Kingswood (*see* CPLR 5225[b]; *Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 141; *Goldman v Chapman*, 44 AD3d 938; *Mistrulli v McFinnigan, Inc.*, 39 AD3d

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606). Accordingly, the court properly denied the motion.

The petitioner's remaining contention is without merit.

SANTUCCI, J.P., CHAMBERS, HALL and ROMAN, 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