

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

D25035
C/prt

_____AD3d_____

Argued - October 13, 2009

MARK C. DILLON, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2008-01552

DECISION & ORDER

In the Matter of Thomas Imperato, deceased.
Angela Amengual, respondent; Alfred Zucaro, Jr.,
appellant; Maria Zucaro, nonparty-appellant.

(File No. 61/05)

Stern Keiser Panken & Wohl, LLP, White Plains, N.Y. (Laurence Keiser of counsel),
for appellant.

Sichol & Hicks, P.C., Suffern, N.Y. (William R. Sichol, Jr., of counsel), for
respondent.

In a probate proceeding, the objectant, Alfred Zucaro, Jr., appeals from an order of the Surrogate's Court, Rockland County (Berliner, S.), dated September 10, 2007, which granted the petitioner's motion, in effect, for summary judgment dismissing his objections to probate and admitting the will to probate, and nonparty Maria Zucaro appeals from the same order.

ORDERED that on the Court's own motion, the appeal by nonparty Maria Zucaro is dismissed, as she is not aggrieved by the order (*see* CPLR 5511); and it is further,

ORDERED that the order is affirmed; and it is further,

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

The petitioner made a prima facie showing that, at the time the testator executed the

subject will, he possessed the requisite testamentary capacity (*see Matter of Kumstar*, 66 NY2d 691, 692; *Matter of Malan*, 56 AD3d 479, 480; *Matter of DiCorcia*, 35 AD3d 463, 464). Furthermore, the petitioner made a prima facie showing that the will was not procured through undue influence (*see Matter of DiCorcia*, 35 AD3d at 464). In opposition to the petitioner's prima facie showing, the objectant, Alfred Zucaro, Jr., failed to raise a triable issue of fact (*see Matter of James*, 62 AD3d 707, 707-708; *Matter of DiCorcia*, 35 AD3d at 464; *see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Accordingly, the Surrogate's Court properly granted the petitioner's motion, in effect, for summary judgment dismissing the objections to probate and admitting the will to probate.

The objectant's remaining contentions are without merit.

DILLON, J.P., MILLER, ANGIOLILLO and DICKERSON, 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