

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

D25498
H/prt

_____AD3d_____

Argued - November 2, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2008-08659

DECISION & ORDER

Patricia Alexander, etc., appellant, v American
Medical Response, et al., respondents, et al.,
defendants.

(Index No. 4193/05)

Napoli Bern Ripka, LLP, New York, N.Y. (Denise A. Rubin of counsel), for
appellant.

Raven & Kolbe, LLP, New York, N.Y. (George S. Kolbe of counsel), for respondent
American Medical Response.

Wenick & Finger, P.C., New York, N.Y. (Frank J. Wenick and David P. Abatemarco
of counsel), for respondents Mid-Island Center for the Aging, Inc., and the Gurwin
Jewish Geriatric Center.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited
by her brief, from so much of an order of the Supreme Court, Suffolk County (Costello, J.), entered
July 29, 2008, as granted that branch of the motion of the defendants American Medical Response
and that branch of the cross motion of the defendants Mid-Island Center for the Aging, Inc., and the
Gurwin Jewish Geriatric Center which were, in effect, for summary judgment dismissing the
complaint insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs
to the respondents appearing separately and filing separate briefs.

December 22, 2009

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ALEXANDER v AMERICAN MEDICAL RESPONSE

The defendant American Medical Response (hereinafter AMR) and the defendants Mid-Island Center for the Aging, Inc., and the Gurwin Jewish Geriatric Center (hereinafter together Gurwin) demonstrated their prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324) by submitting evidence establishing, inter alia, that they satisfied their respective duties “to exercise reasonable care and diligence in safeguarding” the decedent (*D’Elia v Menorah Home & Hosp. for Aged & Infirm*, 51 AD3d 848, 850). In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d at 324). The affidavit of the plaintiff’s expert was not probative of the issue of whether AMR and Gurwin satisfied their respective duties to safeguard the decedent (*cf. O’Boy v Motor Coach Indus., Inc.*, 39 AD3d 512, 513-514; *Samuel v Aroneau*, 270 AD2d 474, 475). Furthermore, contrary to the plaintiff’s contention, her submissions failed to establish, among other things, that AMR’s or Gurwin’s staff failed to abide by AMR’s or Gurwin’s internal rules and policies (*cf. Kadyszewski v Ellis Hosp. Assn.*, 192 AD2d 765, 766). Accordingly, the Supreme Court properly granted that branch of AMR’s motion and that branch of Gurwin’s cross motion which were, in effect, for summary judgment dismissing the complaint insofar as asserted against them.

FISHER, J.P., COVELLO, SANTUCCI and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court