

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

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_____AD3d_____

Submitted - January 8, 2010

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2009-03106

DECISION & ORDER

Gary Rubio, respondent, v Jennifer Rubio, appellant.

(Index No. 34567/07)

Egan & Golden, LLP, Wainscott, N.Y. (Karen Golden of counsel), for appellant.

Alan Raymond Barr, P.C., Patchogue, N.Y., for respondent.

In a matrimonial action in which the parties were divorced by judgment entered February 14, 2008, the defendant appeals from so much of an order of the Supreme Court, Suffolk County (McNulty, J.), dated February 23, 2009, as denied those branches of her motions which were for an award of an attorney's fee in the total sum of \$13,921.75.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and those branches of the defendant's motions which were for an award of an attorney's fee in the total sum of \$13,921.75 are granted.

The parties' settlement agreement expressly provided that, in the event that either party defaulted in complying with its terms, the defaulting party would be required to reimburse the nondefaulting party for an attorney's fee incurred in enforcing the terms of the settlement agreement. The defendant established that the plaintiff defaulted in the performance of certain terms under the settlement agreement. Thus, the defendant was entitled to an award of an attorney's fee in the total sum of \$13,921.75 (*see Guriel v Guriel*, 55 AD3d 540, 541; *Rawlings v Rawlings*, 50 AD3d 998, 999; *Leiderman v Leiderman*, 50 AD3d 644, 645; *Sayegh v Sayegh*, 49 AD3d 855; *Sieratski v*

Sieratski, 8 AD3d 552, 553-554). We note that the plaintiff neither challenged nor addressed those branches of the defendant's motions which were for an award of an attorney's fee (*see Sieratski v Sieratski*, 8 AD3d at 554-555).

RIVERA, J.P., LEVENTHAL, 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