

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

D26332  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - January 21, 2010

MARK C. DILLON, J.P.  
HOWARD MILLER  
RANDALL T. ENG  
SHERI S. ROMAN, JJ.

2009-03127  
2009-09215

DECISION & ORDER

Michael Grant, respondent, v  
Dana Grant, appellant.

(Index No. 203961/00)

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Harriette N. Boxer, New York, N.Y., for appellant.

The Barbara Law Firm, Garden City, N.Y. (Judith A. Ackerman of counsel), for respondent.

In a matrimonial action in which the parties were divorced by judgment entered July 15, 2005, the defendant former wife appeals, as limited by her brief, from (1) so much of an order of the Supreme Court, Nassau County (Falanga, J.), dated February 2, 2009, as granted that branch of the plaintiff former husband's motion which was to confirm that portion of the report of a judicial hearing officer (Gartenstein, J.H.O.), dated April 9, 2008, which, after a hearing, recommended the denial of her application for an award of an attorney's fee, and (2) so much of an amended judgment of the same court (Diamond, J.), entered September 1, 2009, as, upon the order dated February 2, 2009, failed to award her an attorney's fee.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the amended judgment is affirmed insofar as appealed from; and it is further,

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

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The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of the amended judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the amended judgment (*see CPLR 5501[a][1]*).

“An award of an attorney’s fee pursuant to Domestic Relations Law § 237(a) is a matter within the sound discretion of the trial court, and the issue ‘is controlled by the equities and circumstances of each particular case’” (*Gruppuso v Caridi*, 66 AD3d 838, 839, quoting *Morrissey v Morrissey*, 259 AD2d 472, 473; *see Prichep v Prichep*, 52 AD3d 61, 64-65; *Timpone v Timpone*, 28 AD3d 646, 646).

In this case, the judicial hearing officer providently exercised his discretion in recommending the denial of the defendant’s application for an award of an attorney’s fee, and the Supreme Court properly granted that branch of the plaintiff’s motion which was to confirm that portion of the judicial hearing officer’s report (*see CPLR 4403*; 22 NYCRR 202.44; *Dimino v Dimino*, 39 AD3d 799, 799-800).

The defendant’s remaining contentions are without merit.

DILLON, J.P., MILLER, ENG and ROMAN, JJ., concur.

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DECISION & ORDER ON MOTION

Michael Grant, respondent, v  
Dana Grant, appellant.

(Index No. 203961/00)

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Motion by the respondent on appeals from an order of the Supreme Court, Nassau County, dated February 2, 2009, and an amended judgment of the same court entered September 1, 2009, to dismiss the appeal from the order on the ground that the right of direct appeal therefrom terminated with the entry of the amended judgment. By decision and order on motion of this Court dated November 4, 2009, the motion was held in abeyance and referred to the panel of Justices hearing the appeals for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the submission of the appeals, it is

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ORDERED that the motion is denied as academic in light of our determination of the appeals (*see Grant v Grant*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]).

DILLON, J.P., MILLER, ENG and ROMAN, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court