

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

D27783  
C/kmg

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

Argued - May 18, 2010

MARK C. DILLON, J.P.  
HOWARD MILLER  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT, JJ.

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2009-06694

DECISION & ORDER

Gary Fontana, et al., respondents, v Charles LaRosa, etc.,  
et al., defendants, Tameshwar Ammar, etc., appellant.

(Index No. 32169/02)

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Rogak & Gibbons, LLP, Uniondale, N.Y. (Joyce Lipton Rogak of counsel), for  
appellant.

Law Offices of Joseph M. Lichtenstein, P.C., Mineola, N.Y. (Gregory Green of  
counsel), for respondents.

In an action to recover damages for medical malpractice, etc., the defendant  
Tameshwar Ammar appeals from an order of the Supreme Court, Suffolk County (Baisley, J.), dated  
May 18, 2009, which denied his motion to preclude certain testimony of the plaintiffs' expert witness  
or to direct that witness to submit to a hearing pursuant to *Frye v United States* (293 F 1013).

ORDERED that the appeal is dismissed, with costs.

The order appealed from, which denied the appellant's motion to preclude certain  
testimony of the plaintiffs' expert witness or to direct that witness to submit to a hearing pursuant to  
*Frye v United States* (293 F 1013), was, in effect, an evidentiary ruling. Such a ruling, "even when  
made in advance of trial on motion papers, constitutes, at best, an advisory opinion which is neither  
appealable as of right nor by permission" (*Savarese v City of N.Y. Hous. Auth.*, 172 AD2d 506, 509;  
*see Hering v Lighthouse 2001, LLC*, 21 AD3d 449, 451-452).

DILLON, J.P., MILLER, CHAMBERS and LOTT, JJ., concur.

ENTER:

  
James Edward Pelzer

June 15, 2010

FONTANA v LaROSA

Clerk of the Court

June 15, 2010

FONTANA v LaROSA