

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

D28766
C/kmg

_____AD3d_____

Argued - October 5, 2010

MARK C. DILLON, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
SHERI S. ROMAN, JJ.

2009-06578

DECISION & ORDER

In the Matter of John A. Forgione, deceased.
Christine Forgione, appellant; Gary Forgione,
respondent.

(File No. 333152)

Finkelstein & Feil, LLP, Garden City, N.Y. (Michael S. Finkelstein of counsel), for
appellant.

Harry H. Kutner, Jr., Mineola, N.Y., for respondent.

In a probate proceeding, the petitioner appeals, as limited by her brief, from so much
of an order of the Surrogate's Court, Nassau County (Riordan, S.), dated May 18, 2009, as granted
the respondent's motion pursuant to CPLR 3126 to dismiss the proceeding.

ORDERED that the order is affirmed insofar as appealed from, with costs payable by
the petitioner personally.

The Surrogate's Court providently exercised its discretion in granting the respondent's
motion to dismiss the proceeding pursuant to CPLR 3126 because of the petitioner's extensive delay
in scheduling the examinations of out-of-state attesting witnesses pursuant to SCPA 1404 (*see Rizzuti
v Laucella*, 57 AD3d 755).

DILLON, J.P., FLORIO, BALKIN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court

October 26, 2010

MATTER OF FORGIONE, DECEASED