

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

D28998
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_____AD3d_____

Argued - October 21, 2010

A. GAIL PRUDENTI, P.J.
JOSEPH COVELLO
ANITA R. FLORIO
ARIEL E. BELEN, JJ.

2009-09152

DECISION & ORDER

Darren Daniels, respondent, v City of New York, et al.,
defendants, Keyspan Energy Corporation, appellant.

(Index No. 7874/02)

Cullen and Dykman, LLP, Brooklyn, N.Y. (Patrick Neglia and Diana Neyman of counsel), for appellant.

Barry E. Greenberg, P.C., Farmingdale, N.Y., for respondent.

In action to recover damages for personal injuries, the defendant Keyspan Energy Corporation appeals from an order of the Supreme Court, Kings County (Rothenberg, J.), dated August 13, 2009, which granted that branch of the plaintiff's motion which was pursuant to CPLR 3126 to strike its answer for failure to comply with discovery demands.

ORDERED that the order is affirmed, with costs.

"The nature and degree of the sanction to be imposed on a motion pursuant to CPLR 3126 is within the discretion of the motion court" (*Pirro Group, LLC v One Point St., Inc.*, 71 AD3d 654, 655; *see Novick v DeRosa*, 51 AD3d 885). "The drastic remedy of striking a pleading pursuant to CPLR 3126(3) for failure to comply with court-ordered disclosure should be granted only where the conduct of the resisting party is shown to be willful and contumacious" (*Pirro Group, LLC v One Point St., Inc.*, 71 AD3d at 655; *see Novick v DeRosa*, 51 AD3d 885).

Here, the appellant's willful and contumacious conduct can be inferred from its repeated failure to comply with the plaintiff's request for documents and the Supreme Court's orders

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seeking to enforce that request. Accordingly, the Supreme Court providently exercised its discretion in granting that branch of the plaintiff's motion which was to strike the appellant's answer (*see Pirro Group, LLC v One Point St., Inc.*, 71 AD3d 654; *Byam v City of New York*, 68 AD3d 798; *Schwartz v Suebsanguan*, 15 AD3d 565).

PRUDENTI, P.J., COVELLO, FLORIO and BELEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court