

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

D29529
W/prt

_____AD3d_____

Submitted - November 29, 2010

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2010-03408

DECISION & ORDER

Kaplon-Belo Associates, Inc., respondent,
v Frank D'Angelo, et al., appellants.

(Index No. 25340/07)

The Nolan Law Firm, New York, N.Y. (William Paul Nolan of counsel), for appellants.

Ruskin Moscou Faltischek, P.C., Uniondale, N.Y. (E. Christopher Murray of counsel), for respondent.

In an action to recover a real estate brokerage commission, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Agate, J.), entered January 14, 2010, as denied their cross motion pursuant to 22 NYCRR 130-1.1 for the imposition of a sanction upon the plaintiff.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Contrary to the defendants' contention, the Supreme Court providently exercised its discretion in denying their cross motion for the imposition of a sanction upon the plaintiff. The defendants failed to demonstrate that the plaintiff's conduct was frivolous within the meaning of 22 NYCRR 130-1.1(c) (*see* 22 NYCRR 130-1.1; *Riley v ISS Intl. Serv. Sys.*, 304 AD2d 637; *Curcio v Hogan Coring & Sawing Corp.*, 303 AD2d 357, 358-359; *Barco Auto Leasing Corp. v Thornton*,

December 17, 2010

Page 1.

KAPLON-BELO ASSOCIATES, INC. v D'ANGELO

298 AD2d 341; *cf. Mascia v Maresco*, 39 AD3d 504, 505-506; *Greene v Doral Conference Ctr. Assoc.*, 18 AD3d 429).

MASTRO, J.P., FISHER, ROMAN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court