

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

D29729
W/kmb

_____AD3d_____

Submitted - December 9, 2010

ANITA R. FLORIO, J.P.
RUTH C. BALKIN
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2009-11664

DECISION & ORDER

In the Matter of Joshua H. (Anonymous), respondent.
Grace N. (Anonymous), nonparty-appellant.

(Index No. 18272/04)

Grace N., Brooklyn, N.Y., nonparty-appellant pro se.

In a proceeding pursuant to Mental Hygiene Law article 81 for the appointment of a guardian for the personal needs and property management of Joshua H., an incapacitated person, nonparty Grace N., the former counsel to the guardian of the person and property of Joshua H., the former successor guardian of the person and property of Joshua H., and the former trustee of a supplemental needs trust established for the benefit of Joshua H., appeals from so much of an order of the Supreme Court, Queens County (Thomas, J.), dated July 13, 2009, as imposed a surcharge upon her.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

It is within the discretion of the Supreme Court to determine what, if any, compensation is due to a fiduciary of an incapacitated person or an attorney representing such a fiduciary (*see* Mental Hygiene Law § 81.28[b]; *Matter of Isadora R.*, 5 AD3d 494, 495). The Supreme Court did not improvidently exercise its discretion in surcharging the appellant for all money taken by her, inasmuch as no compensation was due her in light of her failure to complete her duties.

The appellant's remaining contentions are either without merit or not properly before

January 18, 2011

Page 1.

MATTER OF H. (ANONYMOUS), JOSHUA

this Court.

FLORIO, J.P., BALKIN, ENG and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court