

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

D31339
Y/kmb

_____AD3d_____

Argued - April 25, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2009-11526

DECISION & ORDER

Justina Velazquez, appellant, v Jamaica Hospital Nursing Home Company, Inc., Individually and doing business as Trump Pavilion, respondent, et al., defendants.

(Index No. 3070/07)

Kelly, Grossman & Flanagan, LLP (Arnold E. DiJoseph, P.C., New York, N.Y. [Arnold E. DiJoseph III], of counsel), for appellant.

Furey, Furey, Leverage, Manzione, Williams & Darlington, P.C., Hempstead, N.Y. (Ingrid M. Rodriguez of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Kitzes, J.), dated October 8, 2009, which granted the motion of the defendant Jamaica Hospital Nursing Home Company, Inc., Individually and doing business as Trump Pavilion, to dismiss the complaint insofar as asserted against it pursuant to CPLR 3126.

ORDERED that the order is affirmed, with costs.

Under the particular circumstances of this case, the Supreme Court did not improvidently exercise its discretion in granting the motion of the defendant Jamaica Hospital Nursing Home Company, Inc., Individually and doing business as Trump Pavilion, to dismiss the complaint insofar as asserted against it pursuant to CPLR 3126 as a sanction for the plaintiff's willful and

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Individually and doing business as TRUMP PAVILION

contumacious failure to adequately comply with an order dated July 21, 2009, which directed discovery (*see Morgenstern v Jeffsam Corp.*, 78 AD3d 913, 914; *Watson v Hall*, 43 AD3d 435, 435-436; *Reed v Jaspán, Ginsberg, Schlesinger, Silverman & Hoffman*, 283 AD2d 630).

DILLON, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court