

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

D33444  
N/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - December 2, 2011

DANIEL D. ANGIOLILLO, J.P.  
RUTH C. BALKIN  
THOMAS A. DICKERSON  
L. PRISCILLA HALL, JJ.

2011-00445

DECISION & ORDER

Nicholas Catinella, plaintiff, v Mecca & Son Trucking Corporation, et al., defendants; Lipsig, Shapey, Manus & Moverman, P.C., nonparty-appellant, David J. DeToffol, Esq., P.C., nonparty-respondent.

(Index No. 322/05)

Lipsig, Shapey, Manus & Moverman, P.C. (Berson & Budashewitz, LLP, New York, N.Y. [Jeffrey A. Berson], of counsel), nonparty-appellant pro se.

David J. DeToffol, Esq., P.C., New York, N.Y., nonparty-respondent pro se.

In an action to recover damages for personal injuries, nonparty Lipsig, Shapey, Manus & Moverman, P.C., the plaintiff's former attorney, appeals from an order of the Supreme Court, Queens County (Schulman, J.), dated December 9, 2009, which granted that branch of its motion which was, in effect, for an award of an attorney's fee only to the extent of awarding it an attorney's fee in the sum of \$17,500.

ORDERED that the order is affirmed, with costs.

This appeal concerns a dispute over the division of a contingency fee between the plaintiff's outgoing and incoming counsel in an action to recover damages for personal injuries. The Supreme Court awarded the outgoing counsel an attorney's fee in the sum of \$17,500, which amounted to approximately seven percent of the total net contingency fee of \$246,476.14.

The Supreme Court did not improvidently exercise its discretion in determining that

December 27, 2011

Page 1.

CATINELLA v MECCA & SON TRUCKING CORPORATION

outgoing counsel was entitled to \$17,500 as its portion of the contingency fee (*see Castellanos v CBS Inc.*, 89 AD3d 499; *Diakrousis v Maganga*, 61 AD3d 469; *Brown v Governele*, 29 AD3d 617, 618). The court properly considered the nature of the work performed, the relative contributions of counsel, and, insofar as the record permitted, the amount of time spent by the attorneys on the case (*see Brown v Governele*, 29 AD3d at 618).

ANGIOLILLO, J.P., BALKIN, DICKERSON and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court