

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

D33720  
G/kmb

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Submitted - December 19, 2011

PETER B. SKELOS, J.P.  
L. PRISCILLA HALL  
LEONARD B. AUSTIN  
ROBERT J. MILLER, JJ.

2010-10206

DECISION & ORDER

Commissioners of State Insurance Fund, respondent,  
v Joseph C. Kernell II, etc., appellant.

(Index No. 770/08)

Joseph C. Kernell II, Dover Plains, N.Y., appellant pro se.

Maidenbaum & Associates, PLLC, Merrick, N.Y. (Carol G. Morokoff of counsel),  
for respondent.

In an action to recover unpaid premiums for a Workers' Compensation insurance policy, the defendant appeals, as limited by his notice of appeal and brief, from so much of an order of the Supreme Court, Dutchess County (Pagones, J.), dated May 20, 2010, as denied those branches of his motion which were to hold the plaintiff's counsel in civil contempt and to impose sanctions upon the plaintiff and its counsel pursuant to 22 NYCRR 130-1.1.

ORDERED that the order is modified, on the facts and in the exercise of discretion, by deleting the provision thereof denying that branch of the defendant's motion which was to impose sanctions upon the plaintiff and its counsel pursuant to 22 NYCRR 130-1.1, and substituting therefor a provision granting that branch of the motion to the extent of imposing sanctions upon the plaintiff in the sum of \$2,500, and upon the plaintiff's counsel in the sum of \$1,000; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

Contrary to the defendant's contention, the Supreme Court properly denied that branch of his motion which was to hold the plaintiff's counsel in civil contempt. "In order to find that contempt has occurred in a given case, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect," and "[i]t must appear, with reasonable

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certainty, that the order has been disobeyed” (*Matter of McCormick v Axelrod*, 59 NY2d 574, 583; *see Rubin v Rubin*, 78 AD3d 812, 813). In this case, there was no order of the court in effect, expressing an unequivocal mandate, which the plaintiff’s counsel disobeyed. Accordingly, the Supreme Court properly denied that branch of the defendant’s motion (*see Wheels Am. N.Y., Ltd v Montalvo*, 50 AD3d 1130, 1130-1131).

The Supreme Court improvidently exercised its discretion, however, in denying that branch of the defendant’s motion which was to impose sanctions upon the plaintiff and its counsel pursuant to 22 NYCRR 130-1.1. The defendant demonstrated that the plaintiff and its counsel engaged in frivolous conduct in that they either did not have the necessary documentation upon which to formulate or support a meritorious claim, or, being in possession of the documentation, knew or should have known, based upon prior litigation and correspondence from the defendant, that the plaintiff’s claim was completely without merit in law. Under the circumstances, we deem it appropriate to impose sanctions upon the plaintiff in the sum of \$2,500, and upon the plaintiff’s counsel in the sum of \$1,000 (*see* 22 NYCRR 130-1.1), payable pursuant to 22 NYCRR 130-1.3.

The defendant’s remaining contentions are without merit.

SKELOS, J.P., HALL, AUSTIN and MILLER, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court