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

D33879
O/prt

_____AD3d_____ Submitted - January 19, 2012

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2010-10640 DECISION & ORDER

Lizbeth Pagan Martin, respondent, v
Stephen H. Martin, appellant.

(Index No. 200715/07)

Stephen H. Martin, Massapequa, N.Y., appellant pro se.

Lizbeth Pagan Martin, Garden City, N.Y., respondent pro se.

In a matrimonial action in which the parties were divorced by judgment entered October 24, 2008, the defendant appeals from an order of the Supreme Court, Nassau County (O'Connell, J.H.O.), entered July 13, 2010, which, after a hearing, in effect, granted those branches of the plaintiff's amended cross motion which were for an award of arrears in the principal sum of $25,491.97 and counsel fees in the principal sum of $9,090, pursuant to a stipulation of settlement, which was incorporated but not merged into the judgment of divorce.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted that branch of the plaintiff's amended cross motion which was for an award of arrears. Contrary to the defendant's contentions, the plaintiff's testimony, which was credited by a Judicial Hearing Officer, coupled with her submission of receipts, were sufficient to establish the amounts of the payments she made for the cost of child care necessitated by her employment (*see Matter of Klindworth v Garron,* 40 AD3d 642, 643; *see also Matter of Broffman-Kaminsky v Santo,* 74 AD3d 1336, 1337; *Matter of Spiegel v Spiegel,* 68 AD3d 881, 882).

The Supreme Court also properly granted that branch of the plaintiff's amended cross motion which was for an award of counsel fees. In light of the defendant's refusal to comply with the judgment of divorce, thereby compelling the plaintiff to move for enforcement relief, the Supreme Court's award of counsel fees was a proper exercise of discretion (*see Levine v Levine*, 37 AD3d 553; *Nebons v Nebons*, 26 AD3d 478, 479). In any event, the plaintiff was entitled to reimbursement for counsel fees pursuant to the default provision in the parties' stipulation of settlement (*see Szekely v Szekely*, 73 AD3d 1158, 1159; *see also Habib v Habib*, 77 AD3d 1103, 1105; *Matter of Milark v Meigher*, 56 AD3d 1018, 1021; *Parnes v Parnes*, 41 AD3d 934, 937).

The defendant's remaining contentions are without merit.

RIVERA, J.P., DICKERSON, CHAMBERS and AUSTIN, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court