

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

D34028
C/prt

_____AD3d_____

Submitted - January 26, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2011-02489

DECISION & ORDER

Henry Rubio, appellant, v
Rosemary Rubio, respondent.

(Index No. 24476/01)

Stephen David Fink, Forest Hills, N.Y., for appellant.

In a matrimonial action in which the parties were divorced by judgment dated February 13, 2003, the plaintiff appeals from an order of the Supreme Court, Queens County (Flaherty, J.), dated December 16, 2010, which, without a hearing, granted that branch of the defendant's motion which was for an award of an attorney's fee.

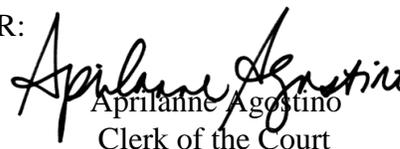
ORDERED that the order is affirmed, without costs or disbursements.

Although, generally, an evidentiary hearing to determine the appropriate amount of an attorney's fee should be conducted before the court grants an award of an attorney's fee (*see Matter of Hobenson v Tarnavsky*, 76 AD3d 560, 561; *Kerrigan v Kerrigan*, 71 AD3d 737, 738; *Sheikh v Basheer*, 34 AD3d 670, 670), the record demonstrates that the plaintiff waived his right to a hearing on this issue when he opposed that branch of the defendant's motion which was for an award of an attorney's fee (*see Messinger v Messinger*, 24 AD3d 631; *Bengard v Bengard*, 5 AD3d 340, 341; *cf. Janousek v Janousek*, 108 AD2d 782, 783).

The plaintiff's contention regarding the belated submission of the defendant's net worth statement is without merit, and his remaining contention is not properly before this Court.

RIVERA, J.P., ENG, HALL and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

February 21, 2012

RUBIO v RUBIO