

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

744

CA 11-02506

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND SCONIERS, JJ.

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IN THE MATTER OF NASTRI REAL ESTATE, LLC,  
DOING BUSINESS AS KELLER WILLIAMS REALTY  
SYRACUSE, PETITIONER-RESPONDENT-APPELLANT,

V

MEMORANDUM AND ORDER

DOLORES BEBLO, RESPONDENT-APPELLANT-RESPONDENT.  
(APPEAL NO. 1.)

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DOLORES BEBLO, RESPONDENT-APPELLANT-RESPONDENT PRO SE.

HISCOCK & BARCLAY, LLP, SYRACUSE (ROBERT J. LYDFORD OF COUNSEL), FOR  
PETITIONER-RESPONDENT-APPELLANT.

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Appeal and cross appeal from an order and judgment (one paper) of the Supreme Court, Onondaga County (James P. Murphy, J.), entered October 13, 2011. The order and judgment granted respondent's motion to reargue, and upon reargument, adhered to the prior order granting the petition in part.

It is hereby ORDERED that the order and judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner, which provided real estate brokerage services to respondent, commenced this proceeding pursuant to Real Property Law § 294-b seeking, inter alia, an order for the payment of monies deposited with the Onondaga County Clerk and thereafter transferred to the Onondaga County Chief Fiscal Officer (see § 294-b [5]). In appeal No. 1, respondent contends that Supreme Court, upon reargument, erred in adhering to its decision granting the petition in part by awarding petitioner the remainder of its 6% commission. We reject that contention. Petitioner established its entitlement to the sum awarded as "the unpaid portion of the compensation agreed to in" the parties' Exclusive Right to Sell Contract (§ 294-b [5] [a]; see § 294-b [5] [d]). The court properly concluded that petitioner's affidavit of entitlement to commission for completed brokerage services was in substantial compliance with the filing requirements of the statute (see § 294-b [2]), that petitioner timely served respondent with such affidavit (see § 294-b [4] [a]), and that any technical defect in the affidavit did not cause a forfeiture of petitioner's rights to the funds at issue. With respect to the order in appeal No. 2, we reject petitioner's contention that the court erred in denying that part of the petition seeking an award of attorneys' fees and costs, inasmuch as the statute does not authorize

such an award in this proceeding.

Entered: June 8, 2012

Frances E. Cafarell  
Clerk of the Court