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publication in the New York Reports.

No. 85 SSM 5
James L. Melcher,
Appellant,
v.
Apollo Medical Fund Management
L.L.C., et al.,
Respondents.

Submitted by Stephen P. Younger, for appellant.
Submitted by Scott R. Matthews, for respondents.

MEMORANDUM:

The order of the Appellate Division, insofar as appealed from, should be reversed, with costs, the appeals by plaintiff that were dismissed in the October 2010 order of the Appellate

Division reinstated, and the case remitted to the Appellate Division for further proceedings in accordance with this memorandum.

In its October 2010 order, brought up for review on this appeal, the Appellate Division sua sponte dismissed plaintiff's appeals without articulating the basis for its order. We conclude that dismissal was an abuse of discretion. No grounds for dismissing the appeals appear tenable from the record. Plaintiff timely perfected his appeals under the First Department's rules, and the court did not give plaintiff adequate notice if it shortened the time period for him to perfect the appeals. On this record, the appeals could not have been properly dismissed for failure to comply with the court's orders. Accordingly, plaintiff's appeals that were dismissed by the October 2010 Appellate Division order should be reinstated and the case remitted to the Appellate Division to consider the merits of those appeals. In light of this remittal, we do not reach the other issue raised by plaintiff on this appeal.

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On review of submissions pursuant to section 500.11 of the Rules, order, insofar as appealed from, reversed, with costs, plaintiff's appeals that were dismissed in the October 2010 Appellate Division order reinstated, and case remitted to the Appellate Division, First Department, for further proceedings in accordance with the memorandum herein. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided February 21, 2012