

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

D55234  
T/htr

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Submitted - January 8, 2018

CHERYL E. CHAMBERS, J.P.  
SYLVIA O. HINDS-RADIX  
COLLEEN D. DUFFY  
HECTOR D. LASALLE, JJ.

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2016-10578

DECISION & ORDER

Demetrios Daviotis, appellant, v Kappa Services  
Corp., et al., respondents.

(Index No. 701100/13)

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Mound Cotton Wollan & Greengrass LLP, New York, NY (Costantino P. Suriano  
and Jon Quint of counsel), for appellant.

Litchfield Cavo LLP, New York, NY (Edward Fogarty, Jr., of counsel), for  
respondents.

In an action, inter alia, to recover for damage to property, the plaintiff appeals from an order of the Supreme Court, Queens County (Janice A. Taylor, J.), dated September 7, 2016. The order denied, as academic, the defendants' motion pursuant to CPLR 3126 to dismiss the complaint for failure to produce a representative of the plaintiff's insurer, New York Property Insurance Underwriters Association, for a deposition or, in the alternative, for an order compelling the deposition of a representative of New York Property Insurance Underwriters Association within 20 days.

ORDERED that the appeal is dismissed, with costs.

A person is aggrieved within the meaning of CPLR 5511 when he or she asks for relief but that relief is denied in whole or in part, or when someone asks for relief against him or her, which the person opposed, and the relief is granted in whole or in part (*see Faicco v Mr. Lucky's Pub, Inc.*, 131 AD3d 920; *Mixon v TBV, Inc.*, 76 AD3d 144). Here, the defendants moved, inter alia, to impose discovery sanctions against the plaintiff, and the order appealed from denied the

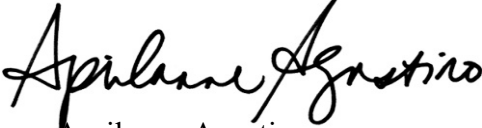
May 2, 2018

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defendants' motion as academic. Since the plaintiff is not aggrieved by the order appealed from, his appeal must be dismissed (*see* CPLR 5511; *Fiacco v Mr. Lucky's Pub, Inc.*, 131 AD3d 920; *Edgar S. v Roman*, 115 AD3d 931).

CHAMBERS, J.P., HINDS-RADIX, DUFFY and LASALLE, JJ., concur.

ENTER:   
Aprilanne Agostino  
Clerk of the Court