

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

M245340
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RUTH C. BALKIN, J.P.
LEONARD B. AUSTIN
VALERIE BRATHWAITE NELSON
LINDA CHRISTOPHER, JJ.

2017-02168

DECISION & ORDER ON MOTION

William N. Smookler, appellant,
v Lynn M. Dicerbo, etc., respondent.

(Index No. 5833/10)

Motion by the respondent to dismiss an appeal from an order of the Supreme Court, Dutchess County, dated January 19, 2017, on the ground that the record is inadequate and contains matter dehors the record or, in the alternative, to direct the appellant to serve and file a supplemental record, to strike stated portions of the record, to enlarge the time to serve and file a brief, and for an award of costs and to impose a sanction upon the appellant's counsel.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the branch of the motion which is to direct the appellant to serve and file a supplemental record is granted, and on or before March 16, 2018, the appellant shall serve and file a supplemental record containing the respondent's notice of motion dated December 6, 2016, supporting affidavit dated December 5, 2016, with annexed Exhibits A, B and C, and reply affidavit dated December 31, 2016, with annexed Exhibits A, B and C; and it is further,

ORDERED that the branch of the motion which is to strike stated portions of the record is granted, the chronology of events on pages 12 through 16 of the record is stricken, and on or before March 16, 2018, the appellant shall remove the stricken material from the copies of the record filed with the Clerk of the Court and it is further,

ORDERED that the branch of the motion which is to enlarge the respondent's time to serve and file a brief is granted, the respondent's time to serve and file a brief is enlarged until

February 14, 2018

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April 16, 2018, and the respondent's brief shall be served and filed on or before that date; and it is further,

ORDERED that the motion is otherwise denied.

BALKIN, J.P., AUSTIN, BRATHWAITE NELSON and CHRISTOPHER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court