

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

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MARK C. DILLON, J.P.
LEONARD B. AUSTIN
SANDRA L. SGROI
BETSY BARROS, JJ.

2017-02460

DECISION & ORDER ON MOTION

Brian Jonas, et al., appellants, v Solstice Residential Group, LLC, et al., respondents, et al., defendants.

(Index No. 502241/14)

The plaintiffs having appealed to this Court from an order of the Supreme Court, Kings County, dated February 22, 2017, the plaintiffs having perfected the appeal on June 6, 2017, the defendant Solstice Residential Group, LLC, having filed a respondent's brief on June 30, 2017, the defendant Zerline Goodman having filed a respondent's brief on July 11, 2017, and the reply brief having been filed on October 3, 2017, the matter was placed on this Court's calendar for November 28, 2017. On November 20, 2017, counsel for the appellants notified this Court for the first time that the case had been settled. By stipulation dated November 27, 2017, the parties withdrew the appeal. By order to show cause dated December 6, 2017, the parties or their counsel were directed to show cause before this Court why an order should or should not be made and entered imposing such sanctions and/or costs, if any, against the parties or their counsel pursuant to 22 NYCRR 670.2(g) as this Court deemed appropriate.

Now, upon the order to show cause and the papers filed in response thereto, it is

ORDERED that within 20 days of service upon him of a copy of this decision and order on motion, Richard Pertz, counsel for the appellants, is directed to pay a sanction in the sum of \$500 to the Lawyers' Fund for Client Protection of the State of New York; and it is further,

ORDERED that within 20 days of service upon it of a copy of this decision and order on motion, Melito & Adolfsen, P.C., counsel for the respondent Solstice Residential Group, LLC, is directed to pay a sanction in the sum of \$500 to the Lawyers' Fund for Client Protection of the State of New York; and it is further,

ORDERED that within 20 days of service upon it of a copy of this decision and order on motion, Winget, Spadafora & Schwartzberg, LLP, counsel for the respondent Zerline Goodman, is directed to pay a sanction in the sum of \$500 to the Lawyers' Fund for Client Protection of the State of New York; and it is further,

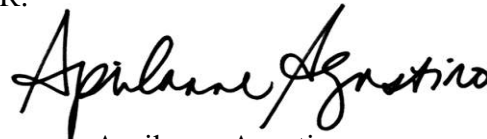
ORDERED that the Clerk of this Court, or her designee, is directed to serve each counsel with a copy of this decision and order on motion; and it is further,

ORDERED that within 10 days after payment of their respective sanctions, counsel shall each file proof of payment of its sanction with the Clerk of this Court.

Section 670.2(g) of the rules of this Court provides, in relevant part, that “[i]f a cause or the underlying action or proceeding is wholly or partially settled * * * or if any cause should not be calendared * * * for some other reason, the parties or their counsel shall immediately notify the court,” and “[a]ny attorney or party who, without good cause shown, fails to comply with the requirements of this subdivision shall be subject to the imposition of such costs and/or sanctions as the court may direct” (22 NYCRR 670.2[g]). Here, counsel for the appellants and counsels for the respondents failed to notify this Court that the action had been settled and the appeal had been rendered academic prior to the date that the appeal was placed on the calendar. Thus, under the circumstances, sanctions in the amounts set forth above are warranted.

DILLON, J.P., AUSTIN, SGROI and BARROS, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court