

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

M248558
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RUTH C. BALKIN, J.P.
JOHN M. LEVENTHAL
SYLVIA O. HINDS-RADIX
LINDA CHRISTOPHER, JJ.

2017-05093

DECISION & ORDER ON MOTION

Patricia Rhoda, appellant,
v James W. Rhoda, Jr., respondent.

(Index No. 5708/12)

Motion by the respondent to dismiss an appeal from an order of the Supreme Court, Dutchess County, dated April 17, 2017, on the ground that the notice of appeal is defective and for failure to properly settle the transcript, or, in the alternative, to strike the record and the appellant's brief for failure to comply with the rules of this Court, to impose a sanction upon the appellant and the appellant's counsel, and for an award of costs. Cross motion by the appellant, inter alia, in effect, to deem the notice of appeal to reflect that the appeal has been taken to this Court rather than the Appellate Term, Ninth and Tenth Judicial Districts, to deem the transcript to contain certain corrections, to impose a sanction upon the respondent, and for an award of costs. Separate motion by the respondent to enlarge the time to serve and file a brief.

Upon the papers filed in support of the motion, inter alia, to dismiss the appeal and the cross motion, and the papers filed in opposition thereto, and upon the papers filed in support of the motion to enlarge the time to serve and file a brief and no papers having been filed in opposition or in relation thereto, it is

ORDERED that the motion, inter alia, to dismiss the appeal is denied; and it is further,

ORDERED that the branch of the cross motion which is, in effect, to deem the notice of appeal to reflect that the appeal has been taken to this Court rather than the Appellate Term, Ninth and Tenth Judicial Districts, is granted (*see* CPLR 2001); and it is further,

ORDERED that the branch of the cross motion which is to deem the transcript to contain certain corrections is granted to the extent that on or before April 25, 2018, the appellant

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shall serve and file an errata sheet containing the corrections to the record referenced in the respondent's letter dated October 25, 2017, annexed to the affirmation in support of the cross motion as Exhibit D; and it is further,

ORDERED that the cross motion is otherwise denied; and it is further,

ORDERED that the motion 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 May 25, 2018, and the respondent's brief shall be served and filed on or before that date.

BALKIN, J.P., LEVENTHAL, HINDS-RADIX and CHRISTOPHER, 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