

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

D20886  
G/hu

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Submitted - October 8, 2008

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
HOWARD MILLER  
THOMAS A. DICKERSON  
RANDALL T. ENG, JJ.

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2008-02171

DECISION & ORDER

In the Matter of Mary Balsamo, deceased.  
Rose Bonacci, petitioner-respondent; F. Paul  
Balsamo, respondent-appellant.

(File No. 768/06)

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Howard M. File, P.C., Staten Island, N.Y., for respondent-appellant.

Danna & Associates, P.C., Staten Island, N.Y. (Anthony S. Danna of counsel), for  
petitioner-respondent.

In a proceeding pursuant to SCPA 2103 to disclose and recover certain assets alleged to be a part of the decedent's estate, F. Paul Balsamo appeals, as limited by his brief, from so much of an order of the Surrogate's Court, Richmond County (Gigante, S.), dated February 28, 2008, as granted that branch of the petitioner's motion which was, in effect, pursuant to 22 NYCRR 130-1.1 for an award of costs and an attorney's fee against him, in the sum of \$2,597.

ORDERED that the order is affirmed insofar as appealed from, with costs payable by the appellant personally.

The Surrogate's Court providently exercised its discretion in granting that branch of the petitioner's motion which was, in effect, pursuant to 22 NYCRR 130-1.1 for an award of costs and an attorney's fee against the appellant. Contrary to the appellant's contention, since the petitioner expressly requested the subject relief in her motion papers, and the appellant was afforded an opportunity to be heard and to oppose the motion, a hearing was not required (*see* 22 NYCRR

October 28, 2008

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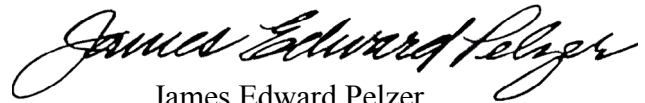
MATTER OF BALSAMO, DECEASED

130-1.1[d]; *Matter of Minister, Elders & Deacons of Refm. Prot. Dutch Church of City of N.Y. v 198 Broadway*, 76 NY2d 411, 413 n; *Wesche v Wesche*, 51 AD3d 909, 910; *RCN Constr. Corp. v Fleet Bank, N.A.*, 34 AD3d 776).

The appellant's remaining contentions are without merit.

SPOLZINO, J.P., SANTUCCI, MILLER, DICKERSON and ENG, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court