

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

D20965
Y/kmg

_____AD3d_____

Argued - October 10, 2008

ANITA R. FLORIO, J.P.
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-07747

DECISION & ORDER

In the Matter of Roy Mark Malan, a/k/a
Renato Marco Malan, deceased.
Marion Malan, respondent; Isabella
Soma, appellant.

(Index No. 2275/05)

Robert G. O'Donnell, P.C., White Plains, N.Y., for appellant.

Katten Muchin Rosenman, LLP, New York, N.Y. (Neil V. Carbone of counsel), for respondent.

In a contested probate proceeding, the objectant, Isabella Soma, appeals from an order and decree (one paper) of the Surrogate's Court, Westchester County (Scarpino, S.), dated July 13, 2007, which granted the petitioner's motion for summary judgment dismissing her objections to probate and admitted the will to probate.

ORDERED that the order and decree is affirmed, with costs payable by the appellant personally.

On her motion for summary judgment, the petitioner established that the subject will was duly executed pursuant to EPTL 3-2.1. The attestation clause and self-proving affidavit give rise to a presumption of compliance with all statutory provisions (*see Matter of Collins*, 60 NY2d 466, 471; *Matter of Moskoff*, 41 AD3d 481). Moreover, although one of the two attesting witnesses who were deposed did not recall the execution ceremony, both identified their signatures on the will and affidavit of execution (*see Matter of Rosen*, 291 AD2d 562). In opposition, Isabella Soma, the

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MATTER OF MALAN, DECEASED

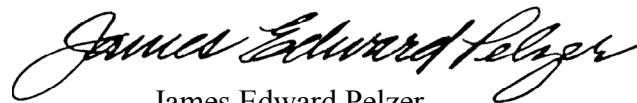
objectant to the will, failed to raise a triable issue of fact.

The petitioner also established that the decedent was competent at the time the will was executed by showing that he understood the nature and consequences of making a will, the nature and extent of his property, and the natural objects of his bounty (*see Matter of Kumstar*, 66 NY2d 691; *Matter of Tuccio*, 38 AD3d 791; *Matter of DiCorcia*, 35 AD3d 463; *Matter of Weltz*, 16 AD3d 428; *Matter of Rosen*, 291 AD2d 562). In opposition, the objectant failed to raise a triable issue of fact as to the decedent's lack of testamentary capacity.

The objectant's remaining contentions are without merit.

FLORIO, J.P., ANGIOLILLO, McCARTHY and CHAMBERS, 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