

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

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_____AD3d_____

Argued - October 23, 2008

A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
STEVEN W. FISHER
MARK C. DILLON, JJ.

2007-09929

DECISION & ORDER

Hunts Point Realty Corp. et al., appellants,
v Vincent Pacifico, respondent, et al., defendant.

(Index No. 9585/05)

Miller & Wrubel P.C., New York, N.Y. (Martin D. Edel and Claire L. Huene of counsel), for appellants.

Frank M. Graziadei, P.C., New York, N.Y., for respondent.

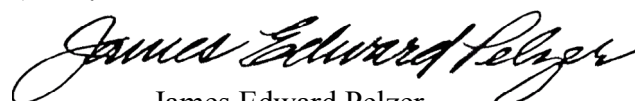
In an action, inter alia, to recover damages for breach of a covenant not to compete, the plaintiffs appeal from so much of a judgment of the Supreme Court, Nassau County (Warshawsky, J.), dated September 18, 2007, as, after a nonjury trial, awarded the plaintiffs no damages against the defendant Vincent Pacifico.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

The proper measure of damages for breach of a covenant not to compete is the net profit of which the plaintiffs were deprived by reason of the defendant's improper competition (*see Earth Alterations, LLC v Farrell*, 21 AD3d 873). Here, we find no basis to disturb the Supreme Court's determination that the plaintiffs failed to prove a loss of profits due to the defendant Vincent Pacifico's breach of the covenant not to compete. The plaintiffs' anticipated lost profits were based on undue speculation (*see Goodstein Constr. Corp. v City of New York*, 80 NY2d 366, 373; *Kenford Co. v County of Erie*, 73 NY2d 312; *cf. Ashland Mgt. v Janien*, 82 NY2d 395; *Earth Alterations, LLC v Farrell*, 21 AD3d 873).

PRUDENTI, P.J., MASTRO, FISHER and DILLON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 25, 2008

HUNTS POINT REALTY CORP. v PACIFICO