

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

M80491
S/sl

HOWARD MILLER, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2008-04285

DECISION & ORDER ON MOTION

Estates at Mountainview, Ltd., respondent-*appellant*,
v Hiroshi Nakazawa, appellant-*respondent*.

(Index No. 04-2597)

On the court's own motion, it is

ORDERED that its decision and order on motion dated November 14, 2008, in the above-entitled case is recalled and vacated, and the following decision and order on motion is substituted therefor:


Appeal by Hiroshi Nakazawa *and cross appeal by Estates at Mountainview, Ltd.*, from an order of the Supreme Court, Rockland County, dated March 13, 2008.

Now, on the court's own motion, it is

ORDERED the appeal *and cross appeal are* dismissed, without costs or disbursements, as no appeal lies from an order determining the admissibility of evidence in advance of trial (*see Cotgreave v Public Adm'r of Imperial County*, 91 AD2d 600), *and because the respondent-appellant is not aggrieved by the order appealed from (see CPLR 5511)*.

MILLER, J.P., DICKERSON, LEVENTHAL and BELEN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

December 31, 2008

ESTATES AT MOUNTAINVIEW, LTD. v NAKAZAWA