

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

M88649  
S/sl

FRED T. SANTUCCI, J.P.  
JOSEPH COVELLO  
JOHN M. LEVENTHAL  
ARIEL E. BELEN, JJ.

---

2008-11519

DECISION & ORDER ON MOTION

Felix Rivera, respondent, v Lutheran Medical Center, et al., defendants; Morgan, Lewis & Bockius, LLP, nonparty-appellant.

(Index No. 22050/05)

---

On the court's own motion, it is

ORDERED that its decision and order on motion dated June 3, 2009, in the above-entitled case is recalled and vacated, and the following decision and order on motion is substituted therefor:

Motion by the respondent, inter alia, to strike the record *and the nonparty-appellant's brief* on an appeal from an order of the Supreme Court, Kings County, dated October 16, 2008, to direct the nonparty-appellant to file a replacement record *and brief*, and to enlarge his time to serve and file a brief.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the branches of the motion which are to strike the record on appeal *and the nonparty-appellant's brief* and to direct the nonparty-appellant to file a replacement record *and brief* are granted, the record on appeal *and the nonparty-appellant's brief* are stricken, and on or before July 1, 2009, the nonparty-appellant shall serve and file a replacement record that contains any motion papers filed with the Supreme Court, Kings County, which resulted in the order appealed from and that does not contain matter dehors the record, *and a brief that does not refer to matter*

June 25, 2009

Page 1.

RIVERA v LUTHERAN MEDICAL CENTER

*dehors the record*; and it is further,

ORDERED that the branch of the motion which is 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 July 31, 2009, and the respondent's brief must be served and filed on or before that date; and it is further,

ORDERED that the motion is otherwise denied.

SANTUCCI, J.P., COVELLO, LEVENTHAL and BELEN, 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