

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

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E/sl

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2008-10714

DECISION & ORDER ON MOTION

Edward Kitt, respondent,
v Ira Podlofsky, appellant.

(Index No. 11701/06)

Motion by the respondent to dismiss an appeal from a judgment of the Supreme Court, Nassau County, dated August 22, 2008, on the ground that review of the issues on this appeal is precluded by the dismissal of a prior appeal for failure to prosecute (*see Bray v Cox*, 38 NY2d 350), or to enlarge the 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 branch of the motion which is to dismiss the appeal is held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof; and it is further,

ORDERED that the branch of the motion which is to enlarge the time to serve and file a brief is granted, the respondent's time to serve and file a brief is enlarged until October 2, 2009, and the respondent's brief must be served and filed on or before that date.

SPOLZINO, J.P., SANTUCCI, ENG and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

September 2, 2009

KITT v PODLOFSKY