

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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**CA 12-01114**

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, WHALEN, AND MARTOCHE, JJ.

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LLORD BYRON BROOKS, III, FRANK FLAY,  
RICHARD S. LAING, JR. AND FRANK WICKINS,  
PLAINTIFFS-APPELLANTS-RESPONDENTS,

V

MEMORANDUM AND ORDER

AXA ADVISORS, LLC AND RICHARD JEFFREY JEROME,  
DEFENDANTS-RESPONDENTS-APPELLANTS.  
(APPEAL NO. 1.)

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THE PEARL LAW FIRM, P.A., PITTSFORD (JASON J. KANE OF COUNSEL), FOR  
PLAINTIFFS-APPELLANTS-RESPONDENTS.

WINGET, SPADAFORA & SCHWARTZBERG, LLP, NEW YORK CITY (STEVEN E. MELLON  
OF COUNSEL), AND HODGSON RUSS LLP, BUFFALO, FOR  
DEFENDANTS-RESPONDENTS-APPELLANTS.

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Appeal and cross appeal from an order of the Supreme Court, Erie  
County (Patrick H. NeMoyer, J.), dated September 1, 2011. The order  
granted in part the motion of defendants to dismiss the complaint.

It is hereby ORDERED that said appeal is unanimously dismissed  
without costs.

Same Memorandum as in *Brooks v AXA Advisors, LLC* ([appeal No. 2]  
\_\_\_ AD3d \_\_\_ [Mar. 15, 2013]).

Entered: March 15, 2013

Frances E. Cafarell  
Clerk of the Court