

**QUESTION # 1:**

**DID DEFENDANTS FAIL TO EXERCISE THAT DEGREE OF CARE, SKILL AND DILIGENCE COMMONLY EXERCISED BY A MEMBER OF THE LEGAL PROFESSION IN THEIR REPRESENTATION OF GLORIA M. FRANKEL'S CLAIMS FOR NUISANCE AGAINST SANFORD B. POTTERS AND SUZANNE POTTERS?**

At least five (5) jurors must agree on the answer to the question

Answer to Question # 1: YES: 5 NO: 1

JURORS, AFTER ANSWERING THE ABOVE QUESTION WILL SIGN THEIR NAMES BELOW:

- 1. *Ann Hill*
- 2. *Mica A. Vonn*
- 3. \_\_\_\_\_
- 4. *Alexis Richland*
- 5. *Rubin Schindler*
- 6. *Mark*

I, the undersigned juror, do not concur in the above

*[Signature]*

**NOTE: IF YOU ANSWERED "YES" TO QUESTION #1 PROCEED TO QUESTION #2.**

**IF YOU ANSWERED "NO" TO QUESTION #1 PROCEED TO QUESTION #3.**

**QUESTION # 2:**

**BUT FOR DEFENDANT'S DEPARTURE, WOULD GLORIA FRANKEL HAVE PREVAILED ON HER PRIVATE NUISANCE CLAIM AGAINST SANFORD B. POTTERS AND SUZANNE POTTERS?**

At least five jurors must agree on the answer to the question

Answer to Question # 2: YES: 6 NO: \_\_\_\_\_

JURORS, AFTER ANSWERING THE ABOVE QUESTION WILL SIGN THEIR NAMES BELOW:

- |                                |                                  |
|--------------------------------|----------------------------------|
| 1. <u><i>Ann M</i></u>         | 4. <u><i>Alexis Richland</i></u> |
| 2. <u><i>Miguel A. Igo</i></u> | 5. <u><i>Rainey Schell</i></u>   |
| 3. <u><i>[Signature]</i></u>   | 6. <u><i>[Signature]</i></u>     |

I, the undersigned juror, do not concur in the above

\_\_\_\_\_

**NOTE: PROCEED TO NEXT QUESTION.**

**QUESTION # 3:**

**DID DEFENDANTS FAIL TO EXERCISE THAT DEGREE OF CARE, SKILL AND DILIGENCE COMMONLY EXERCISED BY A MEMBER OF THE LEGAL PROFESSION IN THEIR REPRESENTATION OF GLORIA M. FRANKEL'S CLAIMS FOR BREACH OF THE IMPLIED WARRANTY OF HABITABILITY AGAINST 71<sup>ST</sup> STREET LEXINGTON CORPORATION?**

At least five (5) jurors must agree on the answer to the question

Answer to Question # 3:      YES: 6      NO: \_\_\_\_\_

JURORS, AFTER ANSWERING THE ABOVE QUESTION WILL SIGN THEIR NAMES BELOW:

- |                          |                           |
|--------------------------|---------------------------|
| 1. <u>Aime F. Yowell</u> | 4. <u>Alexis Richland</u> |
| 2. <u>Wright A. Vog</u>  | 5. <u>Robin Schindler</u> |
| 3. <u>[Signature]</u>    | 6. <u>[Signature]</u>     |

I, the undersigned juror, do not concur in the above

**NOTE:      IF YOU ANSWERED "NO" TO QUESTIONS #1 AND #3  
REPORT YOUR VERDICT TO THE COURT.**

**IF YOU ANSWERED "YES" TO QUESTION #3  
PROCEED TO QUESTION #4.**

**QUESTION # 4:**

**BUT FOR DEFENDANT'S DEPARTURE WOULD GLORIA FRANKEL HAVE PREVAILED ON HER BREACH OF WARRANTY OF HABITABILITY CLAIM AGAINST 71<sup>ST</sup> STREET LEXINGTON CORPORATION?**

At least five jurors must agree on the answer to the question

Answer to Question # 4: YES: 6 NO: \_\_\_\_\_

JURORS, AFTER ANSWERING THE ABOVE QUESTION WILL SIGN THEIR NAMES BELOW:

- |                         |                           |
|-------------------------|---------------------------|
| 1. <u>Alex Etzell</u>   | 4. <u>Alexis Richland</u> |
| 2. <u>Miguel A Vera</u> | 5. <u>Rosam Schindler</u> |
| 3. <u>[Signature]</u>   | 6. <u>[Signature]</u>     |

I, the undersigned juror, do not concur in the above

\_\_\_\_\_

**NOTE: IF YOUR ANSWER TO QUESTIONS #2 AND #4 IS "NO" REPORT YOUR VERDICT TO THE COURT.**

**IF YOUR ANSWER TO QUESTION #2 IS "NO" BUT "YES" TO #4 GO TO QUESTION #7**

**IF YOUR ANSWER TO QUESTION #2 AND #4 IS YES PROCEED TO QUESTION #5.**

**QUESTION #5:**

**STATE THE DOLLAR AMOUNT, IF ANY, GLORIA FRANKEL WOULD HAVE BEEN ENTITLED TO RECOVER FOR HER PRIVATE NUISANCE CLAIM AGAINST SANFORD B. POTTERS AND SUZANNE POTTERS:**

IF YOU DECIDE TO AWARD NO DAMAGES , WRITE "NONE" ON THE APPROPRIATE LINE

TOTAL:                    \$ 100,000

At least five jurors must agree on the answer.

JURORS, AFTER ANSWERING THE ABOVE QUESTION WILL SIGN THEIR NAMES BELOW:

- |                                 |                                  |
|---------------------------------|----------------------------------|
| 1. <u><i>[Signature]</i></u>    | 4. <u><i>Alexis Richland</i></u> |
| 2. <u><i>Miguel A. Vega</i></u> | 5. <u><i>Robin Schurdle</i></u>  |
| 3. <u><i>[Signature]</i></u>    | 6. <u><i>[Signature]</i></u>     |

I, the undersigned juror, do not concur in the above

\_\_\_\_\_

**NOTE:    PROCEED TO THE NEXT QUESTION**

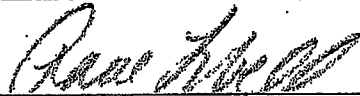

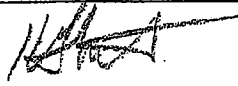
**QUESTION #6:**

**IS GLORIA FRANKEL ENTITLED TO PUNITIVE DAMAGES ON HER NUISANCE CLAIM AGAINST SANFORD B. POTTERS AND SUZANNE POTTERS?**

At least five jurors must agree on the answer to the question

Answer to Question # 6: YES: 1 NO: 5

JURORS, AFTER ANSWERING THE ABOVE QUESTION WILL SIGN THEIR NAMES BELOW:

- |   |  |
|---|--|
| 1. <u></u>   | 4. <u>Alexis Richland</u>  |
| 2. _____  | 5. <u>Robin Schell</u>   |
| 3. <u></u> | 6. <u></u> |

I, the undersigned juror, do not concur in the above

Miguel A. Vega

**NOTE: PROCEED TO THE NEXT QUESTION**

**QUESTION #7:**

**STATE THE PERCENTAGE IF ANY, GLORIA FRANKEL WOULD HAVE BEEN ENTITLED TO RECOVER FOR AN ABATEMENT OF RENT FOR HER BREACH OF IMPLIED WARRANTY OF HABITABILITY CLAIM AGAINST 71<sup>ST</sup> STREET LEXINGTON CORPORATION?**

IF YOU DECIDE TO AWARD NO PERCENTAGE, WRITE NONE.

PERCENTAGE: 50 %

1994 - 2004

At least five jurors must agree on the answer.

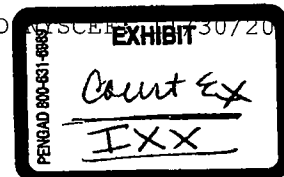
JURORS, AFTER ANSWERING THE ABOVE QUESTION WILL SIGN THEIR NAMES BELOW:

- |                                |                                  |
|--------------------------------|----------------------------------|
| 1. <u><i>Paul Edwell</i></u>   | 4. <u><i>Alexis Richland</i></u> |
| 2. <u><i>Miguel A. Vey</i></u> | 5. <u><i>Robin Schindler</i></u> |
| 3. <u><i>[Signature]</i></u>   | 6. <u><i>[Signature]</i></u>     |

I, the undersigned juror, do not concur in the above

\_\_\_\_\_

**NOTE: REPORT YOUR VERDICT TO THE COURT**



SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: GEOFFREY D.S. WRIGHT Justice PART 47

ERIC FRANKEL, As Executor Of The Estate Of Gloria Frankel, Deceased, Plaintiff/Petitioner,

INDEX NO. 603449/07

MOTION DATE

VERNON & GINSBURG, LLP and MEL B. GINSBURG, Defendant/Respondent

MOTION SEQ. NO. 5 MOTION CAL.

The following papers, numbered 1 to 2 were read on this motion to/for dismiss the complaint

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... 1
Answering Affidavits — Exhibits 2

Replying Affidavits
Memoranda

Cross-Motion: Yes X No

Upon the foregoing papers, it is ordered that this motion to by the Defendants to dismiss the complaint at the conclusion of testimony is denied, a/p/o.

GEOFFREY D. WRIGHT
AJSC

Dated: Nov 28, 2016

J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 47

-----X  
ERIC FRANKEL, As Executor Of The Estate Of  
Gloria Frankel, Deceased,  
Plaintiff-Petitioner(s),

-against-  
VERNON & GINSBURG, LLP and  
MEL B. GINSBURG,  
Defendants.

Index #603449/09  
Motion Cal. #  
Motion Seq. #5  
**DECISION/ORDER**  
Pursuant To Present:  
Hon. Geoffrey Wright  
Judge, Supreme Court

-----X  
Recitation, as required by CPLR 2219(a), of the papers considered in the review of  
this Motion to: grant a directed verdict dismissing the complaint

PAPERS	NUMBERED
Notice of Petition/Motion, Affidavits & Exhibits Annexed	1
Order to Show Cause, Affidavits & Exhibits	
Answering Affidavits & Exhibits Annex	2
Replying Affidavits & Exhibits Annexed	
Cross-motion & Exhibits Annexed	
Supporting Affidavits	
Memoranda	

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

At the conclusion of testimony in this legal malpractice case, the Defendants move to dismiss the complaint on the ground that the Plaintiff has not submitted evidence that the deceased client was compelled to settle the underlying case due to the mistakes of counsel (citing *Bernstein v. Oppenheimer & Co., P.C.*, 160 AD2d 428, 554 NYS2d 587 [1<sup>st</sup> Dept. 1990]), and/or that the Gloria Frankel, the Plaintiff's deceased, ratified the settlement by acceptance and negotiation of the settlement payment.

As to the second claim, the Plaintiff has amply demonstrated, for the purpose of this motion, that the Plaintiff, Gloria Frankel, did in fact, with reasonable promptness, appear in court, *pro se*, to seek to set aside the settlement, only to be denied because the application was not made by counsel. What the Plaintiff did not in response to that denial is not known.

I do not see any issue of compulsion for the reason set forth above, to wit, the Plaintiff's deceased immediately sought to repudiate the settlement on the sole issue that it was not authorized, therefore, there cannot be, and is not in the jury's verdict sheet, any issue of compulsion to be determined, nor was this issue requested by counsel. The issues of the

authority of counsel to accept the proposed settlement in the absence of his client remains, as do the questions of damages that might have been awarded to Gloria Frankel had the underlying issues been tried.

The motion to dismiss the complaint is denied.

Dated: November 28, 2016

  
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**GEOFFREY D. WRIGHT**  
**AJSC**