

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART 2
Justice

ANNA YANOSCIK

Plaintiff,

-against-

NORTH FORK BANK f/k/a JAMAICA
SAVINGS BANK

Defendant

Index No: 3672/04

Motion Date: 11/9/05

Motion Cal. No.: 44

NORTH FORK BANK f/k/a JAMAICA
SAVINGS BANK

Third-party Plaintiff

-against-

JANET FELLOWS and JEFFREY BERKE

Third-party Defendants

The following papers numbered 1 to 14 read on this motion by defendant/third-party plaintiff, NORTH FORK BANK, (NFB) punishing the third-party defendant, FELLOWS, for failure to appear for a deposition and cross-motion by third-party defendant for a protective Order.

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affidavits-Exhibits	1 - 4
Notice of Cross-Motion-Affidavits-Exhibits	5 - 9
Answering Affidavits-Exhibits.....	10 - 12
Replying Affidavits.....	13 - 14

Upon the foregoing papers it is ordered that motion and cross-motion are determined as follows.

The defendant/third-party plaintiff's motion is granted to the extent that the third-party defendant, JANET FELLOWS, shall, on or before March 31, 2006, appear and submit to a deposition upon oral questions, in Queens County at a time and place to be

agreed upon by the parties. The remainder of the plaintiff's motion is denied without prejudice and with leave to renew if JANET FELLOWS fails to appear for the deposition as provided herein. The cross-motion is denied.

Generally, and in the absence of a showing of undue hardship, inconvenience, or unreasonable expense, the deposition of a party to an action is to be conducted in the county where the action is pending. (CPLR 3110[1]; Hoffman v. Kraus, 260 AD2d 435 [1999]; Foley v. Haffmeister, 156 AD2d 541 [1989].) Fellows has failed to make the requisite showing of undue hardship to warrant departure from the general disclosure procedures.

Fellows submitted her affidavit asserting in conclusory terms that appearing in New York for a deposition would cause her undue hardship because she is a resident of California and a single, elderly woman with limited financial means with concerns about her well being and health. She failed to produce any proof of the existence of any medical condition which would cause her concern or to rebut the NFB's proof that she is neither elderly nor infirmed being only 61 years old (see, e.g. Hoffman v. Kraus, 260 AD2d 435 [1999]) nor without financial means because she is employed and works forty hours a week. Moreover, Fellows has failed to show any valid excuse for her failure to abide by the terms of the Compliance Conference Order to which her attorney consented. (See, Foley v. Haffmeister, 156 AD2d 541 [1989].) Finally, despite Fellows' claims of being unable to come to New York, she did not move for a protective Order until after NFB moved for sanctions pursuant to CPLR 3126.

Dated: November 10, 2005
D# 23

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J.S.C.