

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

D38291
O/hu

____AD3d____

Submitted - April 8, 2013

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
SYLVIA HINDS-RADIX, JJ.

2012-02570

DECISION & ORDER

Joseph Lamassa, appellant, v Elizabeth Lamassa,
respondent.

(Index No. 5509/96)

Joseph Giaramita, Jr., Brooklyn, N.Y., for appellant.

In an action for a divorce and ancillary relief, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Richmond County (de Grimston, Ct. Atty. Ref.), dated February 2, 2012, as, after a hearing, denied his motion, in effect, to modify a stipulation of settlement by reducing the amount of child support and cancelling child support arrears, granted that branch of the defendant's cross motion which was to modify a qualified domestic relations order by adding a provision thereto equitably distributing the marital portion of a variable supplement fund, and granted the defendant's separate cross motion for an award of an attorney's fee.

ORDERED that the order is modified, on the law, by deleting the provision thereof granting that branch of the defendant's cross motion which was to modify the qualified domestic relations order by adding a provision thereto equitably distributing the marital portion of the variable supplement fund, and substituting therefor a provision denying that branch of the defendant's cross motion; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

The parties entered into a stipulation of settlement, which was read into a court record, whereby the defendant specifically waived any interest in a variable supplement fund (hereinafter VSF). During those proceedings, the defendant's counsel stated that, under the law in effect at the time, VSF benefits were not marital property subject to equitable distribution. The defendant was asked and confirmed that she understood the effect of the stipulation and voluntarily

May 22, 2013

LAMASSA v LAMASSA

Page 1.