

Supreme Court, Appellate Division, First
 Department, New York.
 Joseph HELMAN, et al., Plaintiffs-Respondents,
 v.
 Jay S. HABERMAN, Defendant-Appellant.

Nov. 20, 2001.

Clients brought legal malpractice action against former attorney, alleging that attorney failed to timely submit an answer in high-income rent deregulation proceeding brought by clients' landlord. The Supreme Court, New York County, [Sheila Abdus-Salaam](#), J., denied attorney's motion to compel disclosure, and attorney appealed. The Supreme Court, Appellate Division, held that attorney was not entitled to discovery of documents allegedly showing that clients were "wealthy tax cheats" who were manipulating rent and tax laws to avoid deregulation.

Affirmed.

West Headnotes

Pretrial Procedure 371 [307Ak371 Most Cited Cases](#)

In legal malpractice action arising out of attorney's failure to timely submit an answer in high-income rent deregulation proceeding brought against clients by their landlord, attorney was not entitled to discovery of documents allegedly showing that clients were "wealthy tax cheats" who were manipulating rent and tax laws to avoid deregulation, where documents sought had no bearing on income reported on clients' state tax returns, and thus were neither relevant to their claim nor sufficiently related to issues in litigation to make effort to obtain documents reasonable.

****164** [Patrick W. Begos](#), for Plaintiffs-Respondents.

Richard E. Lerner, for Defendant-Appellant.

[SULLIVAN](#), P.J., [ANDRIAS](#), [WALLACH](#), [SAXE](#)
 and [MARLOW](#), JJ.

***101** Order, Supreme Court, New York County (Sheila Abdus-Salaam, J.), entered on or about February 16, 2001, which, in an action for legal malpractice, denied defendant's motion to compel disclosure, unanimously affirmed, without costs.

Plaintiffs allege that defendant attorney committed malpractice in failing to timely submit an answer in a high-income rent ****165** deregulation proceeding brought by their landlord. In such proceeding the issue was whether plaintiff's Federal adjusted gross income exceeded \$250,000 as reported on their New York State income tax return for each of the preceding two years (Administrative Code of City of N.Y. § 26-504.1, 26-504.3[a],[c][1]). Defendant's demand for documents other than the two pertinent tax returns, which, defendant claims, will show that plaintiffs are "wealthy tax cheats" who are manipulating the rent and tax laws not only to avoid deregulation but also to avoid eviction on the ground of nonprimary residence, was properly rejected. The documents in question, which include business books and records, bank and brokerage account statements, deeds and leases to other properties owned or rented by plaintiffs, and records relating to insurance, automobiles, utilities, security services, household services, ***102** groceries and dining out, club memberships, travel and charitable donations, while relevant to the accuracy of plaintiffs' tax returns and to the location of their primary residence, have no bearing on the income reported on their State tax returns. Thus, they are not relevant to plaintiffs' claim, i.e., whether plaintiffs' damages were proximately caused by defendant's alleged legal malpractice (cf. [Alfaro v. Schwartz](#), [233 A.D.2d 281, 649 N.Y.S.2d 176](#)), and are not "sufficiently related to the issues in litigation to make the effort to obtain [the documents] ... reasonable." [cite omitted] ([Allen v. Crowell-Collier Pub. Co.](#), [21 N.Y.2d 403, 406-7, 288 N.Y.S.2d 449, 235 N.E.2d 430.](#))

288 A.D.2d 101, 733 N.Y.S.2d 164, 2001 N.Y. Slip Op. 09266

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