

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

D13549
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_____AD3d_____

Submitted - December 15, 2006

ROBERT W. SCHMIDT, J.P.
STEPHEN G. CRANE
PETER B. SKELOS
STEVEN W. FISHER, JJ.

2006-08448

DECISION & JUDGMENT

In the Matter of Milana Tarnavsky, petitioner, v
Esther M. Morgenstern, respondent.

Jeffrey T. Schwartz, New York, N.Y., for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Anthony J. Tomari of
counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent, Esther M. Morgenstern, a Justice of the Supreme Court, Queens County, dated August 16, 2006, which summarily adjudged the petitioner guilty of criminal contempt of court, and a determination of the respondent dated September 6, 2006, which again summarily adjudged the petitioner guilty of criminal contempt of court and sentenced her to a term of imprisonment of 10 days. By order to show cause dated September 7, 2006, enforcement of the determinations was stayed.

ADJUDGED that the petition is granted, on the facts, without costs or disbursements, and the determinations are annulled.

Summary contempt adjudication was not warranted under the circumstances of this case (*see* Judiciary Law § 755). The petitioner's conduct did not disrupt or threaten to disrupt the proceedings, nor did it destroy or undermine, or tend seriously to destroy or undermine, the dignity of the court so that the court was unable to continue to conduct its normal business in an appropriate way (*see* Judiciary Law § 750[A]; 22 NYCRR 701.2[a]; *Matter of Greenberg v Starkey*, 20 AD3d

419, 420; *Matter of Brunetti v Gary*, 300 AD2d 583, 583). Accordingly, both summary contempt adjudications must be annulled.

SCHMIDT, J.P., CRANE, SKELOS and FISHER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court