

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

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DAVID S. RITTER, J.P.
GLORIA GOLDSTEIN
STEVEN W. FISHER
RUTH C. BALKIN, JJ.

2007-03480

DECISION, ORDER & JUDGMENT

In the Matter of John Graziano, et al.,
petitioners, v John C. Bivona, etc.,
et al., respondents.

Christopher J. Cassar, P.C., Huntington, N.Y., for petitioners.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Constantine A. Speres of
counsel), for respondent John C. Bivona.

Proceeding pursuant to CPLR article 78 in the nature of prohibition, inter alia, to prohibit the respondent John C. Bivona, a Justice of the Supreme Court, Suffolk County, from enforcing an order imposing sanctions on the petitioner Christopher J. Cassar pursuant to 22 NYCRR 130-1.1.

Cross motion by the respondent John C. Bivona, a Justice of the Supreme Court, Suffolk County, to dismiss the proceeding on the ground that the petition fails to state a claim upon which relief can be granted.

ORDERED that the cross motion is granted; and it is further,

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs or disbursements.

June 5, 2007

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"Because of its extraordinary nature, prohibition is available only where there is a clear legal right, and then only when a court - in cases where judicial authority is challenged - acts or threatens to act either without jurisdiction or in excess of its authorized powers" (*Matter of Holtzman v Goldman*, 71 NY2d 564, 569; *see, Matter of Rush v Mordue*, 68 NY2d 348, 352). The petitioners have failed to demonstrate a clear legal right to the relief sought.

RITTER, J.P., GOLDSTEIN, FISHER and BALKIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court