

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

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ROBERT A. LIFSON, J.P.
DAVID S. RITTER
MARK C. DILLON
JOHN M. LEVENTHAL, JJ.

2008-01342

DECISION, ORDER & JUDGMENT

In the Matter of Vincent Terio, petitioner, v
Systems & Services Technologies, Inc., etc.,
respondent.

Vincent Terio, Fishkill, N.Y., petitioner pro se.

Proceeding pursuant to CPLR article 78 in the nature of prohibition, inter alia, in effect, to prohibit the respondent from enforcing an order of the Supreme Court, Putnam County (O'Rourke, J.), dated February 7, 2005, and application for poor person relief.

ORDERED that the application for poor person relief is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied; and it is further,

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

This Court does not have original subject matter jurisdiction to entertain this proceeding, as no "justice of the supreme court or a judge of a county court or the court of general sessions" was named as a respondent (CPLR 506[b][1]). Since subject matter jurisdiction cannot be waived, the proceeding must be dismissed (*see Matter of Nolan v Lungen*, 61 NY2d 788; CPLR 7804[b]; *cf. Matter of Law Offs. of Andrew F. Capoccia v Spitzer*, 270 AD2d 643, 644 n 2).

LIFSON, J.P., RITTER, DILLON and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

June 3, 2008

MATTER OF TERIO v SYSTEMS & SERVICES TECHNOLOGIES, INC.