

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

D20379
W/kmg

_____AD3d_____

STEVEN W. FISHER, J.P.
RUTH C. BALKIN
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2008-06498

DECISION, ORDER & JUDGMENT

In the Matter of Edmundo Mejia, petitioner,
v Clerk of Court, Supreme Court of State of
New York, County of Queens, et al., respondents.

Edmundo Mejia, Romulus, N.Y., petitioner pro se.

Michael Colodner, New York, N.Y. (Shawn Kerby of counsel), for respondent Clerk
of the Criminal Court of the City of New York, County of Queens, sued herein as
Clerk of Court, Supreme Court of State of New York, County of Queens.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the
respondents to refund, to the petitioner, money he posted for bail in connection with a criminal action
entitled *People v Mejia*, commenced in the Criminal Court, Queens County, under Docket No. 2006
QN 01446, 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

September 16, 2008

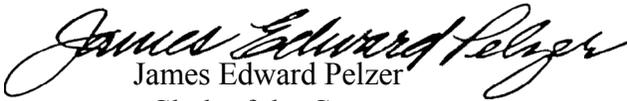
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waived, the proceeding must be dismissed (*see Matter of Nolan v Lungen*, 61 NY2d 788; CPLR 7804[b]; *cf. Matter of Law Offs. of Andrew F. Capoccia v Spitzer*, 270 AD2d 643, 644 n 2).

FISHER, J.P., BALKIN, McCARTHY and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court