

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

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_____AD3d_____

Argued - September 11, 2008

STEVEN W. FISHER, J.P.
MARK C. DILLON
WILLIAM E. McCARTHY
ARIEL E. BELEN, JJ.

2007-02437

DECISION & ORDER

Peter Onitiri, appellant, v CUNY, College of
Staten Island, respondent.

(Claim No. 106959)

Peter Onitiri, Brooklyn, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, Albany, N.Y. (Andrew D. Bing and Frank K.
Walsh of counsel), for respondent.

In a claim, inter alia, to compel the return of certain New York State tax refunds allegedly improperly withheld by the defendant, the claimant appeals from a judgment of the Court of Claims (Sise, J.), dated February 13, 2007, which, after a nonjury trial, granted the defendant's motion to dismiss the claim in its entirety.

ORDERED that the judgment is affirmed, without costs or disbursements.

The claim was properly dismissed. The claimant failed to offer any evidentiary proof to support his bare conclusory allegation that the respondent, CUNY, College of Staten Island (hereinafter the College), improperly intercepted his New York State Tax refunds to pay student loans he had already paid back and/or failed to apply those tax refunds to those loans.

Rather, the College presented proof that the Civil Court judgment upon which it relied as a basis for intercepting the tax refunds did not concern any student loans. The judgment was entered upon the College's successful Civil Court action to recover sums originally awarded to the claimant as federal Pell grants and New York State TAP awards, and used by the College to pay the

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claimant's tuition for attendance at the College. The College was subsequently required to repay those funds to the federal and state governments. Thus, it was entitled to recoup, from the claimant, tuition owed for the semesters he attended the College.

Finally, the claimant failed to show that the underlying Civil Court judgment had not been properly entered by the Civil Court.

FISHER, J.P., DILLON, McCARTHY and BELEN, 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