

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

D21140  
W/kmg

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Submitted - October 29, 2008

PETER B. SKELOS, J.P.  
MARK C. DILLON  
EDWARD D. CARNI  
JOHN M. LEVENTHAL, JJ.

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2007-10851

DECISION & ORDER

Carlos Irizarry, et al., appellants,  
v State of New York, respondent.

(Claim No. 107614)

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The Feld Law Firm, P.C., New York, N.Y. (David Lewis Feld of counsel), for appellants.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Peter H. Schiff and Kathleen M. Treasure of counsel), for respondent.

In a claim to recover damages for personal injuries, etc., the claimants appeal from an order of the Court of Claims (Lack, J.), dated September 25, 2007, which denied their motion for recusal.

ORDERED that the order is affirmed, with costs.

The record does not support a finding that any of the statutory disqualifications set forth in Judiciary Law § 14 are applicable (*see Matter of New York State Assn. of Criminal Defense Lawyers v Kaye*, 95 NY2d 556, 561; *Schreiber-Cross v State of New York*, 31 AD3d 425). Absent a legal disqualification under Judiciary Law § 14, a court is the sole arbiter of its recusal (*see* 22 NYCRR 100.3; *People v Moreno*, 70 NY2d 403, 405; *EECP Ctrs. of Am. v Vasomedical, Inc.*, 277 AD2d 349), and its determination that recusal is not warranted will not be disturbed unless it constitutes an improvident exercise of discretion (*see Matter of Imre v Johnson*, 54 AD3d 427, 427-428). The claimants failed to set forth any proof of bias or prejudice (*see Modica v Modica* 15 AD3d

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635, 636; *Matter of Firestone v Siems*, 272 AD2d 544, 545; *Anjam v Anjam*, 191 AD2d 531, 532-533). The appellate reversal of a prior related determination by the Judge to whom this claim is assigned does not alone constitute a showing of bias (see *Robert Marini Bldr. v Rao*, 263 AD2d 846, 848). Accordingly, the Judge's refusal to recuse himself was not an improvident exercise of discretion.

SKELOS, J.P., DILLON, CARNI and LEVENTHAL, 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