

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

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STEVEN W. FISHER, J.P.
RUTH C. BALKIN
WILLIAM E. McCARTHY
JOHN M. LEVENTHAL, JJ.

2008-07611

DECISION, ORDER & JUDGMENT

In the Matter of Diane Word, petitioner, v
Barbara G. Zambelli, etc., et al., respondents.

Diane Word, Bedford Hills, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Charles F. Sanders of counsel), for respondent Barbara G. Zambelli.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent Barbara G. Zambelli, a Justice of the Supreme Court, Westchester County, to give “due process review” to the petitioner’s motion for leave to reargue and/or renew dated January 2, 2007, and motion for leave to renew dated May 7, 2007, and application by the petitioner to prosecute the proceeding as a poor person.

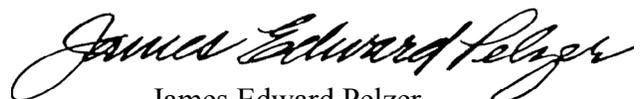
ORDERED that the application to prosecute the proceeding as a poor person is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied as academic; and it is further,

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

The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought (*see Matter of Legal Aid Society of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought.

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

ENTER:



James Edward Pelzer
Clerk of the Court

January 20, 2009

MATTER OF WORD v ZABELLI