

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

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_____AD3d_____

STEVEN W. FISHER, J.P.
MARK C. DILLON
DANIEL D. ANGIOLILLO
ARIEL E. BELEN, JJ.

2008-10381

DECISION, ORDER & JUDGMENT

In the Matter of David Bernard, petitioner, v
Gregory L. Lasak, etc., respondent.

David Bernard, East Elmhurst, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Roberta L. Martin of
counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel the respondent, Gregory L. Lasak, a Justice of the Supreme Court, Queens County, to recall and vacate a decision and order dated July 29, 2008, and application by the petitioner 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 petition is denied and the proceeding is dismissed, 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*

March 24, 2009

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Aid Socy. 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., DILLON, ANGIOLILLO and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court