

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

D23268
C/hu

_____AD3d_____

Argued - January 20, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO, JJ.

2008-06505

DECISION & ORDER

In the Matter of Cosimo Panetta, appellant, v
Richard Carroll, etc., et al., respondents.

(Index No. 24093/06)

Joseph C. Messina, Mamaroneck, N.Y., for appellant.

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick of counsel),
for respondents.

In a proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the issuance of a certificate of occupancy, the petitioner appeals, as limited by his brief, from so much of an order of the Supreme Court, Westchester County (Adler, J.), entered May 7, 2008, as denied that branch of his motion which was for leave to reargue.

ORDERED that the appeal is dismissed, with costs.

No appeal lies from the denial of a motion for leave to reargue (*see Boakye-Yiadom v Roosevelt Union Free School Dist.*, 57 AD3d 929). Thus, this appeal must be dismissed.

RIVERA, J.P., DILLON, SANTUCCI and ANGIOLILLO, JJ., concur.

May 26, 2009

MATTER OF PANETTA v CARROLL

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2008-06505

DECISION & ORDER ON MOTION

In the Matter of Cosimo Panetta, appellant, v
Richard Carroll, etc., et al., respondents.

(Index No. 24093/06)

Cross motion by the respondents, inter alia, to dismiss an appeal from an order of the Supreme Court, Westchester County (Adler, J.), entered May 7, 2008, on the ground that no appeal lies from an order denying reargument. By decision and order on motion of this Court dated September 10, 2008, the cross motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission of the appeal.

Upon the papers filed in support of the cross motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the cross motion, inter alia, to dismiss the appeal is denied as academic in light of our determination of the appeal (*see Pannetta v Carroll*, _____ AD3d _____ [decided herewith]).

RIVERA, J.P., DILLON, SANTUCCI and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court