

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

D24149
G/hu

_____AD3d_____

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2009-05204

DECISION & JUDGMENT

In the Matter of George O. Guldi, etc., petitioner,
v Thomas J. Spota, etc., et al., respondents.

Kathy Huang, Whitestone, N.Y., and John F. Diffley, New York, N.Y., for petitioner.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Maureen McCormack of counsel), respondent pro se.

Proceeding pursuant to CPLR article 78 in the nature of prohibition and mandamus, inter alia, to compel the respondents to return certain attorney files seized on February 3, 2009, from the petitioner's law office and to prohibit "the use, dissemination, duplication of any and all material seized."

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

"Because of its extraordinary nature, prohibition is available only where there is a clear legal right, and then only when a court - in case where judicial authority is challenged - acts or threatens to act either without jurisdiction or in excess of its authorized powers" (*Matter of Holtzman v Goldman*, 71 NY2d 564, 569; *see Matter of Rush v Mordue*, 68 NY2d 348, 352). Similarly, 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 Socy. of Sullivan County v Scheinman*, 53 NY2d 12, 16).

September 8, 2009

MATTER OF GULDI v SPOTA

Page 1.

The petitioner has failed to demonstrate a clear legal right to the relief sought.

RIVERA, J.P., SPOLZINO, ANGIOLILLO and BALKIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court