

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

D24553
W/hu

_____AD3d_____

Argued - September 15, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
HOWARD MILLER
LEONARD B. AUSTIN, JJ.

2009-01561

DECISION & ORDER

In the Matter of Vinrus Corp., appellant, v Village
of Pelham Manor Building Inspector, etc.,
respondent.

(Index No. 21236/08)

Cuddy & Feder LLP, White Plains, N.Y. (Joshua E. Kimerling and Ruth E. Roth of
counsel), for appellant.

Silverberg Zalantis LLP, White Plains, N.Y. (Katherine Zalantis and Steven M.
Silverberg of counsel), for respondent.

In a proceeding, inter alia, pursuant to CPLR article 78 in the nature of mandamus to
compel the issuance of a certificate of occupancy, the petitioner appeals from a judgment of the
Supreme Court, Westchester County (Cacace, J.), entered January 28, 2009, which, upon an order
of the same court entered December 23, 2008, granting the respondent's motion pursuant to CPLR
3211 and 7804(f) to dismiss the petition, in effect, dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

We affirm the judgment on the ground that the petitioner failed to exhaust its
administrative remedies before commencing this proceeding (*see* Village Law § 7-712-a[5][b]; *Matter*
of White v Incorporated Vil. of Plandome Manor, 190 AD2d 854; *see also Matter of Capitol*
Distrib. Corp. v Jones, 2 Misc 2d 816, 817; *cf. Matter of Goldberg v Incorporated Vil. of Roslyn*
Estates, 61 AD3d 756).

October 6, 2009

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The parties' remaining contentions need not be reached in light of our determination.

RIVERA, J.P., FLORIO, MILLER and AUSTIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court