

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

D24882
C/kmg

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A. GAIL PRUDENTI, P.J.
HOWARD MILLER
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2009-08278

DECISION & JUDGMENT

In the Matter of Ronald Caparella, petitioner, v
Meryl J. Berkowitz, etc., et al., respondents.

Addabbo and Greenberg, Forest Hills, N.Y. (Todd D. Greenberg of counsel), for petitioner.

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

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Jamie Johnson of counsel), respondent pro se.

Proceeding pursuant to CPLR article 78 in the nature of prohibition, inter alia, to prohibit the respondent Kathleen Rice, District Attorney of Nassau County, from continuing to prosecute the petitioner under Nassau County Indictment No. 1144N-08 on charges of criminal sexual act in the third degree and sexual abuse in the third degree and to prohibit the respondent Meryl J. Berkowitz, a Justice of the Supreme Court, Nassau County, from presiding over the trial of those charges.

ADJUDGED that the petition is denied and the proceeding is dismissed on the merits, 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 cases where judicial authority is challenged—acts or

November 4, 2009

Page 1.

MATTER OF CAPARELLA v BERKOWITZ

threatens to act wither 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).

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

PRUDENTI, P.J., MILLER, CHAMBERS and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court