

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

D26264
G/prt

_____AD3d_____

JOSEPH COVELLO, J.P.
HOWARD MILLER
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2010-00286

DECISION & JUDGMENT

In the Matter of Gary E. Bashian, petitioner, v
James V. Brands, etc., et al., respondents.

White Fleischner & Fino, LLP, New York, N.Y. (Gil M. Coogler of counsel), for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Susan Anspach of counsel), for respondent James V. Brands.

Benowich Law, LLP, White Plains, N.Y. (Leonard Benowich of counsel), for respondent Rock City Sound, Inc.

Proceeding pursuant to CPLR article 78 in the nature of prohibition, inter alia, to prohibit the respondent James V. Brands, a Justice of the Supreme Court, Dutchess County, from conducting “any further proceedings that deprive [the] petitioner” of certain rights in an action entitled *Rock City Sound, Inc. v Bashian & Farber, LLP*, pending under Dutchess County Index No., 4525/08.

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

COVELLO, J.P., MILLER, DICKERSON and ENG, 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