

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

D30299
Y/prt

_____AD3d_____

Submitted - February 4, 2011

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2010-05641

DECISION & ORDER

In the Matter of Jeffrey Horowitz, appellant, v
New York City Police Department, respondent.

(Index No. 29743/09)

Jeffrey Horowitz, Brooklyn, N.Y., appellant pro se.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Pamela Seider Dolgow
of counsel; Alyse Fiori on the brief), for respondent.

In a proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent to conduct a further investigation into an alleged criminal offense, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Kings County (Ruchelsman, J.), dated April 28, 2010, which granted the respondent's motion to dismiss the proceeding on the merits and dismissed the proceeding.

ORDERED that the order and judgment is affirmed, without costs or disbursements.

The extraordinary remedy of a writ of mandamus is available in limited circumstances only to compel the performance of a purely ministerial act which does not involve the exercise of official discretion or judgment, and only when a clear legal right to the relief has been demonstrated (*see Klostermann v Cuomo*, 61 NY2d 525, 537; *Matter of Salisbury v Lapidez*, 277 AD2d 319; *Matter of Kusky v Town of Islip*, 266 AD2d 460, 461; *Matter of Bullion v Safir*, 249 AD2d 386; *Matter of Peirez v Caso*, 72 AD2d 797). Here, the petitioner sought to compel the respondent to perform the discretionary act of continuing the investigation of an alleged larceny of a relatively small amount of money that occurred in 2006, in the hope that the investigation may allow the petitioner

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to expose alleged widespread nursing home abuses. Since the conduct which the petitioner sought to compel clearly involves the application of police discretion and judgment, the remedy of mandamus was not available (*see e.g. Matter of Walsh v LaGuardia*, 269 NY 437; *Matter of Okslen Acupuncture, P.C. v Dinallo*, 77 AD3d 451, 452; *Matter of Grzyb v Constantine*, 182 AD2d 942; *Matter of Young v Town of Huntington*, 121 AD2d 641, 642; *Matter of Perazzo v Lindsay*, 30 AD2d 179, 180, *affd* 23 NY2d 764). Accordingly, the Supreme Court properly granted the respondent's motion to dismiss the proceeding on the merits, and dismissed the proceeding.

MASTRO, J.P., SKELOS, ENG and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court