

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

D30500
Y/ct

_____AD3d_____

Submitted - February 8, 2011

JOSEPH COVELLO, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2010-01368

DECISION & ORDER

In the Matter of Richard L. Fuchs, appellant, v
Sandra A. Forster, etc., respondent.

(Index No. 17116/09)

George W. Galgano, White Plains, N.Y., for appellant.

Timothy W. Lewis, Greenburgh, N.Y. (Edward M. Lieberman of counsel), for
respondent.

In a proceeding pursuant to CPLR article 78, inter alia, in the nature of prohibition to prohibit Sandra A. Forster, a Justice of the Town Court, Town of Greenburgh, from enforcing an order dated April 1, 2009, recusing Justice Forster from “any matter in which [the petitioner] may serve as counsel,” the petitioner appeals from a judgment of the Supreme Court, Westchester County (Wetzel, J.), entered December 23, 2009, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

“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 (*see Matter of Brine v Dubinsky*, 115 Misc 2d 572, 574).

March 22, 2011

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The petitioner's remaining contentions are without merit.

Accordingly, the Supreme Court properly denied the petition and dismissed the proceeding.

COVELLO, J.P., LOTT, ROMAN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court