

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

D30549  
W/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

REINALDO E. RIVERA, J.P.  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG  
SANDRA L. SGROI, JJ.

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2011-01522

DECISION & JUDGMENT

In the Matter of John R. Duffy, petitioner, v  
Roger N. Rosengarten, etc., et al., respondents.

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John R. Duffy, Kew Gardens, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Susan Anspach of  
counsel), respondent pro se and for respondent Roger N. Rosengarten.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of mandamus to  
compel the respondent Roger N. Rosengarten, a Justice of the Supreme Court, Queens County, to  
take or to consider taking certain action in connection with an underlying proceeding entitled *Matter  
of Duffy v Holt-Harris*, commenced in the Supreme Court, Queens County, under Index No.  
8050/88.

ADJUDGED that the petition is denied and the proceeding is dismissed on the merits,  
without costs or disbursements.

The extraordinary remedy of mandamus will lie only to compel the performance of a  
ministerial act, and only where there exists a clear legal right to the relief sought (*see Matter of Legal  
Aid Socy. of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to  
demonstrate a clear legal right to the relief sought.

RIVERA, J.P., ANGIOLILLO, ENG and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court

March 22, 2011

MATTER OF DUFFY v ROSENGARTEN