

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

D31753
H/kmb

_____AD3d_____

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2011-03632

DECISION, ORDER & JUDGMENT

In the Matter of Sylvia Oliver, petitioner,
v David Schmidt, respondent.

Sylvia Oliver, Brooklyn, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Charles F. Sanders of
counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, in effect, to compel the respondent to determine a CPLR article 78 proceeding entitled *Matter of Oliver v Rhea*, commenced in the Supreme Court, Kings County, under Index No. 6121/10, and application by the petitioner for poor person relief.

ORDERED that the application for poor person relief is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied; and it is further,

ORDERED that the branch of the petition which is to compel the respondent to determine the CPLR article 78 proceeding entitled *Matter of Oliver v Rhea*, commenced in the Supreme Court, Kings County, under Index No. 6121/10, is dismissed as academic, without costs or disbursements, as the petition in that proceeding was determined by the Supreme Court on March 31, 2011; and it is further,

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

June 14, 2011

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The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when 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.

DILLON, J.P., LEVENTHAL, HALL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court