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

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MARK C. DILLON, J.P.
RANDALL T. ENG
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2012-03637 DECISION, ORDER & JUDGMENT

In the Matter of Rosemary Chinye Okolie Toriola,
petitioner, v Timothy J. Flaherty, etc., respondent.

Rosemary Chinye Okolie Toriola, Corona, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Susan Anspach of counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent, Timothy J. Flaherty, a Justice of the Supreme Court, Queens County, to "comply" with two orders to show cause dated July 31, 2009, and December 28, 2009, respectively, issued in an underlying proceeding entitled *Matter of Toriola v North Shore LIJ*, commenced in that court under Index No. 20556/09, and an order to show cause dated September 2, 2009, issued in a proceeding entitled *Matter of Toriola v Doar,* commenced in this Court under Docket No. 2009-08265, and made returnable in the Supreme Court, Queens County, 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,

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

ORDERED that on the Court's own motion, the petitioner is enjoined from making any additional motions or commencing any additional proceedings in this Court regarding the proceedings entitled *Matter of Toriola v North Shore LIJ*, commenced in the Supreme Court, Queens

County, under Index No. 20556/09, and *Matter of Toriola v Doar*, commenced in this Court under Docket No. 2009-08265, and made returnable in the Supreme Court, Queens County, without leave of this Court.

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.

DILLON, J.P., ENG, AUSTIN and SGROI, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court