

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

D57395  
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WILLIAM F. MASTRO, J.P.  
SHERI S. ROMAN  
JEFFREY A. COHEN  
FRANCESCA E. CONNOLLY, JJ.

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2018-11741

DECISION, ORDER & JUDGMENT

In the Matter of Eric Richmond, petitioner,  
v Donald Scott Kurtz, etc., et al., respondents.

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Eric Richmond, Brooklyn, NY, petitioner pro se.

Barbara D. Underwood, Attorney General, New York, NY (Charles F. Sanders of counsel), for respondents.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of mandamus to compel the respondent Honorable Donald Scott Kurtz, a Justice of the Supreme Court, Kings County, to re-hear oral argument of a motion in an action entitled *P.B. #7, LLC v 231 Fourth Avenue Lyceum, LLC*, pending in that court under Index No. 10035/08, and application by the petitioner for poor person relief.

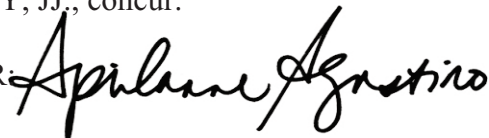
ORDERED that the application for poor person relief is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied; and it is further,

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

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 Legal Aid Socy. of Sullivan County, Inc. v Scheinman*, 53 NY2d 12, 16). The petitioner failed to demonstrate a clear legal right to the relief sought.

MASTRO, J.P., ROMAN, COHEN and CONNOLLY, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court

November 28, 2018

MATTER OF RICHMOND v KURTZ