

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

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**OP 18-01519**

PRESENT: SMITH, J.P., CENTRA, DEJOSEPH, CURRAN, AND WINSLOW, JJ.

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IN THE MATTER OF MONROE COUNTY FEDERATION  
OF SOCIAL WORKERS, IUE-CWA LOCAL 381,  
PETITIONER,

V

MEMORANDUM AND ORDER

THOMAS A. STANDER, J.S.C., AND COUNTY OF  
MONROE, RESPONDENTS.

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TREVETT CRISTO P.C., ROCHESTER (MICHAEL T. HARREN OF COUNSEL), FOR  
PETITIONER.

HARRIS BEACH PLLC, PITTSFORD (JOHN A. MANCUSO OF COUNSEL), FOR  
RESPONDENT COUNTY OF MONROE.

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Proceeding pursuant to CPLR article 78 (commenced in the Appellate Division of the Supreme Court in the Fourth Judicial Department pursuant to CPLR 506 [b] [1]) to compel respondent Thomas A. Stander, J.S.C., to render a judgment in the underlying proceeding.

It is hereby ORDERED that said petition is unanimously dismissed with costs.

Memorandum: Petitioner commenced this original CPLR article 78 proceeding to compel Hon. Thomas A. Stander (respondent), a now retired Supreme Court Justice, to render a judgment in an underlying special proceeding (see CPLR 411). We conclude that the petition must be dismissed. First, the proceeding is untimely. "[W]here, as here, the proceeding is in the nature of mandamus to compel, it 'must be commenced within four months after refusal by respondent, upon demand of petitioner, to perform its duty' " (*Matter of Granto v City of Niagara Falls*, 148 AD3d 1694, 1695 [4th Dept 2017]; see CPLR 217 [1]). Here, petitioner made its demand for a judgment in July 2017, and respondent refused that demand by letter to the parties dated December 21, 2017. This proceeding was commenced in August 2018, well beyond the four-month limitations period. Second, the petition is jurisdictionally defective inasmuch as petitioner never obtained personal jurisdiction over respondent (see CPLR 7804 [c]; *Matter of Hock v Brennan*, 107 AD3d 991, 992 [2d Dept 2013]; *Matter of Taylor v Poole*, 285 AD2d 769, 770 [3d Dept 2001]; *Matter of Lothrop v Edelstein*, 112 AD2d 433, 434 [2d Dept 1985]).

Finally, the petition is wholly without merit inasmuch as petitioner is not entitled to mandamus relief. A writ of mandamus "is

an extraordinary remedy that lies only to compel the performance of acts which are mandatory, not discretionary, and only when there is a clear legal right to the relief sought" (*Matter of Dinsio v Supreme Ct., Appellate Div., Third Jud. Dept.*, 125 AD3d 1313, 1314 [4th Dept 2015], *lv denied* 25 NY3d 908 [2015], *rearg denied* 26 NY3d 1134 [2016]; see *Matter of County of Chemung v Shah*, 28 NY3d 244, 266 [2016]). CPLR 411 provides that a court "shall direct that a judgment be entered determining the rights of the parties to the special proceeding." A CPLR article 78 proceeding terminates in a judgment even if the document appealed from is denominated an order (see *CRP/Extell Parcel I, L.P. v Cuomo*, 27 NY3d 1034, 1037 [2016]; *Matter of McMillian v Lempke*, 149 AD3d 1492, 1493 [4th Dept 2017], *appeal dismissed* 30 NY3d 930 [2017]). Here, respondent issued a "decision and order" in the underlying proceeding; that paper is deemed a judgment, from which petitioner failed to take a timely appeal (see *Matter of Aarismaa v Bender*, 108 AD3d 1203, 1204 [4th Dept 2013]).

Entered: February 8, 2019

Mark W. Bennett  
Clerk of the Court