

Matter of State Division of Human Rights v Berler

2005 NY Slip Op 30125(U)

March 17, 2005

Supreme Court, Suffolk County

Docket Number: 0026288/2004

Judge: Mary M. Werner

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SUPREME COURT - STATE OF NEW YORK
TRIAL/SPECIAL TERM, PART XXXII, SUFFOLK COUNTY

PRESENT: HON. MARY M. WERNER
JUSTICE OF THE SUPREME COURT

MOTION DATE: 12/10/04, 1/20/05

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In the Matter of the Application of
STATE DIVISION OF HUMAN RIGHTS,

MOTION NO: 001, MD
002, MG CASEDISP

Petitioner(s),

GINA M. LOPEZ SUMMA
General Counsel

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

Attorney for Petitioner
By: Michael K. Swirsky, Esq.
One Fordham Plaza
Bronx, New York 10458

- against -

HOWARD BERLER, Justice of the Supreme Court,
State of New York, County of Suffolk,
NORTH SHORE INTERNAL MEDICINE
ASSOCIATES, INC., and ROOKMATIE PERSAUD,

Hon. Howard Berler
Justice of the Supreme Court
Supreme Court, State of New York
County of Suffolk
United States Courthouse and
Federal Building
434 Federal Plaza
Central Islip, New York 11722

Respondent(s).
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NORTH SHORE INTERNAL
MEDICINE ASSOCIATES, INC.
Respondent
c/o State of New York
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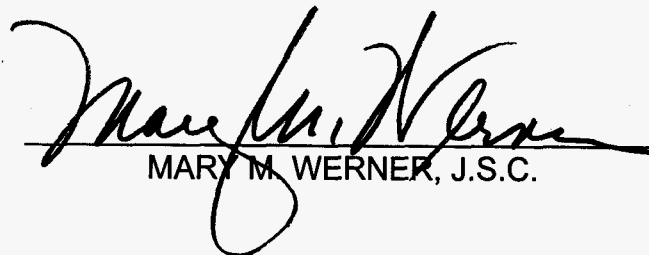
Upon the following papers read on this petition; Notice of Petition and Supporting Papers 1-16 and Exhibits A-K; Notice of Cross-Motion and Supporting Papers 17-27; Answering Affidavits 28-40; it is

ORDERED that upon this petition (seq# 001) for a judgment pursuant to Article 78 annulling the order of the Supreme Court of the State of New York, County of Suffolk (Berler, J.) dated July 9, 2004, the cross-motion (seq #002) for an order dismissing the petition for lack of jurisdiction is granted and the petition is dismissed.

In this action petitioner State Division of Human Rights challenges the authority of Justice Howard Berler to issue an order precluding respondent, Rookmatie Persaud, from offering into evidence in a hearing before petitioner, State Division of Human Rights, documents previously subpoenaed by co-respondent North Shore Internal Medicine, Inc.

A proceeding against a Justice of the Supreme Court must be commenced in the Appellate Division. CPLR § 506 (b) (1). Therefore petitioner has improperly commenced this proceeding in this Court. This is a non-waiveable jurisdictional defect mandating dismissal of the petition. Matter of Hassig v. Nicandri, 2 A.D.3d 1118, 768 N.Y.S.2d 691 (3rd Dep't, 2003); Matter of Santorelli v. District Attorney of Westchester County, 252 A.D.2d 504; 676 N.Y.S.2d 494 (2nd Dep't, 1998).

Dated: 3/17/05


MARY M. WERNER, J.S.C.

FINAL DISPOSITION _____

NON-FINAL DISPOSITION X