

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

D20641  
W/hu

\_\_\_\_\_AD3d\_\_\_\_\_

PETER B. SKELOS, J.P.  
STEVEN W. FISHER  
THOMAS A. DICKERSON  
ARIEL E. BELEN, JJ.

2008-07869

DECISION, ORDER & JUDGMENT

In the Matter of Louise Uccio, petitioner, v  
Debra Silber, et al., respondents.

Louise Uccio, Yonkers, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Susan Anspach of counsel),  
for respondent Debra Silber.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent Debra Silber, an Acting Justice of the Supreme Court, Richmond County, to hold a hearing forthwith on the petitioner's motion for a writ of habeas corpus in an action entitled *Uccio v Argenziano*, pending in the Supreme Court, Richmond County, under Index No. 50822/07, and in the nature of prohibition to prohibit the respondent Debra Silber from otherwise proceeding with that action. Application by the petitioner to prosecute this proceeding as a poor person.

ORDERED that the application to prosecute this proceeding as a poor person is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied as academic; 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 when there exists a clear legal right to the relief sought (*see Matter of Legal Aid Society of Sullivan County v Scheinman*, 53 NY2d 12, 16). In addition, “[b]ecause of its extraordinary nature, prohibition is available only where there is a clear legal right, and then only

October 7, 2008

Page 1.

MATTER OF UCCIO v SILBER

when a court--in cases where judicial authority is challenged--acts or threatens to act either without jurisdiction or in excess of its authorized powers” (*Matter of Holtzman v Goldman*, 71 NY2d 564, 569; *see Matter of Rush v Mordue*, 68 NY2d 348). The petitioner has failed to demonstrate a clear legal right to the relief sought.

SKELOS, J.P., FISHER, DICKERSON and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court