

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

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_____AD3d_____

Argued - January 20, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO, JJ.

2007-08654

DECISION & ORDER

In the Matter of Cosimo Panetta, appellant, v
Richard Carroll, etc., et al., respondents.

(Index No. 24093/06)

Joseph C. Messina, Mamaroneck, N.Y., for appellant.

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick of
counsel), for respondents.

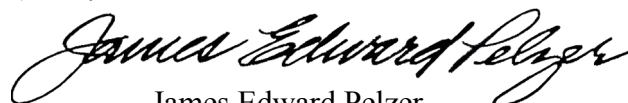
In a proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the issuance of a certificate of occupancy, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Westchester County (Adler, J.), entered July 25, 2007, which granted that branch of the respondents' motion which was to dismiss the proceeding as time-barred and dismissed the proceeding.

ORDERED that the order and judgment is affirmed, with costs.

None of the arguments raised by the petitioner on appeal were raised before the Supreme Court prior to its determination. Thus, the arguments are not properly before this Court on appeal (*see Pekich v James E. Lawrence, Inc.*, 38 AD3d 632). Further, none of the arguments present a question of law which could not have been avoided if raised at the proper juncture. Thus, the arguments may not be reached for the first time on appeal (*id.*). Accordingly, the dismissal of the proceeding should be affirmed.

RIVERA, J.P., DILLON, SANTUCCI and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

May 26, 2009

MATTER OF PANETTA v CARROLL