

Thursday, December 20, 2001

DECISIONS

*First Judicial Department***APPELLATE DIVISION**By Nardelli, J.P., Mazzarelli, Andrias,
Ellerin, Rubin, J.J.

5638. ELENA RUTH SASSOWER, ETC.,
pet-ap, v. COMMISSION ON JUDICIAL CON-
DUCT OF THE STATE OF NEW YORK, res-
res — Order and judgment (one paper),
Supreme Court, New York County (William
Wetzel, J.), entered February 18, 2000,
which, in a proceeding pursuant to CPLR
article 78, *inter alia*, denied petitioner's
recusal motion and her application to
compel respondent Commission to investi-
gate her complaint of judicial misconduct
and granted the motion by respondent
Commission to dismiss the petition, unani-
mously affirmed, without costs.

The petition to compel respondent's
investigation of a complaint was properly
dismissed since respondent's determina-
tion whether to investigate a complaint
involves an exercise of discretion and
accordingly is not amenable to mandamus
(*Mantell v. New York State Commn. on Judi-
cial Conduct*, 277 AD2d 96, *lv denied* 96
NY2d 706). Moreover, inasmuch as peti-
tioner has failed to demonstrate that she
personally suffered some actual or threat-
ened injury as a result of the putatively
illegal conduct, she lacks standing to sue
the Commission (*see, Valley Forge Christ-
ian Coll. v. Am. United for Separation of
Church and State*, 454 US 464, 472; *Soc'y. of
the Plastics Indus. v. County of Suffolk*, 77
NY2d 761, 772; *Matter of Dairylea Coop. v.
Walkley*, 38 NY2d 6, 9).

The fact that the court ultimately ruled
against petitioner has no relevance to the
merits of petitioner's application for his
recusal (*see, Ocasio v. Fashion Inst. of Tech-
nology*, 86 F Supp 2d 371, 374, *aff'd* — F3d
—, 2001 US App LEXIS 9418), and the
court's denial of the recusal application
constituted a proper exercise of its discre-
tion (*see, People v. Moreno*, 70 NY2d 403,
405).

The imposition of a filing injunction
against both petitioner and the Center for
Judicial Accountability was justified given
petitioner's vitriolic ad hominem attacks
on the participants in this case, her volu-
minous correspondence, motion papers
and recusal motions in this litigation and
her frivolous requests for criminal sanc-
tions (*see, Miller v. Lanzisera*, 273 AD2d
866, 869, *appeal dismissed* 95 NY2d 887).

We have considered petitioner's remain-
ing contentions and find them unavailing.

M-4755. SASSOWER, etc. v. COMMISSION
ON JUDICIAL CONDUCT — Motion seeking
leave to adjourn oral argument of this
appeal and for other related relief denied.

This constitutes the decision and order
of the Supreme Court, Appellate Division,
First Department.

EX "A-2"