

Thursday, December 20, 2001

## DECISIONS

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

1  
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.

2  
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).

3  
4  
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, *affd* \_\_\_ 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).

5  
6  
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).

7  
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.