

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office

**September 18 through September 24, 2009**

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11.

**The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.**

EMREY PROPERTIES, INC., MATTER OF v BARANELLO &c., et al.:  
2<sup>ND</sup> Dept. App. Div. order of 4/21/09; reversal; leave to appeal granted by Court of Appeals, 9/15/09; Rule 500.11 review pending;  
MUNICIPAL CORPORATIONS - PERMITS - BUILDING PERMIT - INTENSIFICATION OR ENLARGEMENT OF PRIOR NON-CONFORMING USE - CONVERSION OF SERVICE STATION INTO CONVENIENCE STORE;  
Supreme Court, Nassau County denied the petition and, in effect, dismissed the CPLR article 78 proceeding; App. Div. reversed, granted the petition, annulled the determination of the Town of Oyster Bay Zoning Board of Appeals and remitted the matter to the Town of Oyster Bay Town Board to issue an appropriate building permit to petitioner.

KOWALESKI v NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES:

3<sup>RD</sup> Dept. App. Div. order of 4/2/09; affirmance with dissents; sua sponte examination whether the Appellate Division order appealed from finally determines the proceeding within the meaning of the Constitution;

CIVIL SERVICE - TERMINATION OF EMPLOYMENT - CHALLENGE TO ARBITRATION AWARD DETERMINING THAT TERMINATION WAS APPROPRIATE PENALTY FOR PETITIONER CORRECTION OFFICER'S DISCIPLINARY INFRACTIONS - CLAIM THAT ARBITRATOR EXCEEDED HIS POWER BY IGNORING STRONG PUBLIC POLICY IN CIVIL SERVICE LAW § 75-b TO PROTECT PUBLIC EMPLOYEES FROM RETALIATION - CLAIM THAT DETERMINATION WAS IRRATIONAL, NOT SUPPORTED BY RECORD EVIDENCE, AND ARBITRARY AND CAPRICIOUS;

Supreme Court, Albany County denied petitioner's (1) application pursuant to CPLR 7511 to vacate an arbitration award and (2) motion to amend the petition; App. Div. affirmed.

