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SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 17**

**PRESENT: HON. WILLIAM R. LaMARCA
Justice.**

**In the Matter of the Application of
SELMA FELDMAN, As Executrix of the
Estate of ABE FELDMAN, Deceased,**

**Motion Sequence #1
Submitted August 6, 2008**

Petitioner,

**For an Order of Disclosure for Purposes
of Bringing an Action Pursuant to
CPLR Section 3102(c)**

-against-

INDEX NO: 13308/08

**GREAT NECK MEDICAL ASSOCIATES, LLP,
and ROSEANN M. RUSSO, M.D.,**

Respondents.

The following papers were read on this motion:

Notice of Motion/Order to Show Cause.....1

In this special proceeding, counsel for petitioner, Selma Feldman, As Executrix of the Estate of ABE FELDMAN, Deceased, moves for an order, pursuant to CPLR §3102 (c), permitting pre-action discovery of ABE FELDMAN's medical and hospital records and films for the purpose of investigating a potential action to recover damages for personal injuries on decedent's behalf. An Affidavit of Service reflects that service of the order to show cause and supporting affirmation was made on July 24, 2008, "by depositing a true

copy thereof enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the U.S. Postal Service . . ." to respondents, GREAT NECK MEDICAL ASSOCIATE, LLP. and ROSEANN M. RUSSO, M.D. However, the order to show cause directed personal service "pursuant to CPLR 311-a or CPLR 308(1) or (2) as applicable". CPLR §403(d) permits the Court to grant an order to show cause to be served, in lieu of a notice of petition, in a special proceeding, at a time and in a manner specified therein. Accordingly, service herein by mail is patently defective and the requested relief cannot be granted. It is therefore

ORDERED, that petitioner's motion for pre-action discovery is denied, with leave to renew within thirty (30) days from the date of this order upon application to the Court for a direction with respect to the manner of service.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: November 6, 2008

WILLIAM R. LaMARCA, J.S.C.

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