

# Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed March 25, 2009.

Not final until disposition of timely filed motion for rehearing.

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No. 3D08-2614

Lower Tribunal No. 04-23115

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**Robert Gielchinsky,**  
Petitioner,

vs.

**Vibo Corporation, a Florida corporation, d/b/a General Tobacco,**  
Respondent.

A writ of certiorari to the Circuit Court for Miami-Dade County, David C. Miller, Judge.

Bryon G. Petersen, for petitioner.

Stearns Weaver Miller Weissler Alhadeff & Sitterson, Alan H. Fein, and Kelly R. Melchiondo, for respondent.

Before GERSTEN, C.J., SHEPHERD, J., and SCHWARTZ, Senior Judge.

GERSTEN, C.J.

Robert Gielchinsky (“Gielchinsky”) petitions this Court for writ of certiorari and/or mandamus to quash the trial court’s order denying his motion to dispense with special magistrate services. We grant the petition and quash the order.

Previously, both parties agreed to the appointment of a special magistrate to conduct discovery. After a great deal of discovery under the auspices of the special magistrate, Gielchinsky no longer sought, or agreed to the continuing special magistrate services. Ultimately, Gielchinsky withdrew his consent to have a special magistrate and moved to dispense with the special magistrate's services.

Consent of the parties is required to refer any matter to a special magistrate. See Fla. R. Civ. P. 1.490(c). See also Pesut v. Miller, 773 So. 2d 1185 (Fla. 2d DCA 2000); Miller v. Lifshutz, 558 So. 2d 195 (Fla. 4th DCA 1990). Concomitantly, if a party withdraws his consent, as Gielchinsky did here with good cause due to financial reasons, then it logically follows that the matter is no longer appropriate for a special magistrate.

Accordingly, we grant the petition, and quash the trial court's order denying the motion to dispense with special magistrate services.

Petition granted, order quashed.