

Opinion issued January 28, 2011.



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-11-00059-CV

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IN RE XIAO YU ZHONG, Relator

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Original Proceeding on Petition for Writ of Mandamus

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**MEMORANDUM OPINION**

By petition for writ of mandamus, relator, Xiao Yu Zhong, seeks relief compelling the trial court to set aside the portion of its October 29, 2010 order requiring Zhong to pay \$3,927.50 in attorney's fees as discovery sanctions.<sup>1</sup>

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<sup>1</sup> The underlying case is *Xiao Yu Zhong v. New Yank Sing Chinese Buffet*, No. 2009-37883, in the 190th Judicial District Court of Harris County, Texas, the Hon. Patricia J. Kerrigan, presiding.

Discovery sanctions in the form of an award of attorney's fees can properly be reviewed on appeal from a final judgment and, thus, generally are not subject to mandamus. *See* TEX. R. CIV. P. 215.2(b)(8); *Braden v. Downey*, 811 S.W.2d 922, 928–29 (Tex. 1991) (holding that adequate remedy by appeal exists for monetary discovery sanctions when imposition of sanctions does not threaten party's continuation of litigation); *see also TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913, 919–20 (Tex. 1991) (citing *Braden*). Zhong has not shown that the imposition of monetary sanctions threatens his continuation of the litigation, and the record does not support such a conclusion. *See Braden*, 811 S.W.2d at 928–29; *see also In re Supportkids, Inc.*, 124 S.W.3d 804, 808–09 (Tex. App.—Houston [1st Dist.] 2003, orig. proceeding) (holding that party had adequate remedy by appeal from trial court's award of \$10,000 in attorney's fees).

We **deny** the petition for writ of mandamus. All outstanding motions are dismissed as moot.

**Per Curiam**

Panel consists of Justices Keyes, Sharp, and Massengale.