

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Peter H. Moulton
Administrative Order

In the Matter of the Application of
HOWARD L. GROSSMAN ,

Petitioner,

- v -

INDEX NO. 100199/2015

BENJAMIN W. LAWSKY, Superintendent of
Financial Services New York Banking
Department, et al.,

Respondents.

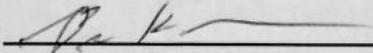
Administrative Order:

By letter dated September 3, 2015, counsel for petitioner requests that this proceeding be transferred from I.A.S. Part 6 (Lobis, J.) to the Commercial Division pursuant to Uniform Rule 202.70 (e). By letter dated September 11, 2015, respondents object to a transfer.

On February 9, 2015, petitioner filed a Request For Judicial Intervention (RJI) in connection with his Article 78 petition. Uniform Rule 202.70 (e) places a 10-day time limit on these transfer applications, measured from the receipt of a copy of the RJI. As the time limit is strictly construed, petitioner's request is untimely. Further, as petitioner's counsel filed the RJI, he cannot request a transfer because the right to appeal an RJI designation is limited to "any other party." See Uniform Rule 202.70 (e).

In his letter, petitioner's counsel states that petitioner filed a plenary class action in July 2015 with almost identical facts as to those alleged in this proceeding, and he believes both should be assigned to the Commercial Division in the interest of judicial economy. To date, no RJI has been filed in the class action. If the class action is truly related to this Article 78 proceeding, it must be marked as related when the RJI is filed to ensure both matters are before the same judge. If there is dispute between the parties as to whether these matters are truly related, the parties may raise this issue with the assigned Justice, and such determination belongs, in the first instance, to him or her (see Section I[B] of the "Summary of Courthouse Procedures"). Filing this later class action lawsuit has no effect on the timeliness of this request and the interest of judicial economy is not in jeopardy as no RJI has been filed in the class action, allowing for the opportunity to mark it related to this proceeding. Thus, the request to transfer this proceeding into the Commercial Division is denied.

Dated: September 11, 2015

ENTER:  , A.J.

HON. PETER H. MOULTON
J.S.C.