

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D30629
Y/prt

_____AD3d_____

Submitted - February 10, 2011

MARK C. DILLON, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
JEFFREY A. COHEN, JJ.

2010-03595

DECISION & ORDER

In the Matter of Golden's Bridge Fire District,
appellant, v Westchester County Department of
Health/Board of Health, respondent.

(Index No. 18039/09)

Covey, Roberts, Corliss & Carmody-Roberts, Katonah, N.Y. (George Hunter Roberts of counsel), for appellant.

Robert F. Meehan, County Attorney, White Plains, N.Y. (Thomas G. Gardiner, Sr., of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the Westchester County Department of Health/Board of Health dated April 16, 2009, which, based on a stipulation entered into between the parties before a hearing officer, inter alia, found that the petitioner violated the Public Health Law and assessed a civil monetary penalty in the sum of \$4,700, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Westchester County (Lorenzo, J.), entered March 1, 2010, which, inter alia, granted those branches of the respondent's motion which were pursuant to CPLR 3211(a)(1), (7), and (8) and 7804(f) to dismiss the proceeding, and dismissed the proceeding.

ORDERED that the order and judgment is affirmed, with costs.

The service of the notice of petition and petition upon the respondent's records access officer did not constitute proper service under either CPLR 311(a)(4) or 312. Accordingly, the

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service in this case was ineffective to acquire personal jurisdiction over the respondent (*see Matter of Randazzo v Neufeld*, 277 AD2d 387, 388; *Matter of J & G Cent. Auto Collision v Zoning Bd. of Appeals of Inc. Vil. of Val. Stream*, 210 AD2d 407; *Matter of Perreten v Westchester County Bd. of Health*, 146 AD2d 779, 779-780; *Matter of Heinisch v Goehringer*, 121 AD2d 721; *Matter of Franz v Board of Educ. of Elwood Union Free School Dist.*, 112 AD2d 934; *but see Matter of Long Is. Teen Challenge, Inc. v Town of Coeymans*, 57 AD3d 1344; *Matter of De Russo v City of Albany Bd. of Zoning Appeals*, 147 AD2d 836).

The parties' remaining contentions are without merit, are improperly raised for the first time on appeal, or have been rendered academic in light of our determination.

DILLON, J.P., FLORIO, DICKERSON and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court