

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1179

TP 16-00683

PRESENT: CENTRA, J.P., CARNI, NEMOYER, CURRAN, AND TROUTMAN, JJ.

IN THE MATTER OF LARBI ADOUI, DOING BUSINESS
AS THE CORNER STORE, PETITIONER,

V

MEMORANDUM AND ORDER

COMMISSIONER OF PERMIT AND INSPECTION SERVICES
AND CITY OF BUFFALO, RESPONDENTS.

SHAW & SHAW, P.C., HAMBURG (JACOB A. PIORKOWSKI OF COUNSEL), FOR
PETITIONER.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Erie County [Tracey A. Bannister, J.], entered April 13, 2016) to review a determination of respondent Commissioner of Permit and Inspection Services. The determination revoked the food store license and restaurant take-out license of petitioner.

It is hereby ORDERED that the order insofar as it transferred the proceeding to this Court is unanimously vacated without costs, and the matter is remitted to Supreme Court, Erie County, for further proceedings in accordance with the following memorandum: In this CPLR article 78 proceeding transferred to this Court pursuant to CPLR 7804 (g), petitioner seeks review of a determination of respondent Commissioner of Permit and Inspection Services to revoke petitioner's food store license and restaurant take-out license. We note that respondents did not file and serve an answer before the matter was transferred, and they did not subsequently do so "within 25 days of filing and service of the order of transfer" (22 NYCRR 1000.8 [a]). However, "[s]hould the body or officer fail either to file and serve an answer or to move to dismiss, the court may either issue a judgment in favor of the petitioner or order that an answer be submitted" (CPLR 7804 [e]). In light of this State's policy against annulling an administrative body's determination on the basis of a failure to answer the petition (*see generally Matter of Abrams v Kern*, 35 AD2d 971, 971), we vacate the order insofar as it transferred the proceeding to this Court and remit the matter to Supreme Court with instructions to direct respondents to file an answer with the complete administrative record, and for further proceedings in accordance with CPLR 7804 (g) as may be appropriate following joinder of issue.

Entered: February 3, 2017

Frances E. Cafarell
Clerk of the Court