

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

**PRESENT: Hon. Jacqueline Silbermann
Administrative Order**

DANIELA MANAS,

Plaintiff,

- v -

INDEX NO. 602150/2006

**VMS ASSOCIATES, LLC, d/b/a VIOLY AND
COMPANY, and VIOLY McCAUSLAND-SEVE,**

Defendants.

Administrative Order:

By letter dated November 16, 2006, counsel for plaintiff has applied for a transfer of this action from I.A.S. Part 36 (Ling-Cohan, J.) to the Commercial Division pursuant to Uniform Rule 202.70. The Court has not received an objection to plaintiff's application.

Defendants filed a Request for Judicial Intervention (RJI) on October 25, 2006 in connection with their motion to dismiss portions of the complaint. Defendants' counsel did not designate the case as a commercial matter, rather he checked the box for "Other Matters - Contract." The action was thus assigned to a non-commercial part.

Plaintiff's counsel contends that the action should be reassigned to the Commercial Division, because his client seeks damages in excess of \$1.2 million, and the case involves claims of breach of contract, fraud and misrepresentation in connection with plaintiff's employment with defendants as an investment banker.

Uniform Rule 202.70(e) places a 10-day time limit on these applications, measured from the "receipt" of a copy of the RJI. According to defendants' affidavit of service, the motion was served on plaintiff's counsel on October 16th by regular mail. Plaintiff had 10 days from the receipt of the RJI to make this application or until October 31st (adding 5 days for service by mail pursuant to CPLR 2103[b][2]). Plaintiff's counsel's mistaken belief that his designation of the case as a "Commercial - Contract" matter on the Index Number Cover Sheet controlled the assignment of the case to the Commercial Division does not excuse the untimeliness.

Accordingly, the request is denied as untimely.

Dated: November 22, 2006

ENTER: _____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION