

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

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_____AD3d_____

Argued - December 12, 2017

RUTH C. BALKIN, J.P.
JOHN M. LEVENTHAL
SYLVIA O. HINDS-RADIX
JOSEPH J. MALTESE, JJ.

2016-10657

DECISION & ORDER

In the Matter of Anthony Reillo, appellant, v New
York State Thruway Authority, respondent.

(Index No. 57712/16)

Collins, Fitzpatrick & Schoene, LLP, White Plains, NY (Ralph F. Schoene of
counsel), for appellant.

Eric T. Schneiderman, Attorney General, New York, NY (Anisha S. Dasgupta and
Mark H. Shawhan of counsel), for respondent.

Appeal from a judgment of the Supreme Court, Westchester County (Rolf M.
Thorsen, J.), dated September 8, 2016. The judgment denied a petition filed pursuant to CPLR
article 78 and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The respondent New York State Thruway Authority (hereinafter the Thruway
Authority) hired the petitioner as a maintenance worker in April 2005. In February 2015, the
Thruway Authority charged the petitioner with disciplinary violations arising from incidents in
September and December of 2014. The parties entered into a stipulation in settlement of the charges.
The petitioner agreed to a one-year period of probation during which the Thruway Authority would
have discretion to terminate his employment for any similar misconduct, and the determination that
the petitioner had engaged in any such misconduct was to be made at the sole discretion of the
Thruway Authority. In February 2016, the Thruway Authority terminated the petitioner's
employment based on incidents that occurred on December 29, 2015, and December 30, 2015. The

March 28, 2018

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petitioner then commenced this proceeding to direct the Thruway Authority to reinstate him to his former position and to recover lost income. The Supreme Court denied the petition and dismissed the proceeding, and the petitioner appeals.

Contrary to the petitioner's contention, the Supreme Court properly determined that he failed to comply with CPLR 7804(c). CPLR 7804(c) provides that when a CPLR article 78 proceeding is commenced against a "state body or officers" by a notice of petition, the notice of petition must be served upon the Attorney General. Here, upon conducting a "particularized inquiry" into the nature of the Thruway Authority and the statute claimed to be applicable to it (*John Grace & Co. v State Univ. Constr. Fund*, 44 NY2d 84, 88; see *Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 387), we conclude that the Thruway Authority is a "state body" for the purposes of CPLR 7804(c) (see *Easley v New York State Thruway Auth.*, 1 NY2d 374, 376). Accordingly, since the Attorney General was not served, the court properly denied the petition and dismissed the proceeding.

BALKIN, J.P., LEVENTHAL, HINDS-RADIX and MALTESE, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court