

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

D55865  
G/htr

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Submitted - March 8, 2018

REINALDO E. RIVERA, J.P.  
SANDRA L. SGROI  
COLLEEN D. DUFFY  
ANGELA G. IANNACCI, JJ.

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2016-04035

DECISION & ORDER

In the Matter of Ened Gjelij, appellant, v Janet  
DiFiore, etc., respondent.

(Index No. 3655/15)

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Patrick Michael Megaro, Forest Hills, NY, for appellant.

Anthony A. Scarpino, Jr., District Attorney, White Plains, NY (John M. Collins, John  
J. Carmody, and Steven A. Bender of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to compel respondent to furnish certain records pursuant to Public Officers Law § 84 *et seq.*, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Westchester County (Susan Cacace, J.), entered February 24, 2016. The order and judgment granted that branch of the motion of respondent Westchester County District Attorney which was pursuant to CPLR 3211(a)(5) to dismiss the petition filed December 7, 2015, and, in effect, dismissed the proceeding.

ORDERED that the order and judgment is affirmed, without costs.

On March 18, 2015, respondent denied the petitioner's request under the Freedom of Information Law (Public Officers Law art 6; hereinafter FOIL) for certain records pertaining to his criminal conviction. The petitioner challenged the denial of his request, and, on May 13, 2015, respondent rejected the challenge. On or about September 11, 2015, the petitioner commenced an article 78 proceeding in this Court seeking to compel respondent to grant his request. By decision and order on motion dated December 3, 2015, this Court transferred the proceeding to the Supreme Court, Westchester County. On December 7, 2015, the petitioner filed a second, separate proceeding pursuant to CPLR article 78 in the Supreme Court, Westchester County, seeking the same relief as in the previously filed proceeding. Respondent moved, inter alia, pursuant to CPLR 3211(a)(5) to

July 5, 2018

Page 1.

MATTER OF GJELAJ v DiFIORE

dismiss the petition filed December 7, 2015, on the ground of the statute of limitations. The Supreme Court granted that branch of the motion and, in effect, dismissed the proceeding. The petitioner appeals.

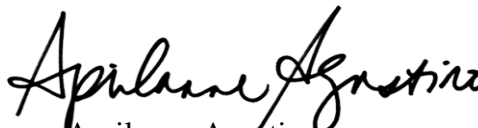
A proceeding pursuant to CPLR article 78 must be commenced within four months after the determination to be reviewed becomes final and binding on the petitioner (*see* CPLR 217[1]; *St. John's Riverside Hosp. v City of Yonkers*, 151 AD3d 786, 788; *Matter of Singh v Board of Educ. of Yonkers School Dist.*, 127 AD3d 874, 875).

We agree with the Supreme Court's determination that the petition filed December 7, 2015, was untimely (*see* CPLR 217[1]). Accordingly, that branch of respondent's motion which was to dismiss the petition filed December 7, 2015, was properly granted.

We note that the Supreme Court did not address that branch of respondent's motion which was to dismiss the separate petition filed on or about September 11, 2015.

RIVERA, J.P., SGROI, DUFFY and IANNACCI, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court