

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

D56865  
T/htr

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 13, 2018

MARK C. DILLON, J.P.  
JOHN M. LEVENTHAL  
ROBERT J. MILLER  
HECTOR D. LASALLE, JJ.

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2016-00245

DECISION & ORDER

In the Matter of Yonkers Firefighters, etc., et al.,  
appellants, v City of Yonkers, respondent.

(Index No. 3914/14)

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Archer, Byington, Glennon and Levine, LLP, Melville, NY (John H. Byington of counsel), for appellants.

Michael V. Curti, Corporation Counsel, Yonkers, NY (Coughlin & Gerhart, LLP [Paul J. Sweeney], of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the City of Yonkers dated August 22, 2014, terminating the employment of the petitioner Christopher Giardini, the petitioners appeal from an order of the Supreme Court, Westchester County (Susan Cacace, J.), dated November 25, 2015. The order, insofar as appealed from, denied the petitioners' motion pursuant to CPLR 3217 to discontinue the proceeding.

ORDERED that the appeal from the order is dismissed, without costs or disbursements.

The appeal from the order denying the petitioners' motion to discontinue this proceeding must be dismissed. An intermediate order made in a CPLR article 78 proceeding is not appealable as of right (*see* CPLR 5701[b][1]; *Matter of Dicker v Glen Oaks Vil. Owners, Inc.*, 153 AD3d 1398; *Matter of Sweeney v Schneider*, 123 AD3d 1049, 1049-1050), and the possibility of taking a direct appeal therefrom terminated with entry of judgment in the proceeding (*see Matter of Yonkers Firefighters v City of Yonkers*, \_\_\_\_\_ AD3d \_\_\_\_\_ [Appellate Division Docket No. 2016-02470; decided herewith]; *Matter of Aho*, 39 NY2d 241). The issues raised on the appeal from the


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order are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501[a][1]).

DILLON, J.P., LEVENTHAL, MILLER and LASALLE, JJ., concur.

ENTER:   
Aprilanne Agostino  
Clerk of the Court