

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

1067

CA 21-00675

PRESENT: CENTRA, J.P., LINDLEY, NEMOYER, AND BANNISTER, JJ.

IN THE MATTER OF ROTH & ROTH, LLP,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

CITY OF ROCHESTER, RESPONDENT-APPELLANT.

TIMOTHY R. CURTIN, CORPORATION COUNSEL, ROCHESTER (JOHN M. CAMPOLIETO OF COUNSEL), FOR RESPONDENT-APPELLANT.

ROTH & ROTH, LLP, NEW YORK CITY (ELLIOT D. SHIELDS OF COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (James J. Piampiano, J.), entered December 29, 2020 in a proceeding pursuant to CPLR article 78. The judgment, among other things, granted the petition to compel responses to a Freedom of Information Law request.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by vacating the third through sixth and eighth through eleventh decretal paragraphs and as modified the judgment is affirmed without costs.

Memorandum: In this proceeding pursuant to CPLR article 78, respondent appeals from a judgment that, inter alia, granted in part a petition seeking to compel responses to petitioner's application pursuant to the Freedom of Information Law ([FOIL] Public Officers Law § 84 et seq.). In the decision upon which that judgment is based, Supreme Court granted the petition "to the extent that" it sought to compel respondent to produce copies of "all records" set forth in the FOIL request that "do not fall within any of the exemptions of Public Officers Law § 87," found that respondent "lacked a reasonable basis for denying the . . . FOIL request," granted petitioner's request for attorney's fees and costs, and otherwise denied "[a]ny additional relief" sought by the parties. The judgment, by contrast, included several paragraphs granting additional relief to petitioner. We agree with respondent that the judgment impermissibly expanded the relief granted to petitioner in the decision. Where, as here, "there is a conflict between the order [or judgment] and the decision upon which it is based, the decision controls . . . , and the order [or judgment] 'must be modified to conform to the decision' " (*Del Nero v Colvin*, 111 AD3d 1250, 1253 [4th Dept 2013]; see *Matter of Calm Lake Dev. v Town Bd. of Town of Farmington*, 213 AD2d 979, 980 [4th Dept 1995]).

We therefore modify the judgment accordingly.

Entered: December 23, 2021

Ann Dillon Flynn
Clerk of the Court