

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

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

NATIONAL PROMOTIONS ASSOCIATES, LLC,

Plaintiff,

- v -

INDEX NO. 116916/2006

GOPOSTER LLC, ALAN WOLAN, NATALIA
SWAN, JUAN CARLOS BERMUDEZ, GOCARD
LLC and JOHN DOES 1 through 50,

Defendants.

Administrative Order:

By letter dated March 2, 2007, counsel for defendants request that this action be transferred to the Commercial Division pursuant to Uniform Rule 202.70. Counsel for plaintiff objects on the ground that defendants' request is untimely and because transfer is sought only as a ploy to further delay resolution of the matter.

Uniform Rule 202.70(e) provides that an application to transfer an action into the Commercial Division must be made by letter application to the "Administrative Judge" within 10 days of the party's "receipt" of a copy of the Request for Judicial Intervention (RJI). The RJI was served by plaintiff's counsel, by regular mail, on February 16th in connection with a motion to strike defendants' answer for failure to provide discovery. Defendants' counsel contends that her application is timely because it was submitted within fifteen days of service by mail of the RJI, presumably relying on the extra five days afforded by CPLR 2101(b)(2). However, that statute only applies where a period of time prescribed by law is measured from the service of a paper and service is made by mail. Here, Uniform Rule 202.70(e) is clear that the application must be made within 10 days of the party's "receipt" of the RJI, thus CPLR 2101(b)(2) is inapplicable. Public Serv. Mut. Ins. Co. v Zucker, 225 AD2d 308 (1st Dept 1996). Defendants' counsel does not specify when the RJI was received by her office, and thus I can only conclude that the application is untimely.

In addition, the request was not directed to the proper recipient within the 10-day

period. Plaintiff mailed her application to the Hon. Jonathan Lippman, the Chief Administrative Judge of the New York State Unified Court System, as opposed to myself, the Administrative Judge of this court.

For these reasons, I find that defendants' application is untimely and is denied.

Dated: March 20, 2007

ENTER: _____, A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION