

<b>Matter of Solomon v Department of Building of City of New York</b>
2007 NY Slip Op 34380(U)
January 29, 2007
Supreme Court, New York County
Docket Number: 109661/06
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON  
Justice

PART 55

Index Number : 109661/2006  
ZANE & RUDOFKY  
vs  
DEPT OF BUILDINGS OF THE CITY  
Sequence Number : 002  
REARGUMENT/RECONSIDERATION

INDEX NO. \_\_\_\_\_  
MOTION DATE 1/12/07  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1-3  
4-5  
6

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *is denied in accordance with the annexed memorandum decision and order.*

**FILED**  
JAN 30 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 1/29/07

JANE S. SOLOMON  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 55

-----X

In the Matter of the Application of  
JEFFREY SOLOMON and ZANE and RUDOFISKY,  
  
Petitioners,

-against-

INDEX NO. 109661/06

THE DEPARTMENT OF BUILDINGS OF THE  
CITY OF NEW YORK, and PATRICIA  
LANCASTER as Commissioner of  
Buildings of the City of New York,

DECISION AND ORDER

Respondents,

For a Judgment Pursuant to  
CPLR Article 78.

**FILED**  
JAN 30 2007  
COUNTY OF NEW YORK

-----X

JANE S. SOLOMON, J.

Petitioners move, pursuant to CPLR 2221 (a), to reargue this court's decision and judgment, dated October 25, 2006 and entered on November 13, 2006, to the extent that it denied that branch of their Article 78 petition which contended that respondent had acted arbitrarily in denying petitioner Solomon a master electrician license on the ground that he had not been adequately supervised for seven and a half years.

Petitioners contend that this court mistook the dissent in Amabile v Simins (51 AD2d 930 [1st Dept 1976]) for the Court's opinion, and that this proceeding is governed by an unbroken line of authority which includes, in addition to Amabile, Sullivan v Miele (226 AD2d 308 [1st Dept 1996]) and Matter of Hammerl v

Mavis (41 AD2d 724 [1st Dept 1973], affd on op below 34 NY2d 579 [1974]). In petitioners' opinion, all of these cases hold that, prior to a change in the Electrical Code in 2002, the Department of Buildings could not inquire as to the adequacy of supervision that had been given to an applicant for a master electrician license during the required seven-and-a-half-year period of prior experience.

This court was well aware that the opinion of the Court in Amabile had affirmed the decision of the court below, and that that decision had held that Mr. Amabile should not be held accountable for the fact that his supervisor was only in New York sporadically. In addition, the trial court had noted that Mr. Amabile was being held to a standard that was not imposed upon other applicants for a master electrician license. It is for that reason that this court cited Amabile with a but for signal. The cases to which this court contrasted Amabile were Diaz v Paduano (NYLJ, May 23, 1953, p 1727, col 6 [Sup Ct, NY County 1953]) and Sullivan v Miele (226 AD2d 308, supra). As to Diaz, petitioners seem to object only that that case has not otherwise been cited, other than in the dissenting opinion in Amabile. However, petitioners do not contend that this court's view of what Diaz holds is erroneous.

Petitioners' argument to the contrary notwithstanding, Sullivan v Miele does not hold that the Department of Buildings

may not assess the quality of an electrician's supervision during the seven-and-a-half years' experience that are required, but only that it may not require that an applicant for a master electrician license have been employed by his or her supervisor. The Sullivan Court expressly noted that there was evidence that Mr. Sullivan had been supervised by a master electrician over the required seven-and-a-half-year period. This court took that statement in the Sullivan opinion not as stray dicta, but as a predicate of the Court's holding. This court also took it as self-evident that if supervision over the relevant time period may be required, then the nature of such supervision may be assessed. Otherwise, the requirement would be meaningless.

This court did not cite Matter of Hammerl v. Mavis (41 AD2d 724, supra), although petitioners relied upon it, because that case is silent on the issue of supervision. It does not hold, as petitioners would have it, that the Department of Public Works could not assess the quality of the supervision that an applicant for a master electrician license has received, but, rather, that, because any installation of electrical wiring is, perforce, an installation of new wiring, the Department could not deny the petitioner a license solely on the ground that his experience had consisted of installation of wiring in existing, rather than in new, buildings.

Petitioners also take issue with this court's

determination that petitioner Solomon had no due process right to a formal hearing, or to written rules governing the consideration of his application. Petitioners point out that Solomon is not simply an applicant for a master electrician license, as this court stated in its decision, but also a person who has worked for 25 years as an installer of boilers, a trade for which, until a few years ago, a boiler installer license sufficed. There appears, now, to be a question as to whether Solomon can continue performing this work without having a master electrician license. The court is not unsympathetic to Solomon, but the fact is that, while petitioners state that they raised this issue in certain other proceeding(s), they did not raise it here. A motion for reargument may only raise matters that the court may have overlooked or misapprehended, not a matter that was not raised before the court.

Accordingly, it hereby is

ORDERED that the motion for reargument is granted, and that, upon reargument, the court adheres to its prior decision.

Dated: 1/29/07

ENTER:

*J.S.*  
 \_\_\_\_\_  
 J.S.C.

**FILED**

JAN 30 2007

NEW YORK  
 COUNTY CLERK

GARY B. SOLOMON