

**Matter of DeBlasio v City of New York**

2009 NY Slip Op 32844(U)

December 3, 2009

Supreme Court, New York County

Docket Number: 113654/03

Judge: Michael D. Stallman

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

Index Number : 113654/2003

**DEBLASIO, MICHAEL**

vs.

**CITY OF NEW YORK**

SEQUENCE NUMBER : 010

REARGUMENT/RECONSIDERATION

PART 7

\_\_\_\_\_  
lice  
\_\_\_\_\_

INDEX NO. 113654/03

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...	<u>1-2</u>
Answering Affidavits -- Exhibits _____	<u>3</u>
Replying Affidavits _____	<u>4</u>

Cross-Motion:     Yes     No

Upon the foregoing papers, it is ordered that this motion *by petition to rescind is decided as per the attached*

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

**FILED**

DEC 07 2009

NEW YORK  
CLERK'S OFFICE

**MICHAEL D. STALLMAN**  
J.S.C.

Dated: 12/3/09

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

Check one:     FINAL DISPOSITION     NON-FINAL DISPOSITION

Check if appropriate:     DO NOT POST     REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 7

-----x  
In the Matter of the Application of

MICHAEL DeBLASIO and THE CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION,

Petitioner,

Index No. 113654/03

For a judgment pursuant to Article 78  
of the Civil Practice Law and Rules and  
a declaratory judgment action,

Decision and Order

-against-

THE CITY OF NEW YORK and THE NEW YORK  
CITY EMPLOYEES' RETIREMENT SYSTEM,

Respondents.

-----x

**FILED**  
DEC 07 2009  
NEW YORK  
COUNTY CLERK'S OFFICE

**Hon. Michael D. Stallman, J.:**

In this Article 78 proceeding, petitioner Michael DeBlasio moves, pursuant to CPLR 2221, for an order granting reargument of certain portions of this court's decision, dated April 13, 2009, which directed respondents to recalculate DeBlasio's pension, retroactive to March 29, 2003, so as to include his 5<sup>th</sup> and 10<sup>th</sup> year longevity earnings in the computation of his final average salary.

CPLR 2221(d)(2) provides that a motion for leave to reargue must "be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion...." See *Toukara v Fernicola*, 63 AD3d 648, 649 (1st Dept 2009).

In the underlying decision, this court found that respondents

erred in not including DeBlasio's 5<sup>th</sup> and 10<sup>th</sup> year longevity earnings in the computation of his final average salary. Respondents had excluded such earnings because DeBlasio's 20 years of credited service toward his pension were not entirely as a correction officer. DeBlasio now argues that the court erred by failing to direct respondents to recalculate his pension retroactively to February 1, 2002, which is the date on which DeBlasio retired.

It is undisputed that, at the time the instant motion was submitted, the Amended Petition requested that respondents recalculate DeBlasio's pension retroactive to March 29, 2003. However, on August 7, 2008, this court granted, without opposition, petitioner's motion to amend the petition to change that date to February 1, 2002. Therefore, upon reargument, the court directs respondents to recalculate DeBlasio's pension retroactive to February 1, 2002.

DeBlasio also argues that the court erred by failing to award him interest on his retroactive pension payments. This is unpersuasive.

This court has previously held that a party is not entitled to interest on retroactive retirement benefits, absent an express or implied contract which provides for such interest, or unless such interest is mandated by statute. *Lehrer v The City of New York*,

Sup Ct, NY County, June 3, 2003, Stallman, J., index No. 118503/01, citing *New York State Thruway Auth. v Hurd*, 25 NY2d 150, 158 (1969); *Ittleman v City of New York*, 286 NY 150 (1941); *Matter of Brophy v Prudential Ins. Co. of Am.*, 246 App Div 871 (3d Dept), affd, 271 NY 644 (1936); see *Matter of Levanis v New York City Employees' Retirement Sys.*, 278 AD2d 327 (2d Dept 2000).

Here, it is undisputed that Article 14 of the Retirement and Social Security Law, which governs DeBlasio's pension benefits, does not provide for payment of interest in connection with an award of retroactive pension benefits. Moreover, there is no allegation that an express or implied contract exists between respondents and either DeBlasio or the Correction Officers' Benevolent Association, which provides for such interest payments.

Furthermore, DeBlasio has not demonstrated that respondents have wrongfully withheld the retroactive payments or delayed in making such payments. See *Matter of Levanis v New York City Employees' Retirement Sys.*, 278 AD2d 327, *supra*. Therefore, upon reargument, the court adheres to its original decision, dated April 13, 2009, insofar as it declines to award interest on the retroactive pension benefits.

Accordingly, it is

ORDERED that petitioner's motion for reargument is granted; and it is further

ORDERED that respondents are directed to recalculate petitioner's pension retroactive to February 1, 2002; and it is further

ORDERED that the court otherwise adheres to its original decision, dated April 13, 2009.

DATED: December 3, 2009

New York, NY

ENTER:



J.S.C.

**FILED**  
DEC 07 2009  
NEW YORK  
COUNTY CLERKS OFFICE