

**Matter of Wesley v New York City Dept. of Educ.**

2011 NY Slip Op 31428(U)

May 25, 2011

Sup Ct, NY County

Docket Number: 400030/2009

Judge: Paul G. Feinman

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

PRESENT: HON. PAUL G. FEINMAN

PART 12

Index Number : 400030/2009  
WESLEY, MICHAEL DONNEL  
vs.  
TWEED COURT HOUSE  
SEQUENCE NUMBER : 005  
OTHER RELIEFS

INDEX NO. 400030/2009  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 005  
MOTION CAL. NO. \_\_\_\_\_

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

**FILED**

Cross-Motion:  Yes  No

MAY 27 2011

Upon the foregoing papers, it is ordered that this motion

NEW YORK  
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE WITH  
THE ANNEXED DECISION AND ORDER.**

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

Dated: May 25, 2011

Paul G. Feinman

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 12

-----X

In the Matter of the Application of  
MICHAEL DONNEL WESLEY,  
Petitioner,

Index No. 400030/2009

Mot. Seq. Nos. 005 & 006

**DECISION & ORDER**

- against -

NEW YORK CITY DEPARTMENT OF  
EDUCATION, TWEED COURT HOUSE  
52 CHAMBERS STREET, NEW YORK, NY 10007  
CHANCELLOR JOEL KLEIN,  
THE NEW YORK CITY DEPARTMENT OF  
EDUCATION, REGIONS 9 AND 10 OPERATIONS  
CENTER, 333 SEVENTH AVENUE, 8<sup>TH</sup> FLOOR,  
NEW YORK, NEW YORK 10001  
DIRECTOR ROBERT WILSON,  
Respondents.

**FILED**

**MAY 27 2011**

NEW YORK  
COUNTY CLERK'S OFFICE

-----X

**For Petitioner:**  
Michael Donnel Wesley, *pro se*  
545 West 126<sup>th</sup> Street, Apt. 11-B  
New York, New York 10027  
(347) 767-7825

**For Respondents:**  
Michael A. Cardozo, Esq.  
Corporation Counsel of the City of New York  
By: Kimberly Conway, Esq.  
100 Church Street  
New York, New York 10007

**Papers considered in review of this motion:**

Motion Sequence Number 005:

Papers	Number
Petitioner's Notice of Motion & Supporting Affidavit with Exhibits	1
Respondents' Affirmation in Opposition	2

Motion Sequence Number 006:

Papers	Number
Petitioner's Notice of Motion & Supporting Affidavit with Exhibits	1

**PAUL G. FEINMAN, J.:**

Motion sequence number 005 and 006 are joined for purposes of this decision and order.

In this article 78 proceeding, petitioner seeks to compel respondent, the New York City

Department of Education, to provide him an official record confirming his graduation from Park West Evening High School in 1996, and to compel respondent to verify the authenticity of a document claimed to be his high official diploma (CPLR 7803[1]). By motion bearing sequence number 005, petitioner seeks an order requiring respondent to pay to petitioner sanctions in the amount of \$29,250.00 for its alleged failure to comply with the court's order of August 4, 2010. Respondent opposes. By motion bearing sequence number 006, petitioner seeks an order requiring respondent to pay to petitioner sanctions in the amount of \$34,500.00. No opposition has been asserted by respondent related to this motion. For the reasons provided below, petitioner's motions bearing sequence numbers 005 and 006 are denied in their entirety.

This is an article 78 proceeding in which petitioner seeks to compel respondent, the New York City Department of Education, to provide him an official record confirming his graduation from Park West Evening High School (PWEHS) in 1996, and to compel respondent to verify the authenticity of a document claimed to be his high school diploma, pursuant to CPLR 7803 (1). Petitioner's unsuccessful efforts, dating back to 2006, to obtain verification of his high school graduation were described in detail in a previous decision of this court and need not be repeated (*see Matter of Wesley v New York City Dept. of Educ.*, 2011 NY Slip Op 30392 [U] [Sup Ct, NY County, Feb. 16, 2011]).

The petition was initially held in abeyance at respondent's request while it conducted a search for petitioner's records (*Matter of Wesley v New York City Dept. of Educ.*, Interim Dec. & Order, Sup Ct, NY County, April 3, 2009, Feinman, J., at 2). Respondent eventually opposed petitioner's application on the ground that it was moot because, based on respondent's search of its computer records, it could not verify petitioner graduated from PWEHS in 1996. The court

thereafter denied the petition and dismissed the proceedings as having been rendered academic (Dec./Order/Judgment, Sup Ct, NY County, June 3, 2009, Feinman, J.). Subsequently, petitioner sought to reinstate the proceeding based on newly available proof (Mot. Seq. No. 002). On August 4, 2010, the court granted petitioner's motion upon respondent's default (Dec./Order/Judgment, Sup Ct, NY County, August 4, 2009, Feinman, J.). Upon renewal, the court granted the branch of the petition which sought to compel respondent to enter petitioner's graduation from PWEHS into its electronic record system and issue a certified copy of his diploma and transcript from PWEHS (*id.*).

On September 21, 2010, petitioner filed a motion seeking sanctions against respondent for failure to comply with the court's August 4, 2010 decision, order and judgment (Mot. Seq. No. 003). Respondent opposed and cross-moved to vacate its default that had resulted in the August 4, 2010 decision, order and judgment. In a decision, order and amended judgment, dated February 16, 2011, the court granted respondent's cross motion, vacating respondent's prior default on petitioner's motion sequence number 002 (*see Matter of Wesley v New York City Dept. of Educ.*, 2011 NY Slip Op 30392 [U] [NY County, Feb. 16, 2011]). Upon vacatur of the August 4, 2010 decision, order and amended judgment, the court granted petitioner's motion, deeming it one for renewal based on newly available facts (*id.*). Upon renewal, the court granted the petition to the extent of directing respondent to conduct a full search for petitioner's "official academic records from Park West Evening School in all of the relevant computer, microfiche and physical paper records in its possession and control," and requiring it to provide the results to petitioner within thirty days of entry of that order (*id.*). The court further ordered that, in the event no records could be found, respondent would be required to provide petitioner an affidavit detailing its search

efforts (*id.*).

The motion, bearing sequence number 005, was filed on January 31, 2011, and respondent's affirmation of opposition is dated February 14, 2011. Petitioner's notice of motion, bearing sequence number 006, is dated March 8, 2011. The court's review of records on file with the County Clerk's Office reveals that the February 16, 2011 decision, order and amended judgment were not entered in the County Clerk's Office until March 22, 2011. As such, under the terms of that order, respondent has until April 21, 2011, to comply.

Both motion sequence 005 and 006 seek sanctions against respondent for failing to comply with the court's August 4, 2010 decision, order and judgment. However, as mentioned above, that order was vacated by this court's February 16, 2011 decision, order and amended judgment. The vacated decision, order and judgment of August 4<sup>th</sup> cannot provide the basis of any award of sanctions inasmuch as it is a nullity. The operable order is the later one, dated February 16, 2011. Because that order was not entered until March 22, 2011, respondent had until April 21, 2011, to comply with its directives. On the extant record, the court has no ability to determine whether there has been compliance with the amended order and judgment of February 16<sup>th</sup>.

Accordingly, it is

ORDERED that petitioner's motions, bearing sequence numbers 005 and 006, which inter alia, seek monetary sanctions, are denied in their entirety.

This constitutes the decision and order of this court.

Dated: May 25, 2011  
New York, New York

*Paul J. Ferraro*  
\_\_\_\_\_

J.S.C.  
**FILED**

**MAY 27 2011**

NEW YORK  
COUNTY CLERK'S OFFICE