

**Brown v Melrose Ctr. 40**

2011 NY Slip Op 32910(U)

November 1, 2011

Supreme Court, New York County

Docket Number: 400114/11

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE  
J.S.C.  
*Justice*

PART 10

J. Brown  
*vs.*  
Melrose Center 40

INDEX NO. 400114/11  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 002

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_  No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_  No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_  No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

***motion (e) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.***

### UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

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

Dated: 11/1/11

J. Gische  
**HON. JUDITH J. GISCHE** J.S.C.  
J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 10

-----X  
John Brown,  
  
Petitioner,  
  
-against-  
  
Melrose Center 40,  
  
Respondent.  
-----X

DECISION/ORDER AND JUDGMENT

Index No.: 400114/11  
Seq. No.: 002

PRESENT:  
Hon. Judith J. Gische  
J.S.C.

*Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):*

<b>Papers</b>	<b>Numbered</b>
JB petition w/ exhs and proof of service .....	1
Resp. x-mo w/ WH affirm, JB affid, SMA affid, exhs .....	2
JB aff. in opp w/ exhs and proof of service .....	3

*Upon the foregoing papers, the decision and order of the court is as follows:*

This is the verified petition of John Brown, a recipient of public assistance benefits from the City of New York, Office of Human Resources ("HRA"). Mr. Brown is self represented and the relief he is seeking is somewhat unclear. Apparently he is seeking a writ of mandamus pursuant to Article 78 of the CPLR, directing HRA to take certain action that the State of New York, Office of Temporary and Disability Assistance ("OTDA") directed HRA to take following a Fair Hearing held on October 18, 2010 [Case No. 00002640470H].

In its decision dated November 15, 2010, OTDA directed the local HRA office to recompute Mr. Brown's public assistance budget from May 1, 2010 to the present "immediately, taking into account [Mr. Brown's] contention that his benefits were insufficient

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for his household.” HRA was also directed by OTDA to notify Mr. Brown of its computations in writing and to restore any lost public assistance benefits retroactive to May 1, 2010.

In a notice dated December 7, 2010, HR notified Mr. Brown of its decision to issue him the sum of \$97.20 “as a nonrecurring or retroactive Cash Assistance grant for 05/01/10 - 06/30/10.” The benefit would be “available to [Mr. Brown] on or before 12/10/10. HR decided, however, that his “cash assistance benefits [remained] unchanged.” The notice goes on to state that this was due to Mr. Brown’s failure to respond to “our letter” and that HR “[could not] complete any compliance action until you come in and/or supply the requested information. If you come in and/or bring the information to your Center within ten (10) days from the date of this notice, we will consider the information in accordance with the Fair Hearing decision...” The notice also contains these additional comments: “Your current budget is correct. Budget is \$682.01 S/M [semi-monthly] rent \$401.51 S/M your household cash is 280.50 S/M \$42.35 S/M sent for utility payment why you receiving \$238.15 S/M.”

Mr. Brown states that he is not appealing the OTDA’s decision after a hearing, but that the HR center is not doing what they are supposed to which is (among other things) to pay his family’s Con Edison bill. He also states that HR has recouped money improperly and that he is owed retroactive monies.

This motion was originally submitted on default and in a Decision and Order dated April 14, 2011, this court held:

“Given the circumstances of this case, the serious nature of the relief sought, and the non-appearance of the respondent/agency, this petition cannot be

decided without further facts and information. Therefore, the court will hold a hearing and directs that Mr. Brown serve: 1) a copy of his petition and supporting papers and 2) a copy of this decision and order upon the New York City Law Department, 100 Church Street, New York, NY 10007. These papers may either be served in person or by regular, first class mail and they must be served no later than May 10, 2011."

However, Mr. Brown did not serve process upon the New York City Law Department, located at 100 Church Street, New York, NY 10007, as directed by the court. Rather, on May 5, 2011, Mr. Brown subsequently served a verified petition, a verification, and a notice of petition on Melrose Center 40, Bx, NY 10457. Although within the period as directed in the Decision and Order, Mr. Brown once again served the same and improper party.

Respondent, claiming that its first notice of the instant action when it received a copy of the Court's prior Decision and Order in the mail, seeks the dismissal of the petition. Respondent argues that Mr. Brown has failed to properly serve the petition, not once but twice.

Respondent further provides the sworn affidavits of Jerry Bradshaw (Unit Chief of the Communications & Docketing Services Unit in the Operations Division of the Law Department of the City of New York) and Stephen M. Aronson, Esq. (Manager of the HRA Office of Legal Affairs Subpoena Unit). Each affiant states that he conducted a diligent investigation of their business records and found no record of the petition having been served. Therefore, Respondent claims that because Mr. Brown has failed to properly effect service, in the first place or in accordance with the prior order of this court, the Court is deprived of jurisdiction over the Respondent.

### Discussion

"The incontestable starting proposition . . . is that once jurisdiction and service of process are questioned, plaintiffs have the burden of proving satisfaction of statutory and due process prerequisites." Stewart v. Volkswagen of America, Inc., 81 N.Y.2d 203, 207 (1993); American Bank Note Corp. v. Daniele, 916 N.Y.S.2d 112 (1st Dept. 2011). To acquire jurisdiction over an agency of The City of New York, CPLR § 311[a][2] requires personal service of process upon either The City of New York Corporation Counsel or to a designated agent. (See 86 NY Jur2d, PROCESS AND PAPERS § 100.) The failure to effectuate service of process upon the defendant, within 15 days after the expiration of the underlying 4-month Statute of Limitations for Article 78 actions, warrants dismissal of the action upon a party's motion. (See CPLR §§ 217, 306-b, 308[1]).

As a governmental subdivision, service of process upon Respondent must conform with CPLR § 311[a][2], which requires personal service of process to the Corporation Counsel of the City of New York or Respondent's designated agent, namely The City of New York Human Resources Administration / Department of Social Services, Office of Legal Affairs at 180 Water Street 17<sup>th</sup> Floor, New York, New York 10038. (See The City of New York Human Resources Administration EXECUTIVE ORDER [Eggleston] No. 678, May 6, 2002.)

Here, although petitioner twice served the local HR center and the manager accepted service, the papers did not make their way to the New York City Law Department. The second time around, Mr. Brown did not serve the New York Law Department, although he was instructed to do so. Mr. Brown, instead, disregarded the Courts direction and re-served the local HR center. Since this summary proceeding was improperly commenced,

the court has not obtained personal jurisdiction over the Respondent and therefore, the cross-motion by Respondent is granted, the petition is denied and this proceeding is dismissed.

**Conclusion**

**ORDERED, ADJUDGED AND DECLARED** that the petition is denied for lack of service and this summary proceeding is hereby dismissed; and it is further

**ORDERED** that any relief requested but not addressed is hereby denied; and it is further

**ORDERED** that this constitutes the decision, order and judgment of the court.

Dated;           New York, New York  
November 1, 2011

So Ordered:

  
\_\_\_\_\_  
Hon. Judith J. Gische, JSC

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