

**Matter of Jaronczyk v Mangano**

2012 NY Slip Op 33727(U)

November 7, 2012

Supreme Court, New York County

Docket Number: 2819/12

Judge: Denise L. Sher

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**SHORT FORM ORDER**

**SUPREME COURT OF THE STATE OF NEW YORK**

**PRESENT: HON. DENISE L. SHER**  
Acting Supreme Court Justice

In the Matter of the Application of

TRIAL/IAS PART 31  
NASSAU COUNTY

JOHN JARONCZYK, as President of the Sheriff Officers Association, Inc., COREY C. TIMO, as Second Vice President of the Sheriff Officers Association, Inc., and the SHERIFF OFFICERS ASSOCIATION, INC.,

Petitioners,

Index No.: 2819/12  
Motion Seq. No.: 02  
Motion Date: 09/10/12

for a Judgment Pursuant to NY Civil Practice Law and Rules Article 78

- against -

EDWARD P. MANGANO, as the Executive of Nassau County, NASSAU COUNTY, MARGARET RADZEWSKY, as the record access officer of the Nassau County Sheriff's Department, ELIZABETH LOCONSOLO, as the appeals officer of the Nassau County Sheriff's Department, MICHAEL A. SPOSATO, as the Sheriff of the Nassau County Sheriff's Department, and the NASSAU COUNTY SHERIFF'S DEPARTMENT,

Respondents.

**The following papers have been read on this motion:**

	Papers Numbered
Notice of Motion, Affirmation and Exhibits	1
Petitioners' Memorandum of Law in Opposition, Affirmation and Exhibits	2
Reply Affirmation	3

Upon the foregoing papers, it is ordered that the motion is decided as follows:

[\* 2]

Respondents move, pursuant to CPLR § 2221(f), for an order granting them leave to separately renew and reargue the June 27, 2012 Decision and Order of this Court which granted petitioners' application, pursuant to CPLR Article 78 and New York Public Official Law § 89(4), for a judgment that the documents which petitioners requested pursuant to the New York State Freedom of Information Law ("FOIL") are not exempt from disclosure and for an order directing respondents to release the requested documents to petitioners and pay petitioners' attorneys' fees and costs related to this action. Petitioners oppose the motion.

For a recitation of the salient facts, we refer to the Court's Decision and Order dated June 27, 2012. *See* Respondents' Affirmation in Support Exhibit D.

In said June 27, 2012 Decision and Order, the Court granted petitioner's CPLR Article 78 Verified Petition in all respects. Specifically, the Court ordered that respondents disclose to petitioners under the New York State Freedom of Information Law ("FOIL") the requested overtime slips for correction captains for the years 2011 and 2012 without redaction of employee signatures. The Court also awarded attorneys' fees and costs to petitioners.

In the Decision and Order dated June 27, 2012, the Court held that "an award of attorneys' fees is appropriate and the matter shall be set down for a hearing on the reasonable amount of attorneys' fees." Respondents contend, based upon information and belief, that the above holding was based on the following reasoning:

"[u]pon or review of the record, we cannot say that it was reasonable for respondents to initially withhold the entirety of the records sought by petitioners and then release the overtime slips with the redaction of social security numbers only after petitioners retained and paid for counsel and filed an Article 78 proceeding." *See* Respondents' Affirmation in Support Exhibit D.

[\* 3]

With respect to the motion for leave to renew, respondents submit the “previously unavailable affidavit of Correction Officer Radzewsky,” claiming that said Affidavit “would change the Court’s prior determination as to the issue of the imposition of attorneys’ fees.” *See* Respondents’ Affirmation in Support ¶ 18; Respondents’ Affirmation in Support Exhibit F.

In her Affidavit, Correction Officer Margaret Radzewsky (“Radzewsky”) states that, on or about February 27, 2012, she gathered and redacted the records at issue. Petitioners instituted this action, via notice of Verified Petition and Verified Petition, on March 2, 2012. Thus, Correction Officer Radzewsky began compiling and redacting the requested documents with the purpose of providing such records to petitioners prior to the instant litigation.

Moreover, Correction Officer Radzewsky states that she was unaware of petitioners’ commencement of the underlying Article 78 proceeding when she gathered the requested records and when she sent the March 6, 2012 correspondence.

Overall, respondents maintain that the facts asserted in Correction Officer Radzewsky’s Affidavit are in direct contradiction of the basis upon which the Court awarded attorneys’ fees. As such, the Court should reverse its granting of attorneys’ fees as the respondents did not “withhold the entirety of the records sought by the petitioners” and then “release the overtime slips...only after petitioners retained and paid for counsel and filed an Article 78 proceeding.” Respondents argue that these new facts would alter the trial court’s prior determination, and, hence, leave to renew should be granted. *See* Respondents’ Affirmation in Support ¶¶ 26 - 27.

In opposition to the motion to renew, petitioners assert that said motion should be denied on the grounds that respondents had access during the litigation to Court Officer Radzewsky as their employee and the information in Court Officer Radzewsky’s Affidavit is neither new, nor

would it have changed the Court's determination. The "new" fact that respondents began to compile the records on February 27, 2012, was still after the deadline petitioners gave to respondents. Further, these "new" facts would not have changed this Court's decision.

A motion for leave to renew must be "based upon new facts not offered on the prior motion that would change the prior determination" and must provide a "reasonable justification for the failure to present such facts on the prior motion." See CPLR § 2221(e)(2) and (3); *Kranenberg v. TKRS Pub, Inc.*, \_\_\_ N.Y.S.2d \_\_\_, 2012 WL 4800856 (2d Dept. 2012); *Rowe v. NYCPD*, 85 A.D.3d 1001, 926 N.Y.S.2d 121 (2d Dept. 2011); *Nicolia v. Nicolio*, 84 A.D.3d 1327, 924 N.Y.S.2d 509 (2d Dept. 2011); *Matter of Korman v. Bellmore Pub. Schools*, 62 A.D.3d 882, 879 N.Y.S.2d 194 (2d Dept. 2009).

While a court has the discretion to grant renewal upon facts known to the movant at the time of the original motion (see *May v. May*, 78 A.D.3d 667, 911 N.Y.S.2d 94 (2d Dept. 2010); *Schenectady Steel Co., Inc. v. Meyer Contr. Corp.*, 73 A.D.3d 1013, 903 N.Y.S.2d 58 (2d Dept. 2010)), "a motion for leave to renew 'is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation.'" *Renna v. Gullo*, 19 A.D.3d 472, 797 N.Y.S.2d 115 (2d Dept. 2005) quoting *Rubinstein v. Goldman*, 225 A.D.2d 328, 638 N.Y.S.2d 469 (1<sup>st</sup> Dept. 1996). See also *Coccia v. Liotti*, 70 A.D.3d 747, 896 N.Y.S.2d 90 (2d Dept. 2010); *Huma v. Patel*, 68 A.D.3d 821, 890 N.Y.S.2d 639 (2d Dept. 2010).

Contrary to respondents' contention, they failed to offer a reasonable justification as to why the Affidavit of Correction Officer Radzewsky, or the alleged new facts, were not submitted earlier.

In any event, even assuming that respondents' excuse for failing to provide the Affidavit in their original opposition papers could be deemed a reasonable justification, the facts derived

[\* 5]

from said Affidavit would not have changed the Court's prior determination. *See Kranenberg v. TKRS Pub, Inc., supra; May v. May, supra.* Accordingly, respondents' motion for leave to renew is hereby **DENIED**. *See Matter of Korman v. Bellmore Pub. Schools, supra.*

As to reargument, respondents argue that petitioners did not substantially prevail in this proceeding because they agreed not to further challenge the redaction of anyone's social security numbers and that the redaction of signatures was a novel issue for this Court.

In opposition, petitioners maintain that the aforementioned arguments regarding attorneys' fees are exactly the same as the arguments that respondents made in their Verified Answer.

In addition, petitioners submit that the motion is untimely, as a motion to reargue must be made within thirty (30) days after service of a copy of the Order with Notice of Entry. Since a copy of the Order with Notice of Entry was served on July 16, 2012, respondents' August 20, 2012 motion to reargue should be deemed untimely.

"Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some [other] reason mistakenly arrived at the earlier decision." *Barnett v. Smith*, 64 A.D.3d 669, 883 N.Y.S.2d 573 (2d Dept. 2009), quoting *E.W. Howell Co., Inc. v. S.A.F. La Sala Corp.*, 36 A.D.3d 653, 828 N.Y.S.2d 212 (2d Dept. 2007). *See also Hague v. Daddazio*, 84 A.D.3d 940, 922 N.Y.S.2d 548 (2d Dept. 2011); CPLR § 2221(d). The determination to grant leave to reargue a motion lies within the sound discretion of the Court. *See Matter of Anthony J. Carter, DDS, P.C. v. Carter*, 81 A.D.3d 819, 916 N.Y.S.2d 821 (2d Dept. 2011). "[A] motion for leave to reargue 'is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments

[\* 6]

different from those originally presented.” *V. Veeraswamy Realty v. Yenom Corp.*, 71 A.D.3d 874, 895 N.Y.S.2d 860 (2d Dept. 2010) quoting *McGill v. Goldman*, 261 A.D.2d 593, 691 N.Y.S.2d 75 (2d Dept. 1999). See also *Woody's Lbr. Co., Inc. v. Jayram Realty Corp.*, 30 A.D.3d 590, 817 N.Y.S.2d 391 (2d Dept. 2006); *Foley v. Roche*, 68 A.D.2d 558, 418 N.Y.S.2d 588 (1<sup>st</sup> Dept 1979) *app. den.* 56 N.Y.2d 507, 453 N.Y.S.2d 1025 (1982).

The Court finds, in agreement with petitioners, that no grounds for reargument exist.

In view of the foregoing, respondents' motion, pursuant to CPLR § 2221(f), for an order granting them leave to separately renew and reargue the June 27, 2012 Decision and Order of the Court is hereby **DENIED in its entirety**.

The matter is set down for an Inquest, for an assessment of attorneys' fees, to be held before the Calendar Control Part (CCP) on the 3<sup>rd</sup> day of December, 2012, at 9:30 a.m.

This constitutes the Decision and Order of this Court.

ENTER:

  
\_\_\_\_\_  
DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York  
November 7, 2012

**ENTERED**  
NOV 13 2012  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE