

**Matter of Friedman v Public Serv. Commn. (P.S.C.)**

2013 NY Slip Op 32043(U)

August 21, 2013

Supreme Court, Albany County

Docket Number: 400656/13

Judge: Thomas A. Breslin

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: JUDGE DORIS LING-COHAN  
*Justice*

PART 36

Abraham Friedman

INDEX NO. 400656/13

-v-

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

Public Service Commission

MOTION SEQ. NO. 001

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~~ Article 78 proceeding is deemed moot, without prejudice to the parties proceeding in Albany County, as this proceeding has been ordered to be transferred to Albany County in accordance with the Decision and Order of Honorable Thomas A. Breslin, dated August 21, 2013.

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

**FILED**  
SEP 04 2013  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 9/3/13

[Signature], J.S.C.  
JUDGE DORIS LING-COHAN

- 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 ALBANY

Albany County Clerk  
Document Number 11464909  
Rcvd 08/27/2013 11:55:33 AM



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In the Matter of the Application of

ABRAHAM FRIEDMAN,

Petitioner,

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

-against-

PUBLIC SERVICE COMMISSION (P.S.C.),

Respondent.

DECISION

AND ORDER

Index No. 2944-13  
RJI No. 01-13-ST4695

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Supreme Court, Albany County: CPLR Article 78 Special Term: July  
19, 2013

Hon. Thomas A. Breslin, J.S.C., presiding

APPEARANCES:

For Petitioner:

Abraham Friedman, pro se  
1331 48<sup>th</sup> Street, 3<sup>rd</sup> floor  
Brooklyn, NY 12219-3102

For Respondents:

Peter McGowan  
General Counsel  
Public Service Commission  
State of New York Department of  
Public Service  
Three Empire State Plaza  
Albany, NY 12223-1350

Jonathan D. Feinberg  
Solicitor

THOMAS A. BRESLIN, J.

Petitioner commenced a CPLR article 78 proceeding in New York  
County to challenge a determination of the respondent Public  
Service Commission (hereinafter PSC) relating to the adding of

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**RECEIVED**  
AUG 26 2013  
Public Service Commission  
Office of Counsel

arrears owed to Con Edison on one apartment onto the account of another apartment which petitioner resided in. Respondent has made a motion in Albany County to change venue to Albany County and to summon Con Edison as a necessary party to the proceeding. Petitioner, in an unsworn letter, objects to a change of venue.

As respondent points out, CPLR 506 (b)(2) specifies that proceedings against the PSC must be commenced in Albany County. Accordingly, the timely motion for change of venue must be granted.

As to the motion to summon a necessary party, respondent states that it cannot provide the relief that petitioner seeks, that is, precluding Con Edison from obtaining the disputed amount that Con Edison says is owed to it or the return of his money already paid. An informal review decision of respondent determined that the utility's transfer to petitioner's open residential account of the \$321.06 balance from a closed residential account in petitioner's name was proper. Upon administrative appeal of that determination, respondent upheld the determination. Respondent points out that it cannot refund any money or order re-billing of the electric account if petitioner were to succeed in this proceeding and thus Con Edison must be joined as a party in order for petitioner to obtain relief.

In that Con Edison is arguably subject to the jurisdiction of this court (see CPLR 1001[b]), this court is required to order petitioner to summon Con Edison, without consideration of the discretionary factors listed in CPLR 1001(b) (see Matter of Alexy v Otte, 58 AD3d 967 [2009]).

Accordingly, the motion is granted and the venue is changed to Albany County. In addition, petitioner is directed to serve Consolidated Edison Company of New York, Inc. as a necessary party to this proceeding with a copy of this decision and order, the notice of petition, verified petition and all other papers filed in this proceeding to date within 30 days of being served with a copy of this court's decision and order and notice of entry of the same. This shall constitute the decision and order of this court.

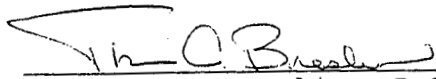
It is further ORDERED that the New York County Clerk, upon respondent filing with him a certified copy of this Decision and Order, shall forthwith deliver to the Albany County Clerk all papers and records in the above-titled proceeding and certified copies of all minutes and entries.

The original Decision and Order is being returned to the attorneys for the respondent. A copy of this Decision and Order and all other original papers submitted on this motion are being

delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York  
August 21, 2013

  
Thomas A. Breslin, J.S.C.

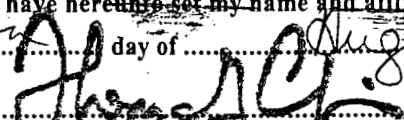
PAPERS CONSIDERED:

- 1) Notice of Motion dated May 30, 2013, Affirmation of Jonathan D. Feinberg, Esq., dated May 30, 2013 with Exhibits, Respondent's Memorandum of Law dated May 30, 2013,
- 2) Letter by Petitioner dated July 17, 2013 with attachments.

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SEP 04 2013  
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STATE OF NEW YORK }  
COUNTY OF ALBANY CLERK'S OFFICE } ss.:

I, THOMAS G. CLINGAN, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, DO HEREBY CERTIFY that I have compared the annexed copy Order with the original thereof filed in this office on the 27th day of Aug 13 and that the same is a correct transcript therefrom, and of the whole of said original.

IN TESTIMONY WHEREOF, I have hereunto set my name and affixed my official seal, this 27th day of Aug 13  
  
Clerk

