

Matter of Simpson v State of New York
2014 NY Slip Op 31786(U)
July 8, 2014
Supreme Court, New York County
Docket Number: 400569/14
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Kern
Justice

PART 55

Theodore Simpson,
- v - Petitioner

INDEX NO. 400569-14

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The State of NY; The Dept. of
Disciplinary Committee, Respondent.

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

FILED

Upon the foregoing papers, it is ordered that this motion

JUL 11 2014

NEW YORK
COUNTY CLERKS OFFICE

is decided in accordance with the annexed decision.

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Dated: 7/8/14

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J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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

THEODORE SIMPSON,

Petitioner,

Index No. 400569/14

For an Order Pursuant to Article 78
of the Civil Practice Law and Rules,

DECISION/ORDER

-against-

STATE OF NEW YORK and THE NEW YORK STATE
DEPARTMENTAL DISCIPLINARY COMMITTEE,

FILED

JUL 11 2014

Respondents.

NEW YORK

-----x COUNTY CLERK'S OFFICE

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____ 1 _____
Notice of Cross-Motion and Affidavits Annexed.....	_____ 2 _____
Replying Affidavits.....	_____ _____
Exhibits.....	_____ 3 _____

Petitioner Theodore Simpson commenced the instant proceeding pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to challenge the determination made by respondent The New York State Departmental Disciplinary Committee ("DDC") dismissing a grievance brought by petitioner against two attorneys and to compel the DDC to provide petitioner with certain confidential investigatory documentation. The DDC and respondent the State of New York (hereinafter collectively referred to as "respondents") cross-move to dismiss the petition. For the reasons set forth below, the cross-motion to dismiss the petition is granted

and the petition is denied.

The relevant facts are as follows. On November 30, 1998, after a jury trial, petitioner was convicted of two counts of Murder in the Second Degree, Robbery in the First and Second Degree and Kidnaping in the Second Degree. Dawn Florio, a former assistant district attorney in the Office of the District Attorney, Bronx County, allegedly participated in the prosecution of petitioner's criminal case. More than fourteen years after his conviction, petitioner filed a complaint with the DDC against Ms. Florio and Bronx District Attorney Robert Johnson requesting sanctions for alleged violations of the New York State Rules of Professional Conduct relating to his criminal case. By letters dated August 22, 2013, the DDC informed petitioner that it had completed its investigation of Mr. Johnson and Ms. Florio and would not be proceeding against either individual for professional misconduct on the grounds that they did not find evidence justifying any further action. Petitioner then requested reconsideration of the dismissal of his complaint. By letters dated October 28, 2013, the DDC explained to petitioner that a second DDC member had completed an independent review of his complaint and affirmed its dismissal.

On or about March 13, 2014, petitioner commenced an Article 78 proceeding in the Appellate Division, First Department against the same respondents seeking relief identical to the instant proceeding. Respondents filed an answer to that petition and the return date was set for May 28, 2014. The petition is currently pending before the First Department. Petitioner then commenced the instant proceeding by Order to Show Cause seeking to challenge the DDC's denial of his complaint and to compel the DDC to produce any documentation submitted to the DDC by Mr. Johnson and Ms. Florio.

As an initial matter, the petition must be dismissed on the ground that an identical petition is already pending before the First Department. Pursuant to CPLR §3211(a)(4), a pleading may be dismissed against a party on the ground that “there is another action pending between the same parties for the same cause of action in a court of any state or the United States.” For an action to be dismissed pursuant to this provision, both suits must have substantially the same parties and “arise out of the same subject matter or series of alleged wrongs.” *White Light Prods. Inc. v. On the Scene Prods. Inc.*, 231 A.D.2d 90, 94 (1st Dept 1997), citing *Kent Dev. Co. v. Liccione*, 37 N.Y.2d 899, 901 (1975). The instant petition must be dismissed on the ground that the petition brought before the First Department involves parties identical to those in this proceeding and involves claims that arose from the same subject matter and series of alleged wrongs.

Additionally, the petition must be dismissed on the ground that this court lacks subject matter jurisdiction over this action. The exclusive jurisdiction to discipline attorneys lies with the four departments of the Supreme Court, Appellate Division. See N.Y. Jud. Law § 90(2) (“...the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice...”) The Appellate Division, First Department has delegated its own judicial function to investigate alleged misconduct by attorneys within its jurisdiction to the DDC. See N.Y.C.R.R. § 603.4(a)(1); see also *Rapoport v. Departmental Disciplinary Committee for the First Judicial Department, et. al.*, 1989 WL 146264 (S.D.N.Y. 1989). As a result, the DDC “is a delegatee of the powers of the

Appellate Division as an aid to that Court in carrying out its statutory functions.” *Rapoport*, 1989 WL 146264 at *1. As the DDC acts as an instrumentality of the Appellate Division, to the extent a petitioner seeks to challenge a determination made by the DDC, such determination may only be reviewed by the Appellate Division and not by the Supreme Court. Thus, the instant petition must be dismissed as petitioner may only challenge the DDC’s determination before the First Department, which he has already done.

Accordingly, respondents’ cross-motion to dismiss the petition is granted and the petition is denied. The petition is hereby dismissed in its entirety. This constitutes the decision and order of the court.

Date: 7/8/14

Enter: PAK
J.S.C.

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