

Matter of Givens v City of New York
2018 NY Slip Op 31021(U)
May 18, 2018
Supreme Court, New York County
Docket Number: 151625/2017
Judge: Verna Saunders
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON.VERNA L. SAUNDERS, J.S.C.

PART 5

In the Matter of the Application of
JOHN GIVENS and JDG INVESTIGATIONS, INC.,
Petitioner,

INDEX NO. 151625/2017

- against -

CITY OF NEW YORK, LORELEI SALAS, in her
official Capacity as COMMISSIONER of the New York
City Department of Consumer Affairs, and NEW
YORK CITY COUNCIL,

Respondents,

for Judgment pursuant to Article 78 of the CPLR
and relief under 42 U.S.C. § 1983.

MOT. SEQ. NO. 001

The following papers were read on this motion to/for ARTICLE 78
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
Notice of Cross-Motion/Answering Affidavits — Exhibits
Replying Affidavits

ECFS DOC No(s). 15-44,46
ECFS DOC No(s). 45
ECFS DOC No(s).

JDG INVESTIGATIONS, INC. and JOHN GIVENS,
Plaintiff,

INDEX NO. 153763/2017

- against -

CITY OF NEW YORK, NEW YORK CITY
COUNCIL, and LORELEI SALAS, in her capacity as
COMMISSIONER of the New York City Department
Of Consumer Affairs,

Defendants.

MOT. SEQ. NO. 001

The following papers were read on this motion to/for DISMISS
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
Notice of Cross-Motion/Answering Affidavits — Exhibits
Replying Affidavits

ECFS DOC No(s). 8-16
ECFS DOC No(s). 20-27
ECFS DOC No(s). 29

There above two matters currently pending before this Court, an Article 78 proceeding and an action where plaintiff seeks, amongst other requests for relief, a declaratory judgment, involve the same parties. The Article 78 petition and the City’s motion to dismiss the complaint are hereby consolidated for disposition.

On or about February 19, 2017, JDG Investigations, Inc. (“JDG”) and John Givens (“Givens”) commenced an Article 78 proceeding under index number 151625/2017 seeking to annul and vacate the Commissioner of the New York City Department of Consumer Affairs’ (“Consumer Affairs”) determinations of January 19, 2017, denying a process server agency license to JDG and denying an individual process server license to Givens, pursuant to

applications submitted on April 14, 2016 and August 18, 2016, respectively. The petition also seeks an order enjoining Consumer Affairs from enforcing the determinations; directing Consumer Affairs to issue the licenses sought; and awarding compensatory damages and attorneys fees.

The City opposes the petition on the ground that the Consumer Affairs determinations were rational, reasonable, a proper exercise of discretion, and supported by the record. The City also argues that the petition should be dismissed as there are other matters pending in Supreme Court, New York County which share “substantial identity of parties” and “essential identity issues” of this proceeding. (The court notes that three previous matters involving JDG and Givens were commenced in New York County Supreme Court. Specifically, petitioner commenced *JDG Investigations, Inc. and John Givens v City of New York, et al.*, Index No. 161609/2015 (Sup Ct, NY County); *JDG Investigations, Inc. v City of New York, et al.*, Index No. 100224/2016 (Sup Ct, NY County) and *John Givens and JDG Investigations Inc. v City of New York, et al.*, Index No. 100016/2016 (Sup Ct, NY County). All three actions asserted that the Consumer Affairs license denials were improper.)

Thereafter, on or about April 25, 2017, JDG and Givens commenced an action seeking a declaratory judgment, compensatory damages, and injunctive relief as a result of the Consumer Affairs determinations of December 28, 2015 and February 17, 2016 which denied JDG’s March 30, 2014 application for an agency process server license and Givens’ February 8, 2016 process server license application. (See *Summons and Complaint*, Index No. 153763/2017.)

With respect to the April 25, 2017 declaratory judgment action, the City moves for dismissal of the complaint on the ground that another action is pending between the same parties for the same cause of action. In its moving papers, the City references the instant Article 78 petition (Index No. 151625/2017), as well as, the actions it listed above in its opposition thereto.

A party may move for judgment dismissing one or more causes of action asserted against him 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 (see CPLR 3211[a][4]). Dismissal is warranted when two actions involve the same parties, the same subject matter or series of alleged wrongs, and the relief sought is the same or substantially the same (see *Kent Dev. Co., Inc. v Liccione*, 37 NY2d 899 [1975]).

Here, dismissal of the Article 78 petition is warranted. Prior to initiation of the instant proceedings, JDG and Givens commenced two Article 78 proceedings based on denials of their process server applications. Givens’

individual process server license expired on March 31, 2014 and he applied for a new license on July 9, 2014. Consumer Affairs denied this application in a determination dated December 28, 2015. JDG applied to renew its process serving license on February 8, 2016. That application was denied by Consumer Affairs on February 17, 2016. Consumer Affairs determined that both Givens, as an individual, and JDG, as an agency, were unfit for licensing under New York City Administrative Code (“Administrative Code”) § 20-101 as they failed to “maintain standards of integrity, honesty, and fair dealing.” As a result of these denials, JDG and Givens commenced *JDG Investigations, Inc. v City of New York et al.*, Index 100224/2016 (Sup Ct, NY County) and *John Givens and JDG Investigations Inc. v City of New York et al.*, Index 100016/2016 (Sup Ct, NY County). These proceedings were consolidated for disposition and ultimately dismissed by Justice J. Billings. (*See Matter of Givens v City of New York*, 2018 NY Slip Op 30371 (U) [Sup Ct, New York County 2018].)

In the instant Article 78 application, the Consumer Affairs denials dated January 19, 2017 state that the applications submitted on April 14, 2016 and August 18, 2016 were denied for the same reasons set forth in the denials regarding the applications submitted on February 8, 2016 and July 9, 2014.¹ However, despite this statement, the denials provide a considerable amount of additional detail regarding the basis for the denial of JDG’s and Givens’ applications for licenses.²

Here, just as in the proceedings before Justice Billings, JDG and Givens challenge the merits of these determinations, as well as, the validity of the New York City Administrative Code (“the Administrative Code”) and the Rule of the City of New York (“RCNY”) as it pertains to regulation of process servers. Therefore, inasmuch as JDG and Givens are seeking judicial review of largely identical Consumer Affairs determinations on the same grounds upon which it previously challenged the prior Consumer Affairs determinations, the instant petition for Article 78 review is dismissed in accordance with the February 2, 2018 Decision and Order of Justice Billings.

Additionally, JDG and Givens previously filed a summons and complaint challenging Consumer Affairs’ authority to impose fines for violations of the Administrative Code and the RCNY asserting that the fines were a violation of due process. (*See JDG Investigations, Inc. and John Givens v City of New York, et al.*, Index No. 161609/2015 [Sup Ct, NY County].) The complaint also asserted that Consumer Affairs defamed JDG and Givens by

¹ John Givens is the owner/principal of JDG Investigations, Inc. JDG’s application was submitted on behalf of the agency and Givens’ application was submitted for an individual process serving license. Separate decisions were rendered on the same date with regard to each application. Both applications were denied.

² These prior denials referenced by Consumer Affairs were the subject of the Article 78 proceedings which were considered and dismissed by Justice Billings.

publishing false statements on its website. The previous action was also adjudicated by Justice Billings, who dismissed the action. (See *JDG Investigations, Inc. v City of New York*, 2018 NY Slip Op 30313(U) [Sup Ct, New York County 2018].) In her decision, Justice Billings notes that JDG and Givens assert the same claims challenging the validity of the Administrative Code and RCNY as previously asserted in the two Article 78 proceedings already determined by the court and as such holds that “res judicata thus bars all plaintiffs’ claims challenging the validity of Administrative Code and R.C.N.Y. provisions relating to process servers.”

In the case at bar, JDG and Givens again assert the same claims as were raised in the prior actions and prior Article 78 proceedings including challenges to the validity of the statues and rules regulating process servers; Consumer Affairs authority to enforce violations and impose fines; and defamation. JDG and Givens also assert the same basis and rationale for these previously asserted and decided claims. While JDG and Givens may argue that this proceeding is different from the proceedings already adjudicated, this court rejects that argument as the claims asserted in each action are indistinguishable; the Consumer Affairs denials were based on the same conduct; and the controlling authority upon which the denials are based is the same. Accordingly, this action is dismissed in accordance with February 20, 2018 Decision and Order of Hon. J. Billings.

Based on the foregoing, it is

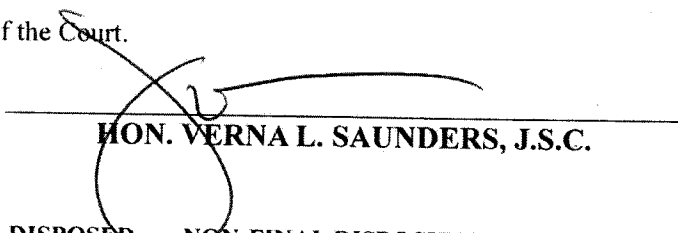
ORDERED, that the petition under Index No. 151625/2017 is denied and the proceeding is hereby dismissed; and it is further

ORDERED, that the City’s motion is granted and the complaint under Index No. 153763/2017 is hereby dismissed in its entirety; and it is further

ORDERED, that any relief not expressly addressed in this order has nonetheless been considered and is hereby denied.

This constitutes the decision and order of the Court.

Dated: May 18, 2018


HON. VERNAL L. SAUNDERS, J.S.C.

- 1. Check one:
 - 2. Check as appropriate: Motion is
 - 3. Check if appropriate:
- CASE DISPOSED NON-FINAL DISPOSITION
 - GRANTED DENIED GRANTED IN PART OTHER
 - SETTLE ORDER SUBMIT ORDER DO NOT POST
 - FIDUCIARY APPOINTMENT REFERENCE