

New York Presbyt. Hosp. v New York City Water Bd.
2019 NY Slip Op 33194(U)
October 24, 2019
Supreme Court, New York County
Docket Number: 157037/2018
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART

IAS MOTION 59EFM

Justice

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INDEX NO. 157037/2018

NEW YORK PRESBYTERIAN HOSPITAL,

MOTION DATE 04/23/2019

Petitioner,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY WATER BOARD, NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION, and
CITY OF NEW YORK,

**DECISION + ORDER ON
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for

ARTICLE 78 (BODY OR OFFICER)

ORDER

Upon the foregoing documents, it is

ORDERED that petition is granted to the extent that the August 7, 2012 decision of the New York City Water Board pertaining to petitioner New York Presbyterian Hospital is annulled, and it is further

ORDERED that a trial for before a Special Referee to hear and report is directed on the issue whether the water meter was properly measuring petitioner's usage and that, upon confirmation or disaffirmation of such report, the matter shall be remanded to the respondents for further proceedings in accordance with such order of confirmation or disaffirmation; and it is further

This matter having come on before this court on April 23, 2019, on the petition of New York Presbyterian Hospital for an annulment of the decision of respondents dated August 7, 2012 and the petitioner(s) having appeared by Mary K. Sherman , Esq., and the respondent(s) having appeared by David Clark Wrobel, Esq., and, pursuant to CPLR 4212, the court having on its own motion determined to consider the appointment of a referee to hear and report, and it appearing to the court that such an appointment is appropriate, it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this court on the following individual issue of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

the issue of whether the water meter was properly registering petitioner's usage;

and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court

at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion and

counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issue presented in the petition identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this court thereon.

DECISION

Petitioner New York Presbyterian Hospital (Hospital) brings this Article 78 proceeding to annul the August 7, 2012 decision of respondent New York City Water Board (Water Board), rejecting, as time barred, the Hospital's claim that petitioner overcharged it for water use.

The Water Board is a public benefit corporation established in 1984 pursuant to the New York City Municipal Water Finance Authority Act, Public Authorities Law (PAL) 1045-a, et seq. PAL § 1045-g (4) empowers the Water Board to establish rates for use of the City sewerage and water systems. Pursuant to an agreement between the Water Board and the City of New York, the Water Board assumed responsibility for operating the City's water system. See PAL § 1045-f and 1046.

Under the Agreement of Lease between the City and the Water Board, dated July 1, 1985, respondent New York City Department of Environmental Protection (DEP) acts as the agent for the Water Board, billing and collecting water and sewer charges. PAL § 1045-g (4) provides, in relevant part, that the Water Board "shall not establish a limit of less than four years, commencing from the date of the bill for service, to challenge any fee, rate, rent or other service charges for the use of or services furnished by the water and/or sewerage systems."

It is undisputed that, by letter dated April 13, 2016, petitioner's agent, The Water Group, LLC, wrote to Ms. Barbara Baird, at the DEP Ombudsman's Office, objecting to the August 7, 2012 bill. Respondents argue that that letter did not constitute a complaint, because the applicable rate schedule provides that a written complaint must be filed within four years of the bill date with the DEP/BCS customer service

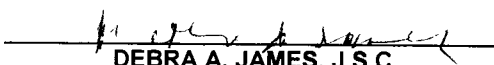
department in Elmhurst, N.Y. However, the applicable rate schedule provides:

"The Customer or Authorized Representative must file a written complaint . . . within four years of the Bill Date to DEP/BCS Customer Service, P.O. Box 739055, Elmhurst, NY 11373-9055. To submit such complaint, the customer **may also** use DEP's Customer Dispute Form, which is available on DEP's website . . . or may be obtained from DEP by calling (718) 595-7000" (bold face supplied).

The DEP online form provides that "you may submit this form at any BCS borough office" and that "you may fax this form." Thus, petitioner's letter complaint to Ms. Baird was properly and timely submitted.

Moreover, petitioner represents that writing to Ms. Baird was the procedure established by DEP for complaining about a hospital's water bills.

Respondents also argue that, because Ms. Baird concluded that the Hospital's water meter was not registering usage, no adjustment to the estimated bill is warranted. The court agrees that such statement of Ms. Baird is insufficient to establish that the water meter was not registering petitioner's usage. Therefore, a trial pursuant to CPLR § 7804(h) is warranted.

<u>10/24/2019</u>			
DATE		DEBRA A. JAMES, J.S.C.	
CHECK ONE:	☒ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☒ REFERENCE