

Matter of Allecia v New York City Dept. of Bldgs.
2020 NY Slip Op 32115(U)
June 29, 2020
Supreme Court, New York County
Docket Number: 155704/2019
Judge: John J. Kelley
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. JOHN J. KELLEY **PART** **IAS MOTION 56EFM**

Justice

-----X

INDEX NO. 155704/2019

In the Matter of

MOTION DATE 10/04/2019

BRAD ALLECIA,

MOTION SEQ. NO. 003

Petitioner,

- v -

**AMENDED DECISION AND
ORDER**

THE NEW YORK CITY DEPARTMENT OF BUILDINGS,
THOMAS FARIELLO, FRANK DAMIANI, YEGAL
SHAMASH, and ASHRAF OMRAN,

Respondents.

-----X

The order of this court dated May 6, 2020 is hereby recalled and vacated, and the following order is hereby substituted therefor:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 39, 40, 78
were read on this motion to/for DISMISS.

This is a hybrid CPLR article 78 proceeding seeking judicial review of a New York City Department of Buildings (DOB) determination revoking the petitioner/plaintiff's master rigger license and action pursuant to 42 USC § 1983 to recover damages for violation of constitutional rights. Under Motion Sequence 001, the petitioner/plaintiff moved, by order to show cause, for a preliminary injunction prohibiting the DOB from enforcing its revocation order. Under Motion Sequence 002, the petitioner/plaintiff sought to annul the DOB's revocation order.

Prior to the respondents/defendants' service and filing of an answer and the administrative record, this court, by order dated June 10, 2019, as amended June 25, 2019 (SEQ 001), directed that the first and fourth causes of action, which sought relief pursuant to CPLR article 78, be transferred to the Appellate Division for substantial evidence review. The court severed the second, third, and fifth causes of action, which sought monetary and other relief for violation of the United States and New York Constitutions. The court further directed

that the second, third, and fifth causes of action be reassigned to a City Part of this court, and that the Clerk of the Court assign a new index number to the severed causes of action without the necessity of the payment of an additional index number fee. By order dated July 5, 2019 (SEQ 002) this court denied the petition on the ground that, upon the transfer of the CPLR article 78 causes of action to the Appellate Division, it was divested of jurisdiction to consider them.

By decision and order on motion dated August 6, 2019, the Appellate Division, First Department, remitted the matter back to this court to permit the respondents/defendants to serve and file an answer to the CPLR article 78 causes of action, along with the administrative record. As directed by the Appellate Division,

“[u]pon completion of such filings, Supreme Court is directed to enter an amended order of transfer pursuant to CPLR 7804(g), unless said answer raises a question other than that [sic] one of substantial evidence within the meaning of CPLR 7803(4).”

On August 30, 2019, the respondents/defendants served and filed their answer and the administrative record and simultaneously moved pursuant to CPLR 3211(a) to dismiss the second, third, and fifth causes of action (SEQ 003). By amended order of transfer dated September 27, 2019 (SEQ 002), this court again transferred, to the Appellate Division, the portion of the matter constituting the CPLR article petition, as set forth in the first and fourth causes of action.

Upon the parties' September 26, 2019 stipulation, this court, by interim order dated September 27, 2019 (SEQ 003), directed that the second, third, and fifth causes of action remain severed, directed the County Clerk to assign a new index number to those severed causes of action without the requirement of an additional index number fee, and stayed consideration of the motion to dismiss the severed non-CPLR article 78 causes of action pending the Appellate Division's disposition of the transferred CPLR article 78 proceeding. The court further directed that the severed non-CPLR article 78 causes of action, as well as the

motion to dismiss them, be remitted to the Trial Support Clerk, who was directed randomly to reassign the matter to a City Part of this court.

By decision and order dated March 10, 2020, the Appellate Division, upon concluding that substantial evidence supported the DOB's finding of misconduct and that the penalty of license revocation did not constitute an abuse of discretion, denied the petition in the transferred proceeding, and thereupon dismissed that proceeding (see *Matter of Allecia v New York Dept. of Buildings*, 181 AD3d 455 [1st Dept 2020]).

In light of the stay, the Clerk of the court had yet to assign a new index number to the severed action comprising the non-CPLR article 78 causes of action prior to the disposition of the transferred CPLR article 78 proceeding, and the Trial Support Clerk had yet to reassign the severed action or the motion to dismiss the complaint in that action to a City Part. Inasmuch as the stay of proceedings has now been dissolved by operation of law, the Clerk of the court and the Trial Support Clerk must now respectively assign a new index number and randomly reassign the severed action to a City Part for disposition of the motion to dismiss.

Accordingly, it is,

ORDERED that the matter is restored to active status; and it is further,

ORDERED that the stay of proceedings, as directed in this court's order dated September 27, 2019 under Motion Sequence No. 003 be, and hereby is, lifted and dissolved; and it is further,

ORDERED that the second, third, and fifth causes of action remain severed and together shall constitute a severed action; and it is further,

ORDERED that, upon this dissolution of the stay, the County Clerk shall assign a new index number to the severed action, and the petitioner/plaintiff shall not be required to pay an additional index number fee or RJI fee; and it is further,

ORDERED that, upon this dissolution of the stay, the severed action, as well as the instant motion to dismiss the complaint in the severed action, are remitted to the Trial Support

Clerk, who is directed randomly to reassign the matter to a City Part of this court; and it is further,

ORDERED that the respondents/defendants shall serve a copy of this order with notice of entry upon both the County Clerk and the Trial Support Clerk; and it is further

ORDERED that the respondents/defendants shall serve the notice required by CPLR 8019(c) and a completed Form EF-22 upon the County Clerk and the Trial Support Clerk, and file the same with the County Clerk, and the Trial Support Clerk shall thereupon amend the court records accordingly; and it is further,

ORDERED that, upon the Clerk's issuance of a new index number to the severed action, the respondents/defendants shall file an RJJ under that index number, without the need for the payment of any new RJJ fee, and shall re-notice the motion to dismiss the complaint in the severed action under that index number; and it is further,

ORDERED that the motion submitted by the respondents/defendants under Motion Sequence 003 in this action shall be designated as a decided motion, and the appropriate clerk or office of the court shall close out that Motion Sequence number.

This constitutes the Amended Decision and Order of the court.

6/29/2020
DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:

☐
☐
☐
☐

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☐

DENIED

☒
☐
☐
☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☒

OTHER

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: