

**Allergan Fin., LLC v New York State Dept. of Fin.
Servs.**

2022 NY Slip Op 31947(U)

June 22, 2022

Supreme Court, New York County

Docket Number: Index No. 157128/2021

Judge: Frank P. Nervo

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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: HON. FRANK NERVO PART 04

Justice

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ALLERGAN FINANCE, LLC, ENDO HEALTH SOLUTIONS
INC., ENDO PHARMACEUTICALS INC., PAR
PHARMACEUTICAL COMPANIES, INC., PAR
PHARMACEUTICAL, INC., CEPHALON, INC., TEVA
PHARMACEUTICALS USA, INC., WATSON
LABORATORIES, INC., ACTAVIS PHARMA, INC., ACTAVIS
LLC, ACTAVIS ELIZABETH LLC

Plaintiff,

- v -

NEW YORK STATE DEPARTMENT OF FINANCIAL
SERVICES, LINDA A. LACEWELL,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 12, 13, 15, 16, 60, 61, 62, 63, 64, 65, 66, 75, 82, 84, 86

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

A writ of prohibition under CPLR § 7803 is an extraordinary remedy and requires a petitioner to establish: “(1) a body or officer is acting in a judicial or quasi-judicial capacity, (2) that body or officer is proceeding or threatening to proceed in excess of its jurisdiction, and (3) petitioner has a clear legal right to the relief requested” (*Garner v. NY State Dep’t of Corr. Servs.*, 10 NY3d 358 [2008]; see also *Matter of Town of Huntington v. New York State Div. of Human Rights*, 82 NY2d 783 [1993]). The petitioner must further show that there is either no other remedy at law or that any available remedies are

inadequate (*Schuyler v. State University of New York at Albany*, 31 AD2d 273 [3d Dept 1969]). Writs of prohibition are issued only in “sound discretion in clear-cut situations when there is no other remedy” (*id.* at 275). “[E]ven where the writ may be technically appropriate, the court must consider other facts such as gravity of the potential harm caused by the threatened excess of power or whether other proceedings in law or equity could correct the flaw, in determining whether a [petitioner’s] request should ultimately be granted” (*Matter of Town of Huntington v. New York State Div. of Human Rights*, 82 NY2d at 786).

As relevant here, petitioners contend that the Department of Financial Services (hereinafter “DFS”) is acting in excess of its authority by investigating potential insurance fraud alleged to have been committed by petitioners and, if fraud should be established, imposing civil penalties. New York Insurance Law § 403(c) empowers DFS to impose civil penalties against any person who has committed a fraudulent insurance act. New York Penal Law § 176.05 defines a fraudulent insurance act as an act:

committed by any person who, knowingly and with intent to defraud present [or] causes to be presented ... to or by an insurer ... or any agent thereof: ... any written statement ... as part of, or in support of ... a claim for payment, services or other benefit pursuant

to [a health insurance] policy, contract or plan that he or she knows to: (a) contain materially false information concerning any material fact thereto; or (b) conceal, for the purposes of misleading, information concerning any material fact thereto
(Penal Law § 176.05)

Accordingly, Insurance Law § 403(c) and Penal Law § 176.05 provide respondent DFS with jurisdiction to investigate insurance fraud and impose penalties therefor. Furthermore, it is beyond cavil that the cost of prescription medications are regularly paid by insurance providers, and petitioners concede that DFS properly exercises jurisdiction over insurance claims based upon fraudulent acts or misrepresentations. Consequently, DFS is not acting in excess of its jurisdiction in the instant matter, nor is it impermissibly regulating pharmaceutical companies, as petitioners allege.

To the extent that petitioners contend that they lack a remedy following DFS proceedings, this Court does not so find. Following proceedings before DFS, petitioners may bring an Article 78 proceeding seeking review of those proceedings. A writ of prohibition is, therefore, inappropriate under these circumstances.

Accordingly, it is

ORDERED that the petition is denied in its entirety and the matter is dismissed.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

6/22/2022
DATE


HON. FRANK P. NERVO
J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

J.S.C.

OTHER

REFERENCE