

Aron Law PLLC v New York City Police Dept.

2023 NY Slip Op 33408(U)

October 3, 2023

Supreme Court, New York County

Docket Number: Index No. 158164/2021

Judge: William Franc Perry

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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**

<p>PRESENT: <u>HON. WILLIAM FRANC PERRY</u></p> <p style="text-align: right; margin-right: 100px;"><i>Justice</i></p> <p>-----X</p> <p>ARON LAW PLLC</p> <p style="text-align: center; margin-left: 200px;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>NEW YORK CITY POLICE DEPARTMENT,</p> <p style="text-align: center; margin-left: 200px;">Defendant.</p> <p>-----X</p>	<p>PART</p> <p>INDEX NO. <u>158164/2021</u></p> <p>MOTION DATE <u>10/27/2022</u></p> <p>MOTION SEQ. NO. <u>002</u></p> <p style="text-align: center; margin-top: 20px;">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

On October 26, 2022, the Petitioner, Aaron Law PLLC, filed a CPLR § 2221(d) motion to reargue this Court’s September 9, 2022 order dismissing the petitioner’s Article 78, granting the defendant’s cross motion to dismiss and denying the petitioner’s application for attorney’s fees. Upon review of such motion, opposition to such motion and reply and all arguments contained therein, the motion to reargue is denied.

Pursuant to CPLR §2221(d), a motion for leave to reargue must be based upon matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion that would change the prior determination. *See Sheridan v. Very, Ltd.*, 56 A.D.3d 305 (1st Dept. 2008). Absent mistake on the Court's part, the Court must adhere to its original decision. *William P. Pahl Equip. Corp. v. Kassis*, 182 AD2d 22, 27, 588 N.Y.S.2d 8 [1st Dept. 1992], lv dismissed in part and denied in part 80 NY2d 1005, 592 N.Y.S.2d 665 [1992]). “Re-argument is not designed to afford the unsuccessful party successive opportunities to once again argue issues previously decided . . . or to present arguments different from those originally

asserted" (*William P. Pahl Equip. Corp. v. Kassiss, id.; Matter of Setters v. AI Props. & Devs. (USA) Corp.*, 139 A.D.3d 492, 32 N.Y.S.3d 87 (1st Dept. 2016).

The petitioner has failed to show any facts or law that the Court misapprehended in its September 9, 2022 decision and order. The petitioner alleges that because the respondent did not address the judicial interference exemption and the reasonable basis of the agency's denial in its cross motion, the Court was not allowed to consider either in its decision on the underlying motions. After the appeals' officer's determination and during the pendency of the Article 78, the defendant produced redacted copies of the requested relevant records simultaneous to filing its cross motion to dismiss. The fact that the respondent did not address the judicial interference exemption and the reasonableness of its assertion by the agency in its cross motion is not controlling here. The issue is whether the agency had a reasonable basis to deny the petitioner's FOIL request at the time it was denied. *See Matter of Utility Rate Analysis Consultants (URAC) Corp. v Public Serv. Commn. of The State of N.Y.*, 171 A.D.3d 1279, at 1280-81. Here the judicial interference exemption was put forward by the agency in its written decision on the petitioner's administrative appeal. (NYSCEF Doc No. 5.) In addition, the petitioner extensively argued against the applicability of this exemption in its petition and underlying motions. The judicial interference exemption and whether it was to a reasonable basis of denial of the FOIL was not only properly before the Court, it was the exact issue the Court was being asked to review and decide in connection with the petitioner's request for attorney's fees. *See* POL § 89(c).

On June 1, 2021, a Records Access Appeals Officer ("RAO") denied Petitioner's appeal, pursuant to Public Officers Law ("POL") § 87[2][e][i], on the grounds that disclosure of the records sought "would interfere with law enforcement investigations or judicial proceedings."

(NYSCEF Doc No. 5.) The RAO explained that the records pertained to arrestees whose prosecutions remained pending, and disclosure “could result in witness tampering or the tainting of a jury pool and/or the perpetrator evading detection or prosecution.” (*Id.*) The RAO also stated in the appeal decision that, pursuant to POL § 87[2][b], disclosure “would constitute an unwarranted invasion of personal privacy” of the individuals. (*Id.*)

In its underlying order, the Court properly found that Respondent had a reasonable basis for denying access, as the records pertained to ongoing prosecutions. (POL § 89[4][c][ii].)


The petitioner also argues that the Court was not allowed to consider the redactions and the sealed record exemptions as they were first raised in the cross motion for dismissal. These exemptions were raised when the requested records were turned over to the petitioner during the pendency of the Article 78. Petitioner’s motion to renew does not assert that the redactions or not turning over the sealed record was improper, only that these exemptions were first raised in the respondent’s cross motion and were not the original grounds of the agency’s denial. The petitioner did not raise such argument in its opposition to the respondent’s cross motion to dismiss. (NYSCEF Doc No. 36.) It must be noted, that the motion to renew, like the petitioner’s opposition memorandum to the defendant’s cross motion to dismiss, does not raise any argument regarding the sealed record not being produced. (NYSCEF Doc No. 36, 44 and 51.) While it is true that courts are usually limited to only reviewing the reasons the agency invoked at the time of its decision, privacy of non-parties may be raised for the first time during an Article 78 proceeding.¹ *See Matter of Rose v. Albany County Dist. Attorney's Off.*, 111 A.D.3d 1123 at 1125-26.

¹ It is worth noting that the RAO had already stated in the appeal decision that, pursuant to POL § 87[2][b], disclosure “would constitute an unwarranted invasion of personal privacy” of the individuals.

In its September 9, 2022 decision, the Court properly found that Respondent’s redactions of the arrestees’ birth dates, home addresses, and NYSID numbers were proper on privacy grounds, pursuant to POL § 89 [2][b]. In addition, the petitioner’s previous argument that the “NYPD should not be able to shield [such] information” is still conclusory and unsubstantiated. (NYSCEF Doc No. 36, Reply, at 9.)

Finally, the Court in its discretion properly denied the petitioner’s request for attorneys’ fees on the facts of this case, as the respondent had a reasonable basis for denying access at the time of denial, as the records pertained to ongoing prosecutions. (POL § 89[4][c][ii] [in FOIL proceedings, the court “shall assess” attorneys’ fees and costs against agency if petitioner “has substantially prevailed and the court finds that the agency had no reasonable basis for denying access”].)

Thus, the Defendants CPLR §2221(d) motion for leave to reargue must be denied. This constitutes the decision and order of this Court.

<u>10/03/2023</u> DATE		 <hr/> WILLIAM FRANC PERRY, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE