

**Aruleba v Sapienza**

2024 NY Slip Op 32041(U)

June 17, 2024

Supreme Court, New York County

Docket Number: Index No. 153380/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

-----X

CLEMENT ARULEBA,

Petitioner,

- v -

COMMISSIONER VINCENT SAPIENZA, NEW YORK CITY  
ENVIRONMENTAL PROTECTION AGENCY, THE CITY OF  
NEW YORK

Respondents.

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INDEX NO. 153380/2020

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 3, 4, 5, 6, 7, 8, 17, 18, 19, 20, 21, 22

were read on this motion to/for ARTICLE 78.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 9, 10, 11, 12, 13, 14, 15, 16, 23

were read on this motion to/for CHANGE VENUE.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. The petition (MS001) to contest a decision by respondents is moot in light of respondents' motion (MS002) to change venue to Queens County.

**Background**

Petitioner seeks to annul a determination made by respondent the Department of Environmental Protection (i/s/h/a New York City Environmental Protection Agency) to revoke his asbestos inspection license after a hearing.<sup>1</sup> He claims he had this license for 16 years and

<sup>1</sup> The Court must acknowledge the elephant in the room- that this proceeding has been pending far too long. A man lost his license and was entitled to have a court address his case quickly. Although it was recently transferred to this part, there is no excuse for the four year delay on an Article 78 proceeding. This Court apologizes, on behalf of the court system, for the unacceptable delay in addressing this matter.

argues that he was not aware that the hearing could result in the termination of his license.

Petitioner acknowledges that he had prior, minor violations and paid some minor fines. He insists that no one was ever poisoned due to his allegedly improper inspections.

Respondents contend that this case should be transferred to Queens County as that is the proper venue; they emphasize that the hearing took place in Queens, the determination was made in Queens, the Department of Environmental Protection is in Queens and the material events (i.e., the subject inspection) was in Queens. They argue that they complied with the proper procedural rules with respect to demanding a change in venue.

In opposition to the venue issue, petitioner contends that venue is proper because the City of New York has a principal place of business in New York County. He insists that the prior violations to which he “pled guilty” were at an OATH office in Manhattan. Petitioner claims that the instant venue motion is untimely.

### **Discussion**

As an initial matter, the Court finds that the instant motion to change venue was timely filed. CPLR 511(a) provides that “A demand under subdivision (b) for change of place of trial on the ground that the county designated for that purpose is not a proper county shall be served with the answer or before the answer is served” CPLR 511(b) requires that respondent specify the county that it thinks is proper and, if the petitioner objects, that a motion be made within 15 days.

Here, respondents filed their answer on August 21, 2020 (NYSCEF Doc. No. 17) and their demand for a change of venue is dated August 14, 2020 (NYSCEF Doc. No. 14). Therefore, the initial demand was timely. And the instant motion to change venue was filed on the same day as the answer, which makes the motion timely as well.

Therefore, this Court grants the motion to change venue as there is no doubt that all of the material events took place in Queens County.

The Court observes that, in any event, the proceeding would have to be transferred to the Appellate Division under CPLR 7804(g) as it involves a substantial evidence question made after a hearing. As mentioned in the footnote above, the Court is well aware that that this proceeding has been pending for far too long (it was only assigned to this part in June 2024 but it was seemingly ready to be decided in September 2020). The Court apologizes for this absurd delay. Unfortunately, this Court cannot speed up the process and transfer it directly to the Second Department as CPLR 7804(g) provides that a Court transfer such a proceeding to “to a term of the appellate division held within the judicial department embracing the county in which the proceeding was commenced.” Therefore, this dispute must be transferred to Queens County Supreme Court first; this Court simply cannot transfer it directly to the Second Department (and it would be delayed even longer if this Court tried to slip it through only to have it bounce back).

Accordingly, it is hereby


ORDERED that the motion (MS002) for a change of venue is granted and venue of this action is changed from this Court to the Supreme Court, County of Queens; and it is further

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, County of Queens and shall mark his records to reflect such transfer; and it is further

ORDERED that, within 30 days from entry of this order, counsel for petitioner shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Queens County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website)].

<u>6/17/2024</u> <b>DATE</b>	 <hr/> <b>ARLENE P. BLUTH, J.S.C.</b>			
<b>CHECK ONE:</b>  <b>APPLICATION:</b>  <b>CHECK IF APPROPRIATE:</b>	<input checked="" type="checkbox"/> <b>CASE DISPOSED</b> <input type="checkbox"/> <b>GRANTED</b> <input type="checkbox"/> <b>DENIED</b> <input type="checkbox"/> <b>SETTLE ORDER</b> <input type="checkbox"/> <b>INCLUDES TRANSFER/REASSIGN</b>	<input type="checkbox"/> <b>NON-FINAL DISPOSITION</b> <input type="checkbox"/> <b>GRANTED IN PART</b> <input type="checkbox"/> <b>SUBMIT ORDER</b> <input type="checkbox"/> <b>FIDUCIARY APPOINTMENT</b>	<input checked="" type="checkbox"/> <b>OTHER</b>  <input type="checkbox"/> <b>REFERENCE</b>	