

Matter of Dor v Tucker
2024 NY Slip Op 35640(U)
December 23, 2024
Supreme Court, Queens County
Docket Number: Index No. 724223/23
Judge: Timothy J. Dufficy
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.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

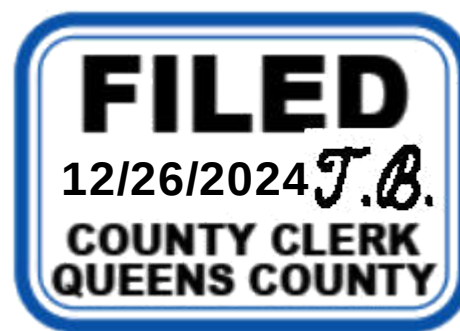
-----X
In the Matter of the Application of
LUBOV DOR,
Petitioner,

Index No.: 724223/23
Mot. Date: 5/21/24
Mot. Seq. 1

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

-against-

JANET TUCKER, in her Official Capacity as
Chief Clerk of the Surrogate's Court for Queens
County; PETER J. KELLY, in his Official Role
as Surrogate for Queens County,



Respondents.

-----X
The following papers were read on this Article 78 petition by petitioner seeking, among other things, a writ of mandamus directing the respondents to honor fee waiver certifications submitted, pursuant to CPLR 1101 (e); to immediately reinstate the petitioner's petition for letters of administration and accompanying documents, filed on June 28, 2023; and, to immediately process the administration petition without requiring the payment of fees.

	<u>PAPERS</u> <u>NUMBERED</u>
Notice of Petition-Petition-Affidavits-Exhibits.....	EF 1-6; EF 9
Answering Affidavits - Exhibits.....	EF 11; EF 16
Reply Affidavits - Exhibits.....	EF 12-20

Upon the foregoing papers, the petition brought by petitioner is denied, as moot.

Petitioner Lubov Dor (Dor), the surviving spouse of the decedent, Michael Woods, who died on March 7, 2023, brings this Article 78 petition seeking, among other things, a writ of mandamus directing the respondents to honor fee waiver certifications submitted, pursuant to CPLR 1101(e); to immediately reinstate the petitioner's petition for letters of administration and accompanying documents, filed on June 28, 2023; and, to immediately process the administration petition without requiring the payment of fees.

Dor engaged Queens Legal Services, (QLS), a non-profit civil legal services provider, for the purpose of administering her late husband's estate. According to her counsel, Dor has a fixed income and qualifies for services under eligibility criteria implemented by QLS. On June 28, 2023, QLS e-filed the petition for administration and supporting papers, including a fee waiver certification as required by CPLR 1101(e). On July 5, 2023, it is alleged that a clerk of the Surrogate's Court of the County of Queens called QLS attorney Michael Corcoran, (Corcoran), stating that additional documents were required to process the fee waiver application. The additional documents requested were then emailed by Mr. Corcoran to the address provided by the clerk. Thereupon, QLS was advised that a motion, under CPLR 1101(d), was required in order to process the fee waiver application and obtain a docket number. After discussion, on July 20, 2023, attorney Corcoran emailed a request that the fee waiver, along with the petition for letters of administration be given a docket number and properly processed, pursuant to CPLR 1101(e), pointing out that QLS is a legal services organization and no formal motion is required to obtain the fee waiver or a docket number. No reply was received by QLS, and, apparently, no replies were provided for the follow-up emails of August 29, 2023 or September 20, 2023. However, on October 4, 2023, attorney Corcoran received an email, apparently from the e-file system that, "The court has removed the [Administration Petition] for the following reason: FILING FEE REQUIRED." Thereafter, on October 10, 2023, Mr. Corcoran sent a letter to the respondents "demanding that the Administration Petition be reinstated and assigned a docket number as mandated by CPLR § 1101 (e)." Receiving no response, this Article 78

petition was filed on November 15, 2023. After the filing of the Article 78 petition, the following transpired:

Upon receipt of the within petition and supporting documents, on or about December 11, 2023, the Office of the Attorney General advised QLS that the prior application was deleted from the NYSCEF system and that a new application had to be re-filed with the court. QLS was advised that, upon re-filing, Dor's application for a fee waiver and docket number would be properly processed. QLS adhered to this request.

However, upon re-filing, the matter was remitted to Surrogate Kelly, under a separate provision of the CPLR section, instead of processing the application with the CPLR 1101(e) fee waiver. Surrogate Kelly's Order of February 23, 2024, granted the fee waiver with a monetary limitation requiring a further motion in order to proceed in administering cooperative shares valued far more than the \$50,000 limitation ordered.

A CPLR Article 78 proceeding is the appropriate vehicle to seek review of actions taken by a government agency, or in this case, the respondents, as to whether its decisions were arbitrary, capricious, or without legal authority.

"A special proceeding under CPLR article 78 is available to challenge the actions or inaction of agencies and officers of state and local government." (*Matter of Gottlieb v. City of New York*, 129 AD3d 724, 725 [2d Dept 2015].) A writ of mandamus may be "addressed to subordinate judicial tribunals, to compel them to exercise their functions, but never to require them to decide in a particular manner" (*Jacobs v Parga*, 98 AD3d 741 [2d Dept 2012], quoting *Klostermann v Cuomo*, 61 NY2d 525, 540 [1984].)

CPLR 1101 (e) provides, in its pertinent part:

"(e) When motion not required. Where a party is represented in a civil action by a legal aid society or a legal services or other nonprofit organization, ... all fees and costs relating to the filing and service shall be waived without the necessity of a motion and the case shall be given an index number, or, in a court other than the supreme or county court, an appropriate filing number, provided that a determination has been made by such society, organization, or attorney that such party is unable to pay the costs, fees and expenses necessary to prosecute or defend the action, and that an attorney's certification that such determination has been made is filed with the clerk of the court."

Were the facts limited to the actions of the clerk of the court, this Court may have addressed the use of the writ of mandamus as to the fee waiver application and CPLR 1101(e). However, with the fluid nature of the facts continuing after the within petition's filing, and Surrogate Kelly's issuance of an Order, which basically granted poor person's relief with the additional proviso requiring further approval by the Surrogate by motion for any matter involving issues over \$50,000, this Court will not entertain the use of a writ to order that it be withdrawn, amended, altered or changed in any manner. (*Id.*; *Jacobs*, 98 AD3d 741.)

Accordingly, it is

ORDERED that the Article 78 petition is deemed moot, and is otherwise denied, in its entirety.

Dated: December 23, 2024



TIMOTHY J. DUFFICY, J.S.C.

