

Matter of Brandi v City of Saratoga Springs, N.Y.
2025 NY Slip Op 35476(U)
July 11, 2025
Supreme Court, Saratoga County
Docket Number: Index No. EF20242135
Judge: James E. Walsh
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SUPREME COURT
STATE OF NEW YORK

COUNTY OF SARATOGA

In the Matter of

MICHAEL A. BRANDI,

Petitioner,

DECISION and ORDER

RJI # 45-1-2024-0871

Index # EF20242135

-against-

THE CITY OF SARATOGA SPRINGS, NEW YORK;
COMMISSIONER OF ACCOUNTS DILLON MORAN,
COMMISSIONER OF FINANCE MINITA SANGHVI,
COMMISSIONER OF PUBLIC WORKS JASON GOLUB,
MAYOR JOHN SAFFORD,
COMMISSIONER OF PUBLIC SAFETY TIMOTHY COLL,

Respondents,

For a Judgment Under Article 78 of the Civil Practice Law and Rules.

In the Matter of

MICHAEL A. BRANDI,

Petitioner,

DECISION and ORDER

RJI # 45-1-2024-1110

Index # EF20242696

-against-

THE CITY OF SARATOGA SPRINGS, NEW YORK;
COMMISSIONER OF ACCOUNTS DILLON MORAN,
COMMISSIONER OF FINANCE MINITA SANGHVI,
MAYOR JOHN SAFFORD,
COMMISSIONER OF PUBLIC SAFETY TIMOTHY COLL,

Respondents,

For a Judgment Under Article 78 of the Civil Practice Law and Rules.

APPEARANCES:

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WALSH, J

On or about July 3, 2024, Petitioner filed a Petition under Index #EF20242135, seeking an order pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) to preliminarily enjoin Respondents from paying the legal fees of two city employees, Respondent Commissioner Moran and Deputy Commissioner Stacey Connors, as well to declare the payment of such expenses were in violation of the New York State Constitution and to annul and void the City Council's decision to pay such expenses in a City Council meeting conducted the previous day, and to award Petitioner counsel fees and costs in bringing this litigation. On August 21, 2024, Petitioner filed a second Petition under Index #EF20242696, seeking an order for the same relief as it related to legal fees paid on behalf of Commissioner Golub and city employee Brooke VanBuskirk pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) as voted on in a City Council meeting conducted on the previous day. On February 20, 2025, these matters were transferred to this Court. A conference was conducted on March 10, 2025 and the Court acquired the transcripts from the oral

argument from July 24, 2024 and September 26, 2024, which was conducted before the Judge previously assigned to the case. Since such time, Respondent has updated the Court on the extent of the outstanding invoices as well as to advise that no criminal charges have resulted from these investigations. On each occasion, Petitioner objected to additional information being provided to the Court, following the completion of briefing. While the Court understands Petitioner's objection, the Court tends to appreciate further information, in the interest of judicial economy.

Initially, Respondents submits that Petitioner does not have standing to maintain this proceeding. Petitioner bases his standing as a taxpayer pursuant to General Municipal Law §51 and common law. As Petitioner brings this action to stop an action which is fraudulent, a waste of public funds, or for entirely illegal purposes, a taxpayer may not use an Article 78 action to challenge an act for which a municipal officer exercises judgment or discretion, unless such judgment or discretion is arbitrary or illegal. *Hebel v. West*, 25 AD3d 172 [3rd Dept. 2005]. Here, Petitioner contends that the conduct complained of and seeking to stop is an impermissible expenditure of city resources, nor simply an unwise one. As such application does not challenge a discretionary decision, Petitioner has standing to bring and to maintain this action.

The facts of these combined actions are similar. In April 2024, a subpoena duces tecum was issued by the Saratoga County Court seeking city records related to a criminal investigation of city employees. In response thereto, despite not being named in the investigation, Commissioner Moran retained legal counsel to represent

himself and his deputy commissioner. In July 2024, Commissioner Moran introduced a motion at a City Counsel meeting for the city to pay the cost of the legal expenses for himself and his deputy. The City Counsel approved the motion and the action under Index EF20242135 was commenced shortly thereafter. Similarly, Commissioner Golub retained private counsel to present himself and his subordinate in April 2024, and sought his legal representation to be paid at the August 20, 2024 counsel meeting. After the City Counsel voted in favor of the motion to pay these fees, Petitioner commenced the second action under Index #EF20242696.

Petitioner relies heavily of the *Matter of Dreyer v. City of Saratoga Springs*, 43 AD3d 586 [3rd Dept. 2007], where the Appellate Division interpreted the Saratoga Springs City Code §9-1 and Public Officers Law §18, finding them to be identical in application. “[T]he City Council of the City Saratoga Springs agrees to provide a defense and indemnify its officers and employees in any state or federal legal action arising out of any alleged act or omission which occurred or allegedly occurred in the scope of official duty or public employment.” *Id. at 587*. The Court ruled that the City was required to indemnify “if the allegations of the complaint suggest that any of the conduct asserted falls reasonably within the scope of employment, the duty to provide a defense is triggered since the duty to defend is extremely broad and exists regardless of how baseless the complaint may be.” *Id at 588*.

Here, there were no allegations lodged against Moran, Conners, Golub or VanBuskirk, but merely an investigation seeking records relating to other city employees. While emails of VanBuskirk emails were demanded in the subpoena, as

there is no complaint, there cannot be a showing that any alleged conduct fell within the scope of their employment.

In an advisory opinion interpreting Public Officers Law, ruled by *Dreyer* to mirror City Code §9-1, the Attorney General opined in Opinion. No. 2003-16:

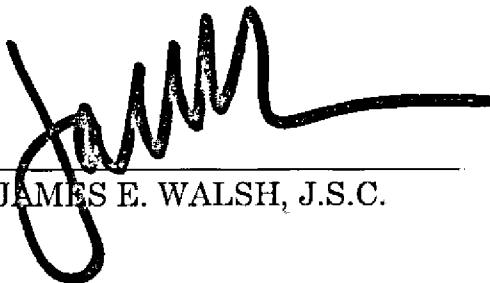
“With respect to town employees called as witnesses or being interviewed in connection with the prosecution of the town supervisor, section 18 authorizes the defense of a municipal employee in a civil proceeding. A potential or actual witness who is represented by an attorney is not defending himself in an action or a proceeding. Furthermore, the statute authorizes defense in a civil action arising out of an act or omission by the employee himself. Here, the employees seek reimbursement in connection with a case against a town official, not against themselves. For these reasons, section 18 does not provide authorization for the Town to pay the legal expenses of the town employees called to assist in the criminal investigation of the town supervisor.

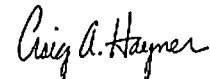
It is clear that this interpretation of Public Officers Law §18 does not permit the indemnification for legal counsel for criminal acts, as such would also constitute conduct outside the scope of employment. As such expenses were approved prior to the lodging of any criminal charges, they prove speculative in nature.

The Court finds that the Respondents lacked authority to authorize the subject payments at the July 2, 2024 and August 20, 2024 City Counsel meetings as in violation of the New York State Constitution Article VIII, §1, which prohibits gifts to individuals from municipalities. The motions to annul and to cancel the vote to make the payments (Agenda Item 6 of the July 2, 2024 meeting and Agenda Items 13.5 and 13.6 of the August 20, 2024) is granted. Said expenditures are permanently enjoined. This shall constitute the Decision and Order of the Court. No costs are awarded to any party. Any relief or arguments not specifically addressed have been considered

and denied or rendered academic by this ruling. The Court is hereby uploading the original Decision and Order into the NYSCEF system for filing and entry by the County Clerk. Counsel for Petitioner is still responsible for serving notice of entry of this Decision and Order in accordance with the Local Protocols for Electronic Filing for Saratoga County.

Dated: July 11, 2025
Ballston Spa, New York



JAMES E. WALSH, J.S.C.

Entered Saratoga County Clerk

07/11/2025