

**DiSanto v New York City Dept. of Health & Mental  
Hygiene**

2026 NY Slip Op 31560(U)

April 9, 2026

Supreme Court, Kings County

Docket Number: Index No. 508835/2024

Judge: Lisa Lewis

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This opinion is uncorrected and not selected for official publication.

At City Part 25, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 9th day of April, 2026.

P R E S E N T:

HON. LISA LEWIS,

Justice.

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PETRINA DISANTO, JOHN DISANTO, JACK DISANTO, ROBERT CUBA, TINAMARIE DISANTO, GEORGINA DISANTO, VASILIKI KONSTANTINOOU, EFREN PENA-FLORES, GOURMET GRILL INC., FROZEN PLANET YOGURT LLC and MILL BASIN BAGEL CAFÉ INC.,

Index No. 508835/2024

**DECISION AND ORDER**

Petitioners,

Motion Sequence: 1, 2, 3

-against-

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE,

Respondent.

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The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and

Affidavits (Affirmations) Annexed \_\_\_\_\_ 1, 11, 29, 31, 32, 34 \_\_\_\_\_

Opposing Affidavits (Affirmations) \_\_\_\_\_ 17, 36, 39 \_\_\_\_\_

Affidavits/ Affirmations in Reply \_\_\_\_\_ 43, 47 \_\_\_\_\_

Upon the foregoing papers in this CPLR article 78 proceeding, petitioners Petrina DiSanto (Petrina), John DiSanto (John), Jack DiSanto (Jack), Robert Cuba (Robert), TinaMarie DiSanto (TinaMarie), Georgina DiSanto (Georgina), Vasiliki Konstantinou, Efren Pena-Flores, Gourmet Grill Inc. (Gourmet Grill), Frozen Planet Yogurt LLC (Frozen Planet) and Mill Basin Bagel Café Inc. (Bagel Café) move, by order to show

cause (OSC), for an order prohibiting and staying a proceeding brought by respondent New York City Department of Health and Mental Hygiene (DOHMH) before the Office of Administrative Trials and Hearings (OATH) (Motion Seq. #1). By separate motion and amended motion (Motion Seq. 2 and 3), petitioners move for an order (1) granting petitioners leave to conduct limited discovery pursuant to CPLR 408 and 3101 and (2) staying the OATH proceeding pending completion of such discovery and further order of this court.

This matter involves three businesses in the Mill Basin neighborhood of Brooklyn-Gourmet Grill, Frozen Planet and Bagel Café. Petrina is the sole owner of Gourmet Grill. John and Jack each own a 25% interest in Frozen Planet and are managers of Gourmet Grill. TinaMarie and Georgina are each 25% owners of Frozen Planet along with John and Jack. Robert is the sole owner of Bagel Café. On or about December 13, 2021, John, Jack and Robert were arrested and charged with bribery in the second and third degree. The arrests and charges ensued from an investigation during which these individual petitioners were reported to have provided \$16,000.00 in cash to an undercover investigator, believed by them to be a DOHMH employee, in exchange for advance notice of confidential scheduled inspections of the three aforementioned businesses. Plea deals were thereafter offered and negotiated whereby John, Jack and Robert would each plead guilty to a misdemeanor under Penal Law § 195.05 (Obstructing governmental administration in the second degree), pay fines, complete community service and receive two years of probation. Guilty pleas were entered on February 8, 2023 and sentencing occurred on October 19, 2023. According to the instant Article 78 petition,

“[i]n the course of the plea deal negotiations, [the DOHMH] had led the Assistant District Attorney, Counsel for the defendants, the owners of the business entities, as well as John, Jack and Robert, to believe that it had agreed not to revoke the food service establishment permits of Gourmet Grill, Frozen Planet or Mill Basin Bagel in connection with the allegations contained in the Kings County Case or any related investigations or convictions. However, on the eve before sentencing, [the DOHMH] reneged on this agreement and refused to follow through on the deal” (Petition, NYSCEF Doc No 1, at ¶ 18).

Petitioners allege that in conjunction with the guilty plea, John, Jack and Robert were each issued a Certificate of Relief From Disabilities (CRD) which relieved them of all forfeitures, disabilities and bars automatically imposed by law to “[e]mployment, license and privilege except those enumerated sections related to weapons imposed under [Penal Law §§ 265.01 (4) and 400.00]” by reason of the convictions (CRD of John, NYSCEF Doc No 5).<sup>1</sup>

On or about February 27, 2024, the DOHMH brought a petition before OATH against John, Jack and Robert, “individually, and as owner or operator or manager or agent, or otherwise person in charge of” Gourmet Grill, Frozen Planet and Bagel Café, seeking a recommendation from the OATH Administrative Law Judge (ALJ) that the DOHMH Commissioner revoke the food service establishment permits of the named respondents and “ban[] the respondents, their relatives and associates from being able to apply for a Department permit to operate a food establishment in New York City.” The OATH petition is based upon the convictions of John, Jack and Robert and sections 3.15,

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<sup>1</sup> The alleged CRDs of Jack and Robert were not filed in NYSCEF as exhibits.

5.17 and 81.39 of the New York City Health Code (Health Code). The instant proceeding was commenced on March 27, 2024 through the filing of the petition and OSC seeking a stay of the OATH proceeding which, according to the OSC, was scheduled to proceed on April 24, 2024. The OSC was signed by Justice Rachel Freier on April 11, 2024 and a stay of the OATH proceeding was granted therein.

In the instant petition, petitioners argue that the CRDs issued in the criminal proceeding prevent the DOHMH from utilizing the convictions in connection with the plea deal as a bar to petitioners' holding of food service establishment permits; that due to the criminal plea agreements, John, Jack and Robert, who are the only parties with personal knowledge of the allegations contained in the OATH petition, cannot testify in Gourmet Grill's, Frozen Planet's or Bagel Café's defense in the OATH proceeding; and that OATH petition should be transferred to the New York Supreme Court to determine the issue of collateral estoppel, and stayed until the probation sentences of John, Jack and Robert are concluded and they can freely participate in their defenses. The DOHMH filed an answer to the instant petition on April 30, 2024, wherein it interposes defenses that the DOHMH is acting within its jurisdiction in bringing the OATH petition, CRDs do not bar discretionary proceedings such as those brought by the DOHMH before OATH, collateral estoppel is inapplicable as DOHMH was not a party to the criminal proceeding, there is no basis in law for transfer of the OATH proceeding to Supreme Court, there is no statute or rule that prevents civil or administrative proceedings from continuing during a period of criminal probation, and that petitioners have not set forth the elements for injunctive relief.

Following joinder of issue, petitioners moved for leave to conduct limited discovery, seeking (a) production of documents from the DOHMH concerning (i) all communications, memoranda, notes, and internal e-mails relating to the plea negotiations and agreements in petitioners' criminal proceedings in Supreme Court, Kings County (ii) all communications with the District Attorney's Office regarding petitioners, (iii) all documents reflecting the DOHMH's position, recommendations, or requests regarding sentencing, fines, probation conditions, and the treatment of petitioners' corporate entities in the Kings County criminal matter; (iv) all records concerning the DOHMH's awareness of, and response to, CRDs issued to petitioners in the Kings County matter, and any internal analysis of what legal effect, if any, those CRDs should have on food service permits and enforcement decisions; (v) all documents, drafts, and communications concerning the initiation, drafting, and prosecution of the pending OATH proceeding against petitioners, including the decision not to name the business entities and other indispensable parties; (vi) any internal DOHMH policies, guidelines, or directives concerning the coordination of enforcement actions with District Attorney's Offices and/or OATH where there has been a related criminal prosecution or CRD; and (vii) any Notices of Violation, Commissioner's Orders, or related enforcement documents issued in connection with the underlying inspections and criminal charges; (b) depositions upon oral questions of (i) the DOHMH official(s) who participated in or approved the plea negotiations in the Kings County criminal matter; (ii) the DOHMH official(s) or attorneys who decided that the DOHMH would not adhere to the plea-related understanding regarding petitioners' businesses, and who directed the subsequent

administrative actions; and (iii) the DOHMH personnel responsible for drafting, reviewing, and filing the OATH petitions and related administrative charging documents including Harminderpal Rana, the individual responsible for filing the OATH petition and whom the DOHMH relied upon in its opposition papers; and (c) such narrowly tailored additional disclosure as may be agreed by the parties or directed by the court, including reasonable third-party subpoenas, if necessary, to complete the record of the agency decision-making at issue. The motions further seek a stay of the OATH proceeding pending completion of discovery.

As an initial matter, because Motion Seq. #2 and #3 seek identical relief, with the latter solely amending the Notice of Motion to include a CPLR 2214 (b) statement, Motion Seq #2 is denied as superseded by Motion Seq. #3 (*see Furze v Stapen*, 66 Misc 3d 1206[A], 2019 NY Slip Op 52139[U] [Sup Ct, Kings County 2019]; *Navarra v Vaca*, 18 Misc 3d 1115(A), 2008 NY Slip Op 50029[U] [Sup Ct, Richmond County 2008]).

An Article 78 petition seeking the extraordinary remedy of prohibition may be granted upon a showing that a “body or officer proceeded, is proceeding, or is about to proceed without or in excess of jurisdiction” (CPLR § 7803 [2]). “Prohibition may be maintained solely to prevent or control a body or officer acting in a judicial or quasi-judicial capacity from proceeding or threatening to proceed without or in excess of its jurisdiction . . . and then only when the clear legal right to relief appears and, in the court’s discretion, the remedy is warranted” (*Matter of the Town of Huntington v New York State Div. of Hum. Rts.*, 82 NY2d 783, 786 [1993]; *see Matter of Schumer v Holtzman*, 60 NY2d 46, 51 [1983]; *Matter of Rachele v Rice*, 112 AD3d 942, 942 [2d

Dept 2013]). “To demonstrate a clear legal right to the extraordinary writ of prohibition, a petitioner is required to show that the challenged action was ‘in reality so serious an excess of power incontrovertibly justifying and requiring summary correction’” (*Matter of Soares v Carter*, 25 NY3d 1011, 1013 [2015], quoting *La Rocca v Lane*, 37 NY2d 575, 580 [1975], *cert denied* 424 US 968 [1976]). In determining whether to exercise the court’s discretion and grant a writ of prohibition, several factors are to be considered, including “the gravity of the harm which would be caused by an excess of power” and “whether the excess of power can be adequately corrected on appeal or by other ordinary proceedings at law or in equity” (*La Rocca*, 37 NY2d at 579).

In this matter, the DOHMH is acting well within its jurisdiction and power in bringing the petition before OATH seeking revocation of petitioners’ food service permits (City Charter §§ 561, 1048). Pursuant to 24 RCNY § 7-09, the Commissioner of the DOHMH has delegated to the OATH Trials Division the authority to conduct hearings on matters including whether to suspend or revoke a license, permit, or registration of a business. Health Code § 3.15 (b) states that “[n]o person shall give or offer a gift, gratuity, benefit, favor or bribe, including but not limited to money, food, and drink, to an employee or agent of the Department engaged in carrying out an inspection, survey or examination or in the performance of any other duty for the Department or Board.” Health Code § 5.17 (a) (1) provides that a permit may be revoked for “[w]illful or continued violation of this Code or for such other reason as the Commissioner or Board.” Health Code § 5.17 (a) (2) states that a permit may be revoked for the “giving or offering to an employee or agent of the Department or other government agency, engaged

in carrying out an inspection, survey or examination or in the performance of any other duty for the Department or such agency, a gift, gratuity, benefit, favor or bribe, including but not limited to money, food, or drink.” Health Code § 81.39 (c) states that, in addition to the forfeitures and penalties set forth in Articles 3 and 5 of the Health Code, the Department may revoke any permit where interference with personnel of the Department in the performance of their duties or a violation of section 5.17 of the Health Code occurs.

Petitioners’ arguments in support of the instant petition include, among other things, claims that the DOHMH is estopped from bringing the petition, that the petition is barred by the CRDs and that the DOHMH failed to join necessary parties, to wit, the individual petitioners named in this proceeding aside from John, Jack and Robert who have ownership interests in the subject businesses. However, the contentions raised by petitioners do not implicate the DOHMH’s authority or jurisdiction to commence the proceeding before OATH but rather challenge the underlying merits of the DOHMH’s petition. These arguments may be presented to and addressed by the ALJ during the course of the OATH proceeding, and any subsequent recommendation of the ALJ and/or determination by the Commissioner of the DOHMH against petitioners may be further challenged by appeal to the Board of Health and, if unsuccessful, by way of an Article 78 proceeding. “Prohibition will not ordinarily be warranted where the grievance can be adequately addressed by alternative proceedings at law or in equity, such as by motion, appeal, or other applications” (*Matter of Feldman v Marcus*, 23 AD3d 559, 560 [2d Dept

2005], *lv denied* 7 NY3d 703 [2006]; *see Matter of Town of Huntington*, 82 NY2d at 786; *Matter of Eberhardt v City of Yonkers*, 305 AD2d 501, 502 [2d Dept 2003]).

The court notes that the copy of the CRD issued to John, filed at NYSCEF Doc. No. 5, includes only the first of two pages, and does not establish that the DOHMH is barred from bringing the OATH proceeding as the CRD applies only to bar forfeitures “automatically imposed by law by reason of” the conviction. Correction Law § 701 (3) provides that a CRD “shall not . . . in any way prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege.”

Further, petitioners do not offer, and this court has not uncovered any legal authority allowing a court to direct the transfer of a proceeding before OATH to Supreme Court.

Finally, while discovery may be directed in a special proceeding with leave of court (CPLR § 408), petitioners have not established how the discovery sought is material and necessary for determining or would have any bearing upon the instant proceeding for prohibition, which is limited to the issue of the DOHMH’s jurisdiction, authority and/or power to bring the proceeding before OATH. Rather, the discovery sought appears to be directed to the underlying merits of the DOHMH’s petition before OATH. As a result, petitioner’s motion for leave to conduct discovery and a stay of the OATH proceeding pending completion of discovery is denied.

There being no showing of success on the merits of the instant proceeding for prohibition, nor showing that irreparable harm will result if the OATH proceeding is resumed, all other requests for a stay or injunctive relief herein are denied (*see Doe v Axelrod*, 73 NY2d 748, 750-751 [1988]).

The court has considered all other arguments of petitioners and finds them unavailing.

Accordingly, it is hereby

ORDERED that petitioners' OSC and petition (Motion Seq. #1) are denied; and it is further

ORDERED that petitioners' original motion for leave to conduct discovery (Motion Seq. #2) is denied as academic; and it is further

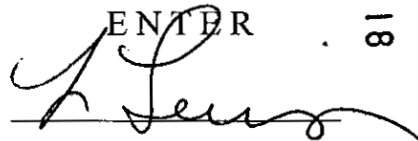
ORDERED that petitioners' amended motion for leave to conduct discovery (Motion Seq. #3) is denied in all respects; and it is further

ORDERED that any request for relief not expressly granted herein has been considered and is denied; and it is further

ORDERED that the stay of the OATH proceeding granted pursuant to the April 11, 2024 OSC is hereby vacated; and it is further

ORDERED that the instant Article 78 proceeding is dismissed.

The foregoing constitutes the decision and order of the court.

ENTER  


J. S. C.  
Hon. Lisa Lewis

KINGS COUNTY CLERK  
FILED  
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