

**Minsky v City of New York**

2012 NY Slip Op 31074(U)

April 18, 2012

Supreme Court, New York County

Docket Number: 108525/11

Judge: Donna M. Mills

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SUPREME COURT OF THE STATE OF NEW YORK—NEW YORK COUNTY

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

ANDREA MINSKY,  
Petitioner,  
-against-  
THE CITY OF NEW YORK, et al.,  
Respondents.

INDEX NO. 108525/11  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED  
1, 2  
3  
4

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....  
Answering Affidavits - Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

CROSS-MOTION:  YES  NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

**FILED**

APR 23 2012

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 4/18/12

*Donna M. Mills*  
J.S.C.

**DONNA M. MILLS, J.S.C.**

Check one:  FINAL DISPOSITION

\_\_\_\_\_  
NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 58

-----X  
In the Matter of the Application of ANDREA  
MINSKY,

Petitioner,

For a Judgment Pursuant to CPLR Article 78

-against-

Index No. 108525/11

THE CITY OF NEW YORK and THE POLICE  
DEPARTMENT OF THE CITY OF NEW YORK,  
Respondents.

FILED

APR 23 2012

CLERK OF THE COURT  
COUNTY OF NEW YORK

-----X  
DONNA M. MILLS, J.:

In this special proceeding, petitioner Andrea Minsky brings this action in the nature of mandamus to compel, pursuant to N.Y. Civil Practice Law and Rules ("CPLR") Article 78 and the N.Y. Public Officers Law ("POL") § 84, also known as the Freedom of Information Law ("FOIL").

Petitioner seeks an order directing the Police Department of the City of New York to provide her with access to records relating to a 2007 internal police department investigation into the conduct of the police officers who investigated her 2005 complaint of stolen property in her home. Respondents cross-move to dismiss this proceeding on the ground that litigation is barred by the principles of collateral estoppel and also that petitioner failed to join a necessary party.

In her complaint, the petitioner alleges that on May 7, 2005, she was the owner of a homeowner/renter's insurance policy issued by Allstate insurance Company ("Allstate"); on that date, plaintiff claims that jewelry was stolen from her residence. Upon presenting her claim to Allstate for reimbursement, however, it was denied

because of alleged "inconsistencies and misrepresentations."

By letter dated January 2, 2010, and envelope postmarked September 3, 2010, petitioner sought access to two investigative reports relating to the burglary in her home and explained that she had complained to the Internal Affairs Bureau about the conduct of the police officers who took her complaint report. In response, by letter dated January 26, 2011, the Records Access Officer informed petitioner that he was unable to locate records based on the information provided. By letter dated February 9, 2011, petitioner's attorney appealed the Record Access Officer's determination on petitioner's behalf and clarified that the records sought were reports from the Internal Affairs Bureau. By letter dated March 28, 2011, the Record Access Appeals Officer denied petitioner access to the records. Among the grounds cited, the Appeals Officer determined that the records of the investigation of a disciplinary matter were the kind used to evaluate police officers toward continued employment or promotion and accordingly, disclosure was barred by N.Y. Civil Rights Law § 50-a and the records exempt from FOIL disclosure under POL § 87(2)(a).

Petitioner commenced an action against Allstate in Nassau County Supreme Court for breach of contract and, apparently for bad faith denial of her insurance claim. This Article 78 proceeding was commenced because the respondents' denied petitioner's request to release the Internal Affairs investigation which she claimed was needed to prove her breach of contract claim against Allstate. In that matter, the court held, by decision and order dated February 6, 2012, that the records relating to the 2007 internal police department investigation, are police personnel records and further that disclosure is barred by N.Y. Civil Rights Law § 50-a.

It is undisputed that petitioner in the instant action is seeking the same documents that were previously barred in the Nassau County Supreme Court action. Respondents' therefore argue that petitioner is collaterally estopped from relitigating this issue.

"The two elements that must be satisfied to invoke the doctrine of collateral estoppel are that (1) the identical issue was decided in the prior action and is decisive in the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior issue" (Luscher v Arrua, 21 AD3d 1005, 1007 [2005]). The party seeking to invoke the doctrine of collateral estoppel "bears the burden of establishing that the identical issue was necessarily decided in the prior action, and 'the party to be estopped bears the burden of demonstrating the absence of a full and fair opportunity to contest the prior determination' " (Leung v Suffolk Plate Glass Co., Inc., 78 AD3d 663, 663-664, [2010], quoting Mahler v Campagna, 60 AD3d 1009, 1011 [2009]).

The instant proceeding and the Nassau County motion concern the very same issue to wit the disclosure of records of the IAB investigation into the conduct of the police officers who took petitioner's 2005 complaint report that jewelry was missing from her home. Judge DeStefano, in petitioner's pending Nassau County Supreme Court case, held that the investigative IAB records sought were subject to N.Y. Civil Rights Law § 50-a and he further held that petitioner failed to serve the motion application on the appropriate police officers in compliance with N.Y. Civil Rights Law § 50-a(1) and (2).

The petition, therefore, should also be dismissed for failure to name the officers

[\* 5]

in question who were the subject of the IAB investigation since they are both necessary parties (CPLR 1003). The report sought by petitioner qualifies as a NYPD personnel record used to evaluate performance toward continued employment within the ambit of the Civil rights Law § 50-a(1). Petitioner has not obtained the permission of the police officers in question and so the records may only be obtained via court order (Civil Rights Law § 50-a(1)). Civil Rights Law § 50-a(2) provides that, in reviewing requests for disclosure of police personnel records, the court shall give "interested parties the opportunity to be heard" (see Dunnigan v Waverly Police Department, 279 AD2d 833 [3<sup>rd</sup> Dept 2001]).

ADJUDGED that the petition is denied and the cross-motion to dismiss the proceeding is granted, with costs and disbursements to respondents.

Dated: 4/15/12 —

ENTER:

DMB  
J.S.C.

DOMINIC M. BILLO, J.S.C.

FILED

APR 23 2012

NEW YORK  
COUNTY CLERK'S OFFICE