

Steinberg v New York City Dept. of Fin.
2022 NY Slip Op 34179(U)
December 9, 2022
Supreme Court, New York County
Docket Number: Index No. 150533/2022
Judge: Judy H. Kim
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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

-----X

NANCIE B STEINBERG,
Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF FINANCE,
Respondent.

-----X

INDEX NO. 150533/2022

MOTION DATE 09/07/2022, N/A

MOTION SEQ. NO. 001 002

DECISION + ORDER + JUDGMENT ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion for ARTICLE 78 (BODY OR OFFICER)

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 29, 32, 45, 46, 47, 48, 49

were read on this motion to/for PROVISIONAL REMEDY

In this Article 78 proceeding, petitioner seeks a judgment vacating certain notices of violation issued to petitioner for violations of New York City Traffic Rules §§ 4-08(d), 4-08(h)(1) and 4-08(1)(3)(ii) between June 2021 and May 17, 2022 on the grounds that these parking tickets would not have been issued had respondent properly and timely renewed petitioner's temporary or permanent disabled parking permit (NYSCEF Doc. No. 1 [Petition]).

Petitioner commenced this Article 78 proceeding on January 18, 2022. On March 18, 2022, respondent cross-moved to dismiss the instant proceeding pursuant to CPLR §§3211(a)(2), 3211(a)(5), 217(1) and 7804(f).

On August 11, 2022, petitioner moved, by order to show cause, for an order, inter alia, directing respondents to remove petitioner's vehicle from their list of vehicles subject to confiscation and, if appropriate, to pay all costs stemming from any such confiscation (NYSCEF

Doc. No. 29). This motion was supported by an “affirmation” signed, again, only by petitioner’s husband.

For the reasons set forth below, the petition is dismissed without prejudice and the motion denied as moot.

DISCUSSION

Respondent’s cross-motion is granted and the petition is hereby dismissed on procedural and substantive grounds as discussed below. The Petition is neither signed nor verified by petitioner¹ but is purportedly verified by petitioner’s husband, Jonathan Steinberg, who is not a party to this action. Moreover, while Mr. Steinberg is admitted to practice law in New York State, he could not have signed the petition as petitioner’s counsel because his license has been suspended since January 10, 2019 (See Matter of Steinberg, 167 AD3d 206 [1st Dept 2018]). Finally, even if Mr. Steinberg has authority to act as petitioner’s attorney-in-fact, such authority would not permit him to sign the petition on her behalf (See Byrd v New York City Hous. Auth., 2010 NY Slip Op 32981[U] [Sup Ct, NY County 2010] [“petitioner’s capacity as attorney in fact does not give him, as a layman, the authority to proceed pro se on behalf of his principal in the instant proceeding]). To hold otherwise would “sanction a course which constitutes the illegal practice of law without a license” (Id.; see also Porter v New York City Hous. Auth., 169 AD3d 455, 469 [1st Dept 2019] [dissent] [“[a]lthough the subsequent pro se article 78 petition names both petitioner and Tyvon in the caption, the latter neither signed nor verified the petition ... [and] Supreme Court dismissed the petition insofar as purportedly brought by Tyvon, noting that petitioner lacks standing to pursue claims on Tyvon's behalf and that, as a non-attorney, she cannot represent him in this matter”]).

¹ Petitioner’s name is typed at the end of the Petition, but this alone does not qualify as an electronic signature under State Technology Law §302(3) as there is no indicia of petitioner’s intent to electronically sign is insufficient to qualify as electronic signature as required by Uniform Rule §202.5-b (e)(1).

To the extent that a Petition verified by petitioner was subsequently filed with the Court on August 21, 2022 (NYSCEF Doc. No. 31), over seven months after the commencement of this action, this filing was beyond the relevant statute of limitations, and is therefore a nullity (See Qayyam v New York City Police Dept., 227 AD2d 188, 188 [1st Dept 1996] [“The IAS Court properly found that the proceeding was time-barred since the petition was not verified until more than four months after respondent's response to petitioner's request”]).

Even setting aside the foregoing, the Court observes that petitioner’s challenges to the various administrative determinations are either time-barred by the four-month statute of limitations (CPLR §217[1]) or are not properly before the Court based on petitioner’s failure to exhaust the available administrative remedies (See e.g., Nelson Mgt. Group, Ltd. v New York State Div. of Hous. & Community Renewal, 259 AD2d 411, 412 [1st Dept 1999]).

In light of the foregoing, it is

ORDERED and **ADJUDGED** that the cross-motion of respondent New York City Department of Finance to dismiss the instant Petition is granted and the Petition is dismissed; and it is further

ORDERED that petitioner’s motion seeking an order directing respondents to remove petitioner’s vehicle from their list of vehicles subject to confiscation is denied as moot; and it is further

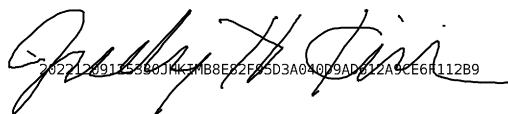
ORDERED that respondent is directed to serve a copy of this decision and order, with notice of entry, on petitioner within ten days of the date of this decision and order; and it is further

ORDERED that within ten days from entry of this order, counsel for respondent shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre St.,

Room 141B) and the Clerk of the General Clerk’s Office (60 Centre St., Rm. 119) who are directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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 this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



0027128917536014KEMBB8E82F55D3A040D9AD012A9CE6F112B9

12/9/2022

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE