

Matter of McAllan v Bloomberg
2006 NY Slip Op 30807(U)
August 10, 2006
Supreme Court, New York County
Docket Number: 115411/05
Judge: Leland G. Degrasse
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SUPREME COURT : STATE OF NEW YORK
COUNTY OF NEW YORK : I.A.S. PART 25

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 In the Matter of the Application of :
 RICHARD J. McALLAN :

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 Petitioner, :

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

 :
 - against - :

 MICHAEL R. BLOOMBERG, as Mayor of the City of :
 New York, THE CITY OF NEW YORK, RUDOLPH W. :
 GIULIANI, as former Mayor of the City of New York, :
 and the RUDOLPH W. GIULIANI CENTER FOR :
 URBAN AFFAIRS :

 Respondents. :
 -----X

Index No.: 115411/05
Cal. No.: 72 of 3/17/06

DeGRASSE, J.:

FILED
 AUG 11 2006
 COUNTY CLERK'S OFFICE
 NEW YORK

Petitioner *pro se* commenced this Article 78 proceeding seeking declaratory and injunctive relief pursuant to the Freedom of Information Law ("FOIL") (Public Officers Law ["POL"] § 84 *et seq.*), and an award of attorney's fees and costs. Respondents Michael R. Bloomberg as Mayor of the City of New York, the City of New York, and Rudolph W. Giuliani, as former Mayor of the City of New York (collectively the "City"), cross-move for an order dismissing the petition pursuant to CPLR 3211 (5) as being barred, in part, by the statute of limitations, and pursuant to CPLR 3211 (a) (7) for failure to state a cause of action. Respondent Rudolph W. Giuliani Center for Urban Affairs ("GCUB") cross-moves for an order dismissing the petition pursuant to CPLR 3211 (a) (7) and CPLR 7804 (f) for failure to state a cause of action.

FACTS

By letter dated May 12, 2005, plaintiff, a retired Emergency Medical Service ("EMS") Senior Paramedic for the City of New York, wrote to the Mayor's Office, requesting that certain documents created during former Mayor Giuliani's administration (the "Giuliani Papers"), and the present Mayor's administration (the "Bloomberg Papers") which concern "the illegal purchase of Motorola XTS 3500 portable radios in 1999-2000 and the illegal inclusion of commercial ambulances in the NYC EMS 911 System in the year 2000," be made available to petitioner for inspection and copying pursuant to the disclosure provisions under FOIL. The Mayor's Office failed to timely respond to petitioner's FOIL request. Petitioner elected to treat this as a constructive denial pursuant to POL § 89 (3) which requires that an agency respond to a FOIL request within five business days, and on July 14, 2005, petitioner sent the Mayor an appeal letter.

By letter dated July 25, 2005, Anthony Crowell, Special Counsel to the Mayor, acknowledged petitioner's FOIL request. This letter states that "[w]e did not receive this FOIL request until recently because it was faxed to the Law Department. I am currently reviewing your request and expect to respond within twenty days informing you of the status of your request and setting forth a timeline for access if such access is to be granted." Thereafter, in a letter to petitioner dated August 17, 2005, Kenneth R. Cobb, Assistant Commissioner of the New York City Department of Records and Information Services ("DORIS"), stated the following: "[t]he Mayor's Office recently forwarded to my attention your correspondence concerning a FOIL request denial. This is to acknowledge receipt of this request and to inform you that I will respond to the request upon further investigation and consultation with the Corporation Counsel." Finally, by letter dated August 29, 2005, Cobb advised petitioner that "a substantial portion of the records of the

administration of former Mayor Giuliani have been processed and microfilmed and are now available for public inspection at the Municipal Archives” where petitioner could make an appointment to view the material. Cobb further advised petitioner that he “must direct [his] appeal to the agency that denied [his] appeal.”

Upon his dissatisfaction with the City’s determination, petitioner then commenced this Article 78 proceeding by the filing of a notice of petition and verified petition on November 3, 2005, seeking *inter alia*, a judgment directing respondents to provide him with complete access to all documents sought. Essentially, petitioner asserts that respondents have refused to make any documents pertaining to the Bloomberg and Giuliani administration available to him for inspection and copying. In answer, respondents have cross-moved to dismiss the petition.

DISCUSSION

Article 78 Proceeding

The branch of the petition by which petitioner seeks declaratory and injunctive relief is denied. The gravamen of petitioner’s claim is respondents’ alleged failure to fully comply with his FOIL request. Therefore, the issue is one which can be challenged in a CPLR Article 78 proceeding where a full and adequate remedy is available to petitioner (*see Greystone Mgt. Corp. v Conciliation & Appeals Bd. of City of New York*, 62 NY2d 763 [1984]; *Jackson v Biderman*, 151 AD2d 400, 401 [1989]). Since petitioner’s notice of petition and verified petition were filed within four months of the City’s final determination, the proceeding is timely.

Freedom of Information Law

"FOIL imposes a broad duty of disclosure on government agencies" (*Matter of Hanig v State of New York Dept. of Motor Vehicles*, 79 NY2d 106, 109 [1992]). Under FOIL, "agency records are presumptively available for public inspection and copying, unless the documents in question fall within one of the enumerated exemptions set forth in [POL] § 87 (2)" (*Matter of Ruberti, Girvin & Ferlazzo P.C. v New York State Div. of State Police*, 218 AD2d 494, 496 [1996]). As the goal of FOIL is to promote open government and public accountability, the exemptions available thereunder are to be narrowly construed, with the agency bearing the burden of demonstrating the applicability of the particular exemption claimed (*see Matter of Gould v New York City Police Dept.*, 89 NY2d 267, 274-275 [1996]). Specifically, "the agency must articulate 'particularized and specific justification' for not disclosing [the] requested documents" (*id.* at 275, quoting *Matter of Fink v Lefkowitz*, 47 NY2d 567, 571 [1979]).

Petitioner seeks disclosure of the following documents, correspondence, contracts, e-mails, test reports, and evaluations created during former Mayor Giuliani's administration which were:

1. "between Motorola Corporation and/or its subcontractors and Mayor Giuliani and/or any other City employee";
2. "related to the purchase of the Motorola XTS 3500 portable radios and/or other emergency radios with their supporting infrastructure";
3. "generated by the New York City Fire Department ["FDNY"], the NYC Police Department ["NYPD"] and/or the NYC [Department of Information Technology and Telecommunication] (DOITT) in connection with the purchase of any emergency radio, radio infrastructure, and/or 9/11 computer equipment";
4. "generated in connection with the programming of and subsequent issuance of the Motorola XTS 3500 portable radios to the Firefighters in the year 2001 and the decision to withdraw them from service in that same year;"

5. "related to the on-going provision of emergency radio communications and/or Computer Aided Dispatch (CAD) support to the members of the [NYPD], the [FDNY] and the NYC [EMS] and/or to the NYC public at large";
6. "related to then Mayor Giuliani's decision to merge the NYC emergency Medical Service into the Fire Department in 1996";
7. "related to then Mayor Giuliani's decision to authorize hospitals in the City of New York to subcontract with Metrocare/Transcare and/or other commercial ambulance companies in order to provide 911 ambulances services to the NYC EMS 911 system beginning in the year 2000";
8. "generated to and/or received by Mayor Giuliani and/or any other City employee in connection with any Hospital's or Ambulance Association's efforts to persuade Mayor Giuliani's decision to alter existing New York City policy to allow commercial ambulances to begin operating in the NYC EMS 911 system";
9. "related to Mr. Steven Zakheim and/or his associates making campaign contributions to any Giuliani Campaign and/or any Giuliani PAC for any office during the time in which Mayor Giuliani served as Mayor";
10. "related to any 911 Receiving Hospital in New York City entering into a contract(s) or subcontract(s) with Metrocare/Transcare or any other commercial ambulance company in order to provide emergency service in the NYC 911 system";
11. concerning "other historical accounts of the WTC 9-11 disaster in Mayor Giuliani's and/or any other City employee's possession which the NYS Court off Appeals has just ordered to be released to the public in accordance with the New York Times decision cited above";
12. "related to Paramedic Richard J. McAllan and/or other [FDNY] employees engaging in protected speech or other activities which may have been critical of various EMS policies which were pursued by the Giuliani Administration during the entire time that Mayor Giuliani served in office";
13. "related to FDNY issuing Administrative Subpoenas to America on Line (AOL) on or about May 1, 2000 for information about the actual names of account holders who had posted comments on a NYC EMS Bulletin Board which criticized the inclusion of commercial ambulances by the Fire Department in the 9-11 system";

14. "agreements which Mayor Bloomberg and former Mayor Giuliani entered into regarding the disposition of the official Giuliani Mayoral papers in 2001 or thereafter";

Additionally, petitioner seeks disclosure of the following documents, correspondence, contracts, e-mails, and test reports which are currently in the City's possession, and which:

15. were "generated in connection with [FDNY's] decision to re-program and re-issue the already purchased Motorola XTS 3500 radios instead of returning those failed XTS 3500 radios to Motorola";
16. were "generated in connection with [FDNY's] decision to re-program and re-issue the already purchased Motorola XTS 3500 radios in the TSBK radio format";
17. are "related to the issue that [FDNY's] TSBK programmed Motorola XTS 3500 portable radios would not be fully interoperable with [NYPD's] MDC 1200 programmed portable radios and/or radio system in an emergency situation";
18. "concern[] the Bloomberg Administration's reported engagement of a consultant in 2002 to develop 'engineering specifications' and other design criteria for a citywide TV Channel 16 [UHF 480 MHz] public safety radio system to allow: '...[All] of the City's public safety functions [to] communicate using the same infrastructure and [with] the highest levels of interoperability;' {Mayor's Management Report, 2002}";
19. are "relate[d] to Mayor Bloomberg's testimony before the 9-11 Commission and/or his later submission of supplemental testimony to the 9-11 Commission";
20. "have been generated in connection with the City's decision to repeatedly postpone the implementation of full interoperability on the TV channel 16 [UHF 480 MHz] radios as described in the recent 2006 FDNY Capital Plan submission to the NYC Council";
21. "have been generated in connection with the City's decision to cancel the contracts with IXP and/or affiliates which were intended to upgrade the [FDNY] and/or [EMS's] Computer Aided Dispatch (CAD) Systems";
22. "have been generated in connection with the NYPD decision to purchase specially designed Motorola SSE 5000 portable radios for use by NYC Police Officers in the NYPD emergency radio communications system";

23. "concern[] the issuance and/or renewal of Transcare/Metrocare ambulance subcontracts to operate in the NYC 911 system during the Bloomberg Administration";
24. are "related to ongoing deployment of any 911 commercial or private ambulances in the NYC 911 system";
25. "are related to the recent forced resignation of former FDNY Assistant Commissioner for Emergency Medicine John Clair";
26. pertain to "the Mayor's Daily Press Digest for June 13, 2002 as saved in PDF format";
27. pertain to "[a]ll Mayoral Press Releases for the month of June, 2002";
28. pertain to "the minutes of any staff Meeting held with Mayor Bloomberg in attendance on between June 9 and June 12, 2003.

"pertain[] to the creation of the blind trust which Mayor Bloomberg created in order to comply with the City of New York's ethics standards when he assumed office as Mayor of the City of New York";
29. pertain to "the assets transferred to the Bloomberg blind trust as the time of its creation";
30. pertain to "the stocks which Mayor Bloomberg sold in order to comply with the NYC's ethics standards when he became Mayor of the City of New York";
31. pertain to "the Mayor's current holdings in Motorola Corporation and/or Credit Suisse Bank."

As an initial matter, petitioner withdraws that portion of the petition which seeks (1) an order directing the City to recover the Giuliani Papers from GCUB, as said Papers are now in the possession of the City; (2) information concerning the actual events of September 11, as FDNY has released a substantial amount of information concerning September 11; (3) documents from NYPD, FDNY and DOITT, as petitioner has elected to file FOIL requests with those individual agencies; (4) copies of the Metrocare Ambulance contracts, as FDNY has provided petitioner with copies of the unredacted contracts; and (5) information concerning the amount of Mayor Bloomberg's stock

holdings in Motorola Corporation and Credit Suisse Bank, as petitioner concedes that that information is not subject to disclosure under FOIL.

The Giuliani Papers

In support of its motion to dismiss, the City argues that the portion of the petition which seeks the return of records from GCUB has been rendered moot since all the Giuliani Papers that were in the temporary possession of GCUB pursuant to a December 24, 2001 agreement with the City were returned to the City during the pendency of this proceeding. Thus, the City contends that petitioner now has access to those records. In support of the City's contention, the Assistant Commissioner of DORIS states the following in his affidavit:

"... all of the original municipal documents and/or records from the Giuliani Administration that were temporarily in the physical custody of [GCUB] have been returned and are now in the possession and control of DORIS.

"These records are available on microfilm through DORIS for inspection by all members of the public in accordance with the standards set forth in [FOIL] and the applicable corresponding regulations of DORIS.

"The records returned by the Giuliani Center are maintained, arranged and described, as are all records in the Municipal Archives, in accordance with accepted professional archival procedures and standards. The records are catalogued by series, based on their originating author or office, and when applicable, by topic under the author or office, to the folder level in an electronic database maintained by DORIS. As provided by the agreement between the City of New York and the Giuliani Center, certain personal records, e.g., social security numbers, home addresses, resumes, have been designated as confidential. Any such records were identified in the course of the archival processing and are noted in the database catalog. Upon information and belief, approximately 10%-20% of the records from the Giuliani Administration have not yet been catalogued.

"A member of the public may come to DORIS, examine a printout of the electronic catalogue and then request the records which correspond to the information being sought. The researcher may then review the records contained in the folders requested. The DORIS staff are available to provide reasonable assistance to the researcher in locating desired documents.

"... . The un-catalogued 10-20% of the records will be made available to the public as they are processed."

In support of its motion to dismiss, GCUB argues that the petition fails to state a cause of action against it because the relief petitioner seeks has already been granted. In support of its contentions, GCUB submits the affidavit of Linda Edgerly, Managing Director of The Winthrop Group, Inc. ("WGI"), and Director of Winthrop Group's Information and Archival Services Division ("WGIAS") who states that "all of the original municipal documents and/or records of the Giuliani Administration that temporarily had been in the custody of [GCUB] for archiving have been returned, including all the post-it notes, envelopes and staples, to DORIS and are in the possession and control of DORIS."

In opposition, petitioner asserts that since 10 to 20 percent of the Giuliani Papers have not yet been catalogued and made accessible for public inspection and copying, the City has not fully complied with his FOIL request. Petitioner further asserts that as to the documents that are now accessible under FOIL, the City has not indicated which of the Giuliani Papers might be redacted in part, "e.g., a document which contained a [s]ocial [s]ecurity number or home address." Additionally, petitioner argues that under the provisions of FOIL, he is entitled to obtain copies of these documents in Adobe PDF format, as release of the documents in microfilm form will force petitioner "to conduct a time-consuming hand search."

In its reply Memorandum of Law, the City asserts that "the requested documents are not segregated in PDF format, but rather, are included within the 150-plus compact discs that contain all the documents returned from [GCUB]. These CDs are available to petitioner provided he pays the fee of \$30 per CD, as provided in Chapter 2 of Title 49 of the Rules of the City of New York." Thus, this issue has been rendered moot.

Petitioner's contention that the City has failed to indicate which of the Giuliani Papers "might be redacted in part" has also been rendered moot by the affidavit of the Assistant Commissioner of DORIS which certifies that "certain personal records, e.g., social security numbers, home addresses, resumes, have been designated as confidential" and "[a]ny such records [are] identified in the course of the archival processing and are noted in the database catalog." Petitioner's FOIL request for access to the un-catalogued Giuliani Papers is also moot by virtue of the Assistant Commissioner of DORIS's averment in his affidavit that "[t]he un-catalogued 10-20% of the records will be made available to the public as they are processed."

The Bloomberg Papers

In further support of its motion, the City argues that the portion of the petition seeking the Bloomberg Papers has been rendered moot since all non-exempt responsive documents were released to petitioner during the pendency of this proceeding. In his affidavit, Special Council to the Mayor asserts that he has "diligently and reasonably conducted a thorough agency-wide search for responsive paper[s] and electronic records ... of [the] Mayor's Office units and personnel such as the Mayor, the Mayor's Chief of Staff, the Deputy Mayor for Operations, the Mayor's Counsel's Office, the Mayor's Press Office, the Mayor's Office of Contract Services, and the Mayor's Office

of Correspondence,” and he has “provided all the non-exempt responsive documents located by the [Mayor’s Office] to the City [r]espondent’s attorney on December 28, 2005.” Crowell also asserts that the Mayor’s press releases for the month of June 2002 (request No. 27) are publicly available through the City’s official website, www.nyc.gov. As for a complete copy of the minutes of any staff meeting held with Mayor Bloomberg in attendance between June 9 and June 12, 2003 (request No. 28), Cowell states that no such minutes exist. Crowell further asserts that the Mayor’s Annual Financial Disclosure Report is available for public inspection by visiting or contacting the Conflicts of Interest Board.

In support of Crowell’s contentions, Jeffrey S. Dantowitz, Assistant Corporation Counsel of the City of New York, states in his affidavit that on December 28, 2005, Special Council provided him with “all non-exempt documents that are responsive to petitioner’s FOIL request of May 12, 2005 that were located by the Mayor’s Office after a reasonable and diligent search.” Dantowitz further states that on December 29, 2005, he “personally delivered to [petitioner] a large box containing the thousands of pages of documents produced by the Mayor’s Office pursuant to petitioner’s FOIL request dated May 12, 2005.”

Crowell next states that the “memos, e-mails, correspondence and other documents exchanged between personnel within the Mayor’s office, as well as with personnel from other City agencies” are inter and intra-agency materials, and as such, are exempt under FOIL pursuant to POL §87 (2) (g) (iii). According to Crowell, “[t]he candor of those assisting in the decision-making process would be impeded if those involved in this process knew their opinions, analysis and recommendations were exposed to public scrutiny.” Further, Kenneth Jockers, Deputy General Counsel in the Mayor’s Office Contract Services states in his affidavit that he and his staff, at Special

Council's direction, reviewed all the material that was withheld from petitioner based on the inter or intra-agency exemption. Annexed to Jockers affidavit is a list of the documents that were withheld from disclosure. Jockers states that "[u]pon review, this office has determined that a limited number of these documents should have been produced in response to [p]etitioner's request. These documents have now been forwarded, through City [r]espondents' counsel, to [p]etitioner." The court notes that the subject list fails to identify which documents the City deems exempt under FOIL.

Finally, Special Council states that pursuant to POL § 89 (2), the following are exempt from FOIL because the information sought constitutes "an unwarranted invasion of the Mayor's privacy," documents pertaining to: (1) the creation of a blind trust for the Mayor's personal funds and the assets transferred to that fund (request Nos. 28 and 29; (2) the stocks sold by Mayor Bloomberg upon his assuming the office of Mayor (request No. 30); and (3) Mayor Bloomberg's current holdings in Motorola and/or Credit Suisse Bank (request No. 31). In the accompanying Memorandum of Law, the City cites New York City Charter, Chapter 68, § 2603, and argues that it is the role of the New York City Conflicts of Interest Board (the "Board") to make sure that the Mayor "is complying with all applicable ethics and conflict of interests rules," and "it is not the proper role for individuals in the general public to assume this function."

In opposition, petitioner concedes that the City provided him with "a limited number of [Bloomberg Papers]" during the pendency of this action. However, petitioner argues that "these responsive documents ... were not catalogued as to what documents were produced and what documents ... were exempt under FOIL." Petitioner further argues that the New York State Committee on Open Government (the "Committee") has opined in Advisory Opinion 9826, dated

January 3, 1997, that although disclosure of the value of the stock or other assets which a public official may hold constitutes "an unwarranted invasion of personal privacy" under FOIL, a public official must disclose the fact that he or she owns stock in a particular corporation. Thus, petitioner argues that in accordance with Advisory Opinion 9826, he is entitled to the release of information as to whether Mayor Bloomberg held or holds stock or other financial considerations in Motorola Corporation and Credit Suisse Bank.

In its reply Memorandum of Law, the City argues that in Advisory Opinion 2002-01, the Board directed Mayor Bloomberg to dispose of all his publicly-traded stocks after taking office. The City further argues that the Board "is satisfied that the Mayor is complying with his duty to comply with all ethics and conflict of interests rules as [they] relate[] to his personal financial interests." Thus, the City argues that the release of records showing whether Mayor Bloomberg held or holds stock in Motorola Corporation and Credit Suisse Bank are not subject to public disclosure. The City also argues that pursuant to the Administrative Code of New York City § 12-110 (a) (2), Mayor Bloomberg was required to file a disclosure form with the Board showing, among other things, his stock holdings prior to his taking office and "[t]his disclosure form is available for public inspection by visiting or contacting the Board."

With respect to petitioner's contention that the Giuliani Papers released by the City "were not catalogued as to what documents were produced and what documents . . . were exempt under FOIL," POL § 87 (3) (c) requires an agency to maintain "a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article." Thus, the statute does not expressly require that the government agencies subject to the provisions of FOIL make "reference to each and every record of the agency" but, rather, as requiring the agencies to

"refer to categories of records that may include the records sought" (*Matter of Allen v Stroinowski*, 129 AD2d 700, 701 [1987], *appeal dismissed*, 70 NY2d 871 [1987]; *see also Matter of Marino v Morgenthau*, 1 AD3d 275, 276 [2003], *appeal dismissed* 2 NY3d 780 [2004], *rearg denied* 3 NY3d 656 [2004]).

As to the City's failure to identify which documents it withheld from disclosure based on the inter and intra-agency exemption, it is well settled that FOIL "protects against the disclosure of 'inter-agency or intra-agency materials', predecisional memoranda or other nonfinal recommendations prepared to assist an agency decision maker" (*Matter of Akras v Suffolk County Dept. of Civ. Serv.*, 137 AD2d 523, 523 [1988], citing Public Officers Law § 87 [2] [g]). The purpose of the exemption is to provide public officers "with the necessary privacy to make frank expressions of opinion" (*see Matter of Dunlea v Goldmark*, 54 AD2d 446, 448-449 [1976], *affd* 43 NY2d 754 [1977]; *Matter of Sea Crest Constr. Corp. v Stubing*, 82 AD2d 546, 549 [1981]). In determining whether a document is exempt from disclosure under FOIL, the court needs to know whether the Agency articulated particularized and specific justifications for not disclosing the information requested (*Matter of Sanders v Bratton*, 278 AD2d 10 [2000]). Applying these guidelines to the facts at bar, the court concludes that the City has failed to put forth a sufficiently particularized justification for refusing to disclose the subject documents in that the list of documents annexed to the City's moving papers fail to identify the precise documents withheld from disclosure under POL § 87 (2) (g) (iii). Moreover, any information which merely reports an event or factual occurrence, and which does not disclose opinions or recommendations will not be barred from disclosure under this exemption (*see Ingram v Axelrod*, 90 AD2d 568, 570 [1982]).

As to the City's contention that it is not obligated to release information to petitioner regarding whether Mayor Bloomberg held or holds stock in Motorola Corporation and Credit Suisse Bank, in Advisory Opinion 9826 the Committee has opined that while "the number of shares or their value could be withheld on the ground that disclosure would result in an unwarranted invasion of personal privacy," FOIL requires "disclosure of the fact that a county officer owns shares in a particular corporation." The Committee is charged with giving advisory opinions on the FOIL statute (POL § 89 [b] [i] and [ii]). While the opinions of the Committee are "neither binding upon the agency nor entitled to greater deference in an article 78 proceeding than is the construction of the agency" (*Matter of John P. v Whalen*, 54 NY2d 89, 96 [1981]; accord *Matter of Buffalo News v Buffalo Enter. Dev. Corp.*, 84 NY2d 488 [1994]), they are informative and, here, persuasive, particularly since the City has not refuted any of the conclusions reached by the Committee. Thus, the City has failed to demonstrate that the requested information is covered by an exception to disclosure under FOIL. In addition, the court notes that the City does not contend that it is incapable of disclosing the requested information.

Accordingly, the court finds that the City has not fully complied with petitioner's FOIL request.

Attorneys' Fees and Costs

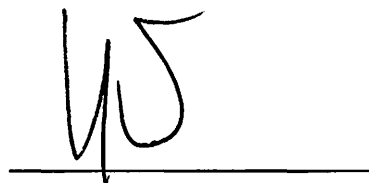
Petitioner who is a *pro se* litigant did not retain a lawyer to represent him in this proceeding. As such, petitioner is not entitled to an award of attorney's fees and costs (*see Matter of Jackson Leeds v Burns*, 205 AD2d 540 [1994], *lv denied* 84 NY2d 811 [1994]).

CONCLUSION

Based upon the foregoing, GCUB's motion is granted. The City's cross motion is denied. The Clerk shall enter judgment dismissing the petition as against GCUB. The claims against the City are severed and continued. The City's answer shall be served and filed within 30 days after service of a copy of this order with notice of entry. Pursuant to CPLR 7804 (f) and upon service of the answer petitioner may re-notice this matter upon at least two days' notice.

This constitutes the decision and order of the court.

DATED: AUG 10 2006



J.S.C.
HON. LELAND DeGRASSE

FILED
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NEW YORK