

**Matter of Donmez v New York City Dept. of
Consumer Affairs**

2013 NY Slip Op 34114(U)

December 12, 2013

Supreme Court, New York County

Docket Number: 401769/13

Judge: Cynthia S. Kern

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
In the Matter of the Application of

IBRAHIM DONMEZ,

Petitioner,

Index No. 401769/13

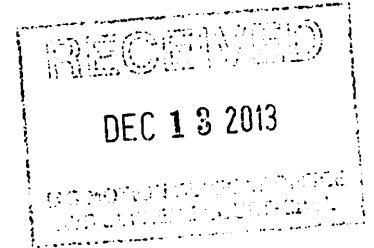
For a Judgment Pursuant to Article 78 of the
Civil Practice Laws and Rules,

DECISION/ORDER

-against-

NEW YORK CITY DEPARTMENT OF CONSUMER
AFFAIRS,

Respondent.



-----X
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for

FILED

Papers

Numbered
DEC 16 2013

Notice of Petition and Affidavits Annexed.....	NEW YORK	1
Answering Affidavits and Cross Motion.....	COUNTY CLERK'S OFFICE	
Replying Affidavits.....		<u>3</u>
Exhibits.....		<u>4</u>

Petitioner brings the instant petition pursuant to Article 78 of the CPLR for an Order (a) declaring respondent New York City Department of Consumer Affairs' ("DCA") Notice of Suspension of petitioner's pedicab driver license illegal and unconstitutional; (b) directing the DCA to serve a proper notice for a hearing for the suspension of his pedicab driver license; and (c) directing the DCA to hold a proper hearing for the suspension of petitioner's pedicab driver license. DCA cross-moves for an Order pursuant to CPLR § 602(a) consolidating this action with two Article 78 petitions pending before Justice Peter Moulton. For the reasons set forth more fully below, the cross-motion to consolidate is denied.

The relevant facts are as follows. Petitioner has been a pedicab driver since 2005 and has had a pedicab driver license since October 2009 when DCA began issuing such licenses. On September 21, 2012, petitioner was observed by two DPR officers picking up passengers in his pedicab in a restricted area of the Central Park Boathouse parking lot, allegedly in violation of New York City Administrative Code (“Admin. Code”) § 20-259(a). The DPR officers also conducted a search of petitioner’s pedicab and observed that its interior did not have a copy of petitioner’s pedicab driver information visible to passengers, allegedly in violation of Admin. Code § 20-258(b). As a result, petitioner was issued Notice of Hearing 183 (“NOH 183”) which charged him with the two violations and required that petitioner appear at DCA for a hearing.

On January 9, 2013, petitioner’s hearing took place at DCA’s Hearing Tribunal (the “January 2013 Hearing”) before Administrative Law Judge Eryn De Fontes (“ALJ De Fontes”). At the January 2013 Hearing, petitioner was represented by counsel and both parties had an opportunity to present testimony. On or about January 28, 2013, ALJ De Fontes issued a Decision and Order finding petitioner guilty of the two violations and ordering petitioner to pay an aggregate fine of \$1,000 (\$500 for each violation) and noting that “[f]ailure to comply with [the] order within (30) days shall result in the suspension of the license at issue, and may result in the suspension of any other [DCA] license(s) held by [petitioner].” In February 2013, DCA received a request from petitioner to appeal and stay enforcement of the fines assessed for NOH 183. On March 13, 2013, Appeals Judge David Wolfe granted petitioner’s request for a stay of enforcement of ALJ De Fontes’ Decision and Order. On June 28, 2013, DCA Director of Adjudication Bruce M. Dennis issued an appeal determination denying petitioner’s appeal and affirming ALJ De Fontes’ Decision and Order (the “Appeal Determination”). The Appeal Determination also advised petitioner that “[t]here will be no further agency action in this matter” and that any further pursuit would be

available “pursuant to Article 78 of the [CPLR].”

On September 19, 2013, DCA sent petitioner a Notice of Suspension stating that the \$1,000 fine assessed following the Appeal Determination was past due and advised petitioner that DCA must receive payment of the \$1,000 fine no later than September 30, 2013 or petitioner’s pedicab driver license would be suspended. When petitioner failed to pay DCA the \$1,000 fine by September 30, 2013, petitioner’s pedicab driver license was suspended pending satisfaction of the outstanding fine. On October 31, 2013, petitioner submitted an application to DCA to renew his pedicab *business* license, which had expired. DCA denied the application because of the outstanding \$1,000 fine. On November 1, 2013, petitioner submitted to DCA an e-mail stating that he “will NEVER pay DCA \$1,000...It will NOT happen...I will not get into any payment plan...I will NOT pay that \$1,000 even if [either] court believes that it was not an excessive penalty...I will NOT obey.” In its response, dated November 6, 2013, DCA explained that payment of outstanding fines is required in order to renew a business license pursuant to the Admin. Code and that petitioner’s stated refusal to satisfy the outstanding fine under any circumstance demonstrates that he lacks the honesty and integrity required of all persons who hold a DCA license.

Petitioner commenced the instant Article 78 proceeding by filing an Order to Show Cause and Verified Petition on October 1, 2013 (“Proceeding No. 1”) which was heard by Justice Paul Wooten. The petition requests an Order (a) declaring the DCA’s Notice of Suspension of petitioner’s pedicab driver license illegal and unconstitutional; (b) directing the DCA to serve a proper notice for a hearing for the suspension of his pedicab driver license; and (c) directing the DCA to hold a proper hearing for the suspension of petitioner’s pedicab driver license. Additionally, petitioner sought a temporary restraining order (“TRO”) prohibiting DCA from suspending petitioner’s pedicab driver license pending a determination of his petition. Following

oral argument, Justice Wooten denied the TRO and made the case returnable before this court on October 29, 2013. At that scheduled appearance, this court ordered the parties to submit papers responding to the petition in Part 55 on November 26, 2013.

Petitioner commenced a second Article 78 proceeding against both the DCA and the New York City Department of Parks and Recreation ("DPR") by filing an Order to Show Cause and Verified Petition on October 25, 2013 ("Proceeding No. 2") before Justice Moulton. The petition requested an Order, *inter alia*, dismissing one of the violations asserted against petitioner; declaring that the inspection of petitioner's pedicab was unconstitutional; declaring that the DCA and DPR violated the New York City Charter; declaring the Pedicab Law unconstitutional; and directing the DCA to restore petitioner's pedicab driver license or lower the fine levied against petitioner. Additionally, petitioner sought a TRO prohibiting DCA from suspending petitioner's pedicab driver license pending a determination of his petition. Justice Moulton denied the TRO and made Proceeding No. 2 returnable on November 12, 2013.

Petitioner commenced a third Article 78 proceeding against the DCA by filing an Order to Show Cause and Verified Petition under the same Index Number for Proceeding No. 2 on November 1, 2013 ("Proceeding No. 3"). The petition requested an Order, *inter alia*, granting petitioner a pedicab *business* license and challenging DCA's failure to conduct a hearing prior to its denial of petitioner's pedicab *business* license renewal as unconstitutional. The Order to Show Cause also requested a conditional pedicab *business* license pending a determination of his petition. Justice Moulton denied the TRO and made Proceeding No. 3 returnable on November 25, 2013. Respondent then cross-moved in the instant proceeding to consolidate this proceeding with the two Article 78 petitions pending before Justice Moulton under Index No. 401875/13.

Pursuant to CPLR § 602(a),

