

Matter of Friedman v Public Serv. Commn. (P.S.C.)

2013 NY Slip Op 32043(U)

August 21, 2013

Supreme Court, Albany County

Docket Number: 400656/13

Judge: Thomas A. Breslin

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: JUDGE DORIS LING-COHAN
Justice

PART 36

Abraham Friedman

INDEX NO. 400656/13

-v-

MOTION DATE _____

Public Service Commission

MOTION SEQ. NO. 001

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this ~~motion~~ Article 78 proceeding is deemed moot, without prejudice to the parties proceeding in Albany County, as this proceeding has been ordered to be transferred to Albany County in accordance with the Decision and Order of Honorable Thomas A. Breslin, dated August 21, 2013.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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SEP 04 2013
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 9/3/13

[Signature], J.S.C.
JUDGE DORIS LING-COHAN

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Albany County Clerk
Document Number 11464909
Rcvd 08/27/2013 11:55:33 AM



In the Matter of the Application of

ABRAHAM FRIEDMAN,

Petitioner,

For a judgment pursuant to Article 78
of the Civil Practice Law and Rules

-against-

PUBLIC SERVICE COMMISSION (P.S.C.),

Respondent.

DECISION

AND ORDER

Index No. 2944-13
RJI No. 01-13-ST4695

Supreme Court, Albany County: CPLR Article 78 Special Term: July
19, 2013

Hon. Thomas A. Breslin, J.S.C., presiding

APPEARANCES:

For Petitioner:

Abraham Friedman, pro se
1331 48th Street, 3rd floor
Brooklyn, NY 12219-3102

For Respondents:

Peter McGowan
General Counsel
Public Service Commission
State of New York Department of
Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Jonathan D. Feinberg
Solicitor

THOMAS A. BRESLIN, J.

Petitioner commenced a CPLR article 78 proceeding in New York
County to challenge a determination of the respondent Public
Service Commission (hereinafter PSC) relating to the adding of

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arrears owed to Con Edison on one apartment onto the account of another apartment which petitioner resided in. Respondent has made a motion in Albany County to change venue to Albany County and to summon Con Edison as a necessary party to the proceeding. Petitioner, in an unsworn letter, objects to a change of venue.

As respondent points out, CPLR 506 (b)(2) specifies that proceedings against the PSC must be commenced in Albany County. Accordingly, the timely motion for change of venue must be granted.

As to the motion to summon a necessary party, respondent states that it cannot provide the relief that petitioner seeks, that is, precluding Con Edison from obtaining the disputed amount that Con Edison says is owed to it or the return of his money already paid. An informal review decision of respondent determined that the utility's transfer to petitioner's open residential account of the \$321.06 balance from a closed residential account in petitioner's name was proper. Upon administrative appeal of that determination, respondent upheld the determination. Respondent points out that it cannot refund any money or order re-billing of the electric account if petitioner were to succeed in this proceeding and thus Con Edison must be joined as a party in order for petitioner to obtain relief.

In that Con Edison is arguably subject to the jurisdiction of this court (see CPLR 1001[b]), this court is required to order petitioner to summon Con Edison, without consideration of the discretionary factors listed in CPLR 1001(b) (see Matter of Alexy v Otte, 58 AD3d 967 [2009]).

Accordingly, the motion is granted and the venue is changed to Albany County. In addition, petitioner is directed to serve Consolidated Edison Company of New York, Inc. as a necessary party to this proceeding with a copy of this decision and order, the notice of petition, verified petition and all other papers filed in this proceeding to date within 30 days of being served with a copy of this court's decision and order and notice of entry of the same. This shall constitute the decision and order of this court.

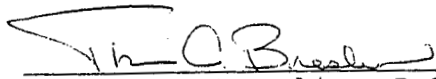
It is further ORDERED that the New York County Clerk, upon respondent filing with him a certified copy of this Decision and Order, shall forthwith deliver to the Albany County Clerk all papers and records in the above-titled proceeding and certified copies of all minutes and entries.

The original Decision and Order is being returned to the attorneys for the respondent. A copy of this Decision and Order and all other original papers submitted on this motion are being

delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
August 21, 2013


Thomas A. Breslin, J.S.C.

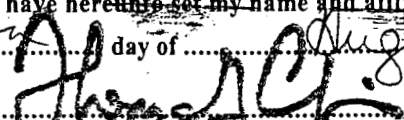
PAPERS CONSIDERED:

- 1) Notice of Motion dated May 30, 2013, Affirmation of Jonathan D. Feinberg, Esq., dated May 30, 2013 with Exhibits, Respondent's Memorandum of Law dated May 30, 2013,
- 2) Letter by Petitioner dated July 17, 2013 with attachments.

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STATE OF NEW YORK
COUNTY OF ALBANY CLERK'S OFFICE } ss.:

I, THOMAS G. CLINGAN, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, DO HEREBY CERTIFY that I have compared the annexed copy Order with the original thereof filed in this office on the 27th day of Aug 13 and that the same is a correct transcript therefrom, and of the whole of said original.

IN TESTIMONY WHEREOF, I have hereunto set my name and affixed my official seal, this 27th day of Aug 13
 Clerk

