

**Matter of Liberow v New York State Office of
Temporary and Disability Assistance**

2013 NY Slip Op 32251(U)

September 20, 2013

Sup Ct, New York County

Docket Number: 401085/2013

Judge: Eileen A. Rakower

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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

Index Number : 401085/2013
LIBEROW, ZALMON
vs
N.Y.S.O.T.A.D.A
Sequence Number : 001
ARTICLE 78

FILED

SEP 25 2013

COUNTY CLERK'S OFFICE
NEW YORK

PART 15

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1

Answering Affidavits — Exhibits _____ | No(s). 2,3

Replying Affidavits _____ | No(s). _____

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

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

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

Dated: 9/20/13


_____, J.S.C.

HON. EILEEN A. RAKOWER

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 — NEW YORK COUNTY
PRESENT: Hon. EILEEN A. RAKOWER PART 15

Justice

IN THE MATTER OF THE APPLICATION OF
ZALMON LIBEROW,

Petitioner,

INDEX NO. 401085/2013

- v -

FILED

MOTION DATE _____

NEW YORK STATE OFFICE OF TEMPORARY AND
DISABILITY ASSISTANCE,

MOTION SEQ. NO. 1

SEP 25 2013

MOTION CAL. NO. _____

Respondents.

COUNTY CLERK'S OFFICE
NEW YORK

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answer — Affidavits — Exhibits _____	<u>2, 3</u>
Replying Affidavits _____	_____

Cross-Motion: **X** Yes No

Zalmon Liberow (“Petitioner”), pro se, brings this CPLR Article 78 petition requesting that this court compel The New York State Office of Temporary and Disability Assistance (“OTDA”) to comply with eleven decisions it has made from August 27, 2010 through January 8, 2013, regarding his PA and FS benefits. OTDA cross-moves to dismiss the petition or in the alternative, to join the New York City Human Resources Administration (“HRA”) as a respondent.

The Petition alleges that Petitioner has had numerous fair hearings, and even after winning his hearing there has been “no compliance with [OTDA’s] ruling[s]” and that “correspondence for compliance with the [HRA Job Center] and [OTDA] has been attempted but to no avail.”

Petitioner commenced this CPLR Article 78 proceeding requesting “complete compliance” with all eleven decisions made by the OTDA from August

27, 2010 through January 8, 2013, regarding his PA and FS benefits.

CPLR Article 78 proceedings “must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner.” (CPLR §217[1]). A determination is considered final and binding, and thus starts the running of the limitations period, “when it has an impact upon the petitioner and... no further events need to take place for him to be aggrieved.” (See, *Matter of Metro. Package Store Ass’n v. Duffy*, 143 A.D.2d 832, [2d Dept 1988]). Where a challenged determination is the result of a hearing held, the limitations period begins to run upon the issuance of the decision. (See, *Austin v. Bd. of Higher Educ.*, 5 NY2d 430 [1959]).

Because Petitioner was denied the relief he sought by the issuance of the November 29, 2010 and December 17, 2011 DAFH’s, “no further events need[ed] to] take place for [Petitioner] to be aggrieved.” (*Metro Package Store Ass’n v. Duffy*, 143 A.D.2d 832 [2d Dept 1988]). To the extent the Petitioner is challenging those decisions, he was impacted by them at the time they were issued. Thus, Petitioner is time-barred from challenging these decisions after the expiration of the four-month statute of limitations.

To the extent that Petitioner is challenging the November 9, 2010 DFHR, February 2, 2011 DAFH, April 1, 2011 DFHR, February 21, 2012 DSAFH, August 3, 2012 DSAFH, August 8, 2012 DFHR, January 9, 2013 DFHR, March 6, 2013 DAFH, and April 9, 2013 DAFH, although such decisions were not adverse to Petitioner, any injury alleged by Petitioner resulting from these decision was final and binding upon their issuance. Thus, only a challenge to the April 9, 2013 DAFH would not be barred by the four-month statute of limitations.

Pursuant to CPLR §1002(b), a third party may be joined to an action if “any common question of law or fact would arise” and “any right to relief jointly, severally, or in the alternative, arising out of the same transaction” may be asserted against the party.

To the extent that Petitioner is challenging the adequacy of HRA’s compliance with the directives set forth in the April 9, 2013, the nature of the relief sought is mandamus to compel HRA to comply with this decision. HRA is responsible for receiving and processing applications for PA and FS Benefits, for

issuing eligibility determinations on such applications, and for administering PA and FS to eligible recipients. (See, 19 NYCRR 352.2, 366.8, 387.14, 387.2.) Accordingly, HRA is a necessary party. (CPLR §7803[1]).

Wherefore, it is hereby,

ORDERED that this proceeding is dismissed as to all of the New York State Office of Temporary and Disability Assistance decisions, except for the determination dated April 9, 2013; and it is further,

ORDERED that the New York City Human Resources Administration is joined as a party to this proceeding and the caption is hereby amended to appear as follows:

**IN THE MATTER OF THE APPLICATION OF
ZALMON LIBEROW,**

Petitioner,

INDEX NO. 401085/2013

- v -

**NEW YORK STATE OFFICE OF TEMPORARY AND
DISABILITY ASSISTANCE AND THE NEW YORK CITY
HUMAN RESOURCES ADMINISTRATION,**

Respondents.

and it is further;

ORDERED that the amended caption shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further,

ORDERED that the Defendant The New York City Human Resources Administration shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of service with notice of entry; and it is further,

ORDERED that Petitioner shall serve a copy of this decision upon the Clerk, who is directed to amend the caption accordingly.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: September 20, 2013


HON. EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FILED
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COUNTY CLERK'S OFFICE
NEW YORK