

Matter of New York City Civilian Complaint Review Bd. v Office of the Comptroller of the City of N.Y.

2016 NY Slip Op 30422(U)

March 4, 2016

Supreme Court, New York County

Docket Number: 452358/15

Judge: Manuel J. Mendez

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ Justice

PART 13

In the Matter of the Application of THE NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD,

Petitioner,

INDEX NO. 452358 /15

- v -

MOTION DATE 02-03--2016

THE OFFICE OF THE COMPTROLLER OF THE CITY OF NEW YORK,

Respondent.

MOTION SEQ. NO. 003

MOTION CAL. NO.

The following papers, numbered 1 to 6 were read on this motion to renew and reargue this court's judgment denying Petitioner's declaratory relief.

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

Table with 2 columns: Description of papers and PAPERS NUMBERED. Rows include Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers it is ordered that this motion by Petitioner to renew and reargue this court's denial and dismissal of its petition for declaratory relief finding that the Respondent is not required to provide it with transcripts of 50-h hearings unless the request is accompanied by judicial subpoena, court order a release from claimant or claimant's counsel is denied.

In a decision and judgment of this court dated October 22, 2015 this court denied Petitioner's request for a declaration that it was not required to obtain a court order or release from a claimant or his or her counsel to obtain a copy of a 50-h hearing transcript from Respondent, once it had issued and served on Respondent a non-judicial subpoena. After the court's judgment Petitioner learned of Respondent's press release where mention is made of its data sharing with the NYPD with respect to claims made against the NYPD and other New York City Departments. Petitioner argues that this information shows the level of information sharing between Respondent and other city agencies, belying Respondent's argument in this proceeding, requiring that the court granti its relief.

Petitioner now move to renew and reargue this court's decision and judgment dated October 22, 2015, claiming that the court misapplied the law and overlooked the facts.

CPLR § 2221(d) states that a motion for leave to Reargue (1) shall be identified specifically as such, (2) shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion, and (3) shall be made within 30 days after service of a copy of the order determining the prior motion and written notice of its entry.

However, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided (*V.Veereswamy Realty v. Yenom Corp.*, 71 A.D. 3d 874, 895 N.Y.S. 2d 860 [2nd. Dept. 2010]), but to point out controlling principles of law or fact that the court may have overlooked (*Simon v. Mehryahi*, 16 A.D. 3d 664, 792 N.Y.S. 2d 543 [2nd. Dept. 2005]).

Defendant has failed to demonstrate that this court overlooked or misapprehended a relevant fact or misapplied any controlling principle of law (*Llana v. Town of pittstown*, 245 A.D. 2d 968, 667 N.Y.S. 2d 112 [3rd. Dept. 1997]). Therefore its motion to reargue is denied.

Similarly CPLR § 2221(e) states that a motion to renew shall (1) be identified specifically as such, (2) shall be based on new facts not offered on the prior motion that would change the prior determination and (3) shall contain reasonable justification for the failure to present such facts on the prior motion. A combined motion for leave to reargue and renew shall identify separately and support separately each item of relief sought.

There is no new evidence that would have changed the result in this case. None of the information provided shows that the Respondent is releasing 50-h transcripts to other City agencies without a claimant’s consent or court order.

Accordingly, it is ORDERED that defendant’s motion to renew and reargue the court’s order and judgment dated October 22, 2015 is denied.

Enter:

MANUEL J. MENDEZ
J.S.C.



Manuel J. Mendez
J.S.C.

Dated: March 4, 2016

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE