

Aron Law, PLLC v New York City Law Dept.
2021 NY Slip Op 32804(U)
December 28, 2021
Supreme Court, New York County
Docket Number: Index No. 153208/2020
Judge: Carol R. Edmead
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL EDMEAD PART 35

Justice

-----X

ARON LAW, PLLC

Plaintiff,

- v -

NEW YORK CITY LAW DEPARTMENT,

Defendant.

-----X

INDEX NO. 153208/2020

MOTION DATE 07/14/2021

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, it is

ADJUDGED that the motion pursuant to CPLR 408 of petitioner Aron Law, PLLC (motion sequence number 004) is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for respondent New York City Law Department shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.

MEMORANDUM DECISION

In this Article 78 proceeding to compel compliance with a Freedom of Information Law (FOIL) request, petitioner Aron Law, PLLC (Aron Law) moves for leave to conduct discovery in

connection with a court-ordered legal fees hearing, pursuant to CPLR 408 (motion sequence number 004). For the following reasons, this motion is denied.

FACTS

On March 5, 2021, this court issued a decision that granted Aron Law's Article 78 petition and remanded its FOIL request to the respondent New York City Law Department (NYCLD) for further consideration (motion sequence number 001). The relevant portion of the court's decision ruled that it was:

“ORDERED that the petitioner's request for the recovery of attorney's fees is severed and the issue of the amount of reasonable attorney's fees that petitioner may recover against the respondent is referred to a Special Referee to hear and report; . . .” *See* notice of motion (motion sequence number 004), exhibit A. Aron Law avers that, at some point shortly thereafter, it “submitted a Special Referee Calendar Information Sheet to schedule a hearing for the Court to award attorney's fees,” for which it is still awaiting a date to be assigned by the Clerk's Office. *Id.*, Aron affirmation, ¶¶ 8, 12. On July 14, 2021, Aron Law submitted the instant motion pursuant to CPLR 408 for leave to conduct certain discovery in advance of the imminent attorney's fee hearing via an order:

“(i) Granting Petitioner leave to serve Notices for Discovery and Inspection and Notice of Deposition upon Respondent Pursuant to CPLR 408, and
ii) Ordering Respondent to respond to Petitioner's Notice for Discovery and Inspection; and
iii) Ordering Respondent to appear for a deposition pursuant to Petitioner's Notice of Deposition; and
iv) together with such other and further relief as this Court deems just and proper.” *Id.*, Aron affirmation, ¶ 2. The NYCLD submitted opposition to the motion on October 4, 2021. *See* Sprayregen affirmation in opposition. With the filing of Aron Law's reply papers, this matter is now fully submitted (motion sequence number 004).

DISCUSSION

Counsel for Aron Law cites the 1999 decision by the Appellate Division, Second Department in *Matter of Town of Pleasant Val. v New York State Bd. of Real Prop. Servs.* (253 AD2d 8 [2d Dept 1999]) to support its assertion that “[u]nder CPLR Article 78, a petitioner is not entitled to discovery as of right, but must seek leave of Court pursuant to CPLR §408.” See notice of motion (motion sequence number 004), Aron affirmation, ¶ 11. However, it is apparent that counsel cited that decision selectively without context for the statute’s application. In full, the Second Department held that:

“Under CPLR article 78, a petitioner is not entitled to discovery as of right, but must seek leave of court pursuant to CPLR 408. Because discovery tends to prolong a case, and is therefore inconsistent with the summary nature of a special proceeding, discovery is granted only where it is demonstrated that there is need for such relief (*see, e.g., Plaza Operating Partners v IRM [U.S.A.]*, 143 Misc 2d 22, 24 [Civ Ct, NY County 1989]). When leave of court is given, discovery takes place pursuant to CPLR 3101 (a), which provides generally that ‘[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.’ The Court of Appeals has ruled that “‘material and necessary’” should be ‘interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason’ (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]).”
Matter of Town of Pleasant Val. v New York State Bd. of Real Prop. Servs., 253 AD2d at 15-16.

Matter of Town of Pleasant Val. involved a complex inquiry under CPLR Article 78 into whether the State Board of Equalization and Assessment had promulgated a final State equalization rate for the years 1993 and 1994 for the Town of Pleasant Valley that was rationally based or, instead, arbitrary and capricious. A portion of that decision dealt with issues of discovery in connection with the State Board’s decision making process. It is clear that *Matter of Town of Pleasant Val.* is factually inapposite to the current proceeding. Here, the court has already concluded its Article 78 review and found in favor of Aron Law. No further discovery is required with respect to Aron Law’s FOIL request.

The court's March 5, 2021 decision severed Aron Law's request for attorney's fees pursuant to Public Officers Law (POL) § 89 (4) (c) (ii), as the "prevailing party" in this proceeding, and referred it to a Special Referee to hear and report on. *See* notice of motion (motion sequence number 004), exhibit A. The court did not use a long form Order of Reference, but rather referred the issue in the single short paragraph cited above since it did not appear necessary to provide the Special Referee with any particular instructions. Instead, the court believes this to be a routine matter. As the NYCLD observed in its opposition papers, "[t]he issue to be resolved by the Special Referee is simply whether or not Petitioner's fees are reasonable . . . [and] . . . [i]f the parties are unable to negotiate a settlement, that will then be determined by the Special Referee based on the facts and applicable law." *See* Sprayregen affirmation in opposition, ¶ 9.

It is true that CPLR 408 provides that discovery in an Article 78 proceeding is only available by leave of the court. *See e.g., Matter of Alexander M. v Cleary*, 188 AD3d 1471, 1474 (3d Dept 2020). The scant case law that touches on the issue of discovery in legal fees hearings conducted by Special Referees indicates that it is an improvident exercise of discretion for a court to grant a discovery request which seeks more material than is necessary to resolve the limited issues addressed in such hearings. In *Baralan Intl., S.p.A. v Vetrerie Bormioli, Ing. Luigi, S.p.A.* (280 AD2d 383 [1st Dept 2001]), the First Department held that:

"The deposition testimony of [defendant's former CEO] was neither necessary nor relevant to the proceeding before the referee, concerning the extent of the legal fees accrued by [defendant] in the defense of this action. To this end, the referee heard the testimony of [defendant's] lawyers and accepted their time sheets and bills into evidence, and [plaintiff] was provided the opportunity to challenge [defendant's] assertion that all the demonstrated legal work related to its defense in the present matter, rather than any of the dozen or so other litigations between the parties. This is the extent of what is necessary to determine the issue of fees."

280 AD2d at 384; *see also Cruz v Nieves*, 49 Misc 3d 1220(A), 2015 NY Slip Op 51829(U) (Sup Ct, Bronx County 2015) (extensively discussing the issue of how to calculate “reasonable attorney’s fees”). Here, Aron Law has offered no explanation for the necessity of serving the NYCLD with a notice of discovery and inspection for its documents or for taking depositions of its officers. As a result, the court concludes that it would be an improvident exercise of its discretion under CPLR 408 to grant Aron Law’s discovery request.

Accordingly, the court denies Aron Law’s motion.

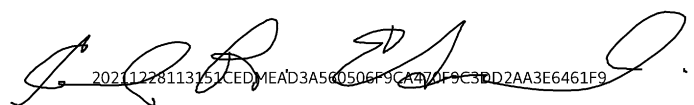
DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the motion pursuant to CPLR 408 of petitioner Aron Law, PLLC (motion sequence number 004) is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for respondent New York City Law Department shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.



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12/28/2021
DATE

CAROL EDMED, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- APPLICATION: SETTLE ORDER
- CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE