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

PRESENT: PAUL WOOTEN J.S.C.

PART 7

Justice

In the Matter of the Application of HARRY DONAS,

Petitioner,

INDEX NO. 101265/14

For a Judgement Pursuant to the Provisions of
Article 78 of the New York Civil Practice Law and Rules,

- against -

CITY OF NEW YORK, NEW YORK CITY OFFICE OF COLLECTIVE
BARGAINING, and NEW YORK CITY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.

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NYS SUPREME COURT - CIVIL

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

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

Answering Affidavits — Exhibits _____ No(s) _____

Replying Affidavits — Exhibits _____ No(s) _____

FILED
OCT 23 2015

Cross-Motion: Yes No

COUNTY CLERK'S OFFICE
NEW YORK

Motion sequence numbers 001 and 002 are hereby consolidated for disposition.

Harry Donas (petitioner) commenced this proceeding, pursuant to Article 78 of the Civil Practice Law and Rules, on or about October 30, 2014, against the New York City Department of Environmental Protection (DEP), City of New York (collectively, city respondents), and the New York City Office of Collective Bargaining (OCB) seeking to challenge and reverse the Decision and Order of the OCB, dated June 24, 2014 (June Decision), which denied in part petitioner's Improper practice petitions (motion sequence 001). Specifically, petitioner is challenging the portion of the determination that the DEP did not violate sections 12-306(a)(1) and (3) of the New York City Collective Bargaining Law (NYC CBL) when it failed to appoint petitioner to the Civil Service title of Chemical Engineer, and when it conditioned petitioner's grant of two days per week release time upon the relinquishment of his

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

compressed work schedule. Petitioner contends that the June Decision was arbitrary and capricious and should be overturned because the evidence presented was inadequate and insufficient to support the decision.

The city respondents cross-move to dismiss the petition on the grounds that this proceeding is time-barred due to petitioner's failure to comply with the applicable statute of limitations, and that this Court lacks personal jurisdiction over the city respondents due to petitioner's failure to timely serve the petition within fifteen days of the expiration of the statute of limitations. Also before the Court is a motion by OCB to dismiss the petition on the grounds that it is time-barred as petitioner failed to file the herein petition within 30 days of service of a copy of the June Decision (motion sequence 002). Moreover, OCB contends that separate and apart from the procedural grounds for dismissal, the petition should be dismissed on the merits because petitioner cannot establish that the Board of Collective Bargaining of the City of New York (Board) acted in an arbitrary and capricious manner in rendering its determination.¹

DISCUSSION

CPLR 217(a) provides that "[u]nless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner." NYC CBL § 12-308 provides in relevant part:

- a. Any order of the board of collective bargaining or the board of certification shall be (1) reviewable under article seventy-eight of the civil practice law and rules upon petition filed by an aggrieved party within thirty days after service by registered or certified mail of a copy of such order upon such party.

A final and binding determination was made by OCB regarding petitioner's improper practice petitions on June 24, 2014, a copy of which was sent by certified mail to petitioner's counsel of record

¹ The Court notes that the Board was not named as a respondent in this proceeding, however, it is OCB's contention that petitioner is seeking a judgment reversing in part a determination of the Board, which also rendered the June Decision.

on June 26, 2014. The signed certified mail receipt establishes that it was received by counsel on June 27, 2014. However, petitioner failed to commence the instant proceeding until on or about October 30, 2014, which is approximately three months after the statute of limitations to challenge the June Decision had expired. Moreover, petitioner concedes that he received a copy of the June Decision via email from his counsel on July 24, 2014, but does not explain the reason for the delay in commencing the herein action. Thus, this proceeding is untimely and must be dismissed (*Matter of Uniformed Firefighters Assn. of Greater N.Y. v New York City Off. of Collective Bargaining, Bd. of Collective Bargaining*, 163 AD2d 251 [1st Dept 1990]). As such, the Court need not address the parties' remaining contentions.

CONCLUSION

Accordingly it is hereby,

ORDERED that the petition is denied and this proceeding brought by petitioner against the respondents is dismissed, without costs or disbursements to the respondents (motion sequence 001); and it is further,

ORDERED that the cross-motion by the city respondents is granted; and it is further,

ORDERED that the motion to dismiss brought by OCB is granted (motion sequence 002); and it is further,

ORDERED counsel for the city respondents shall serve a copy of this Order, with Notice of Entry, upon all parties and upon the Clerk of the Court, who is directed to enter judgment accordingly.

Dated: 10/22/15

FILED

OCT 23 2015

PAUL WOOTEN J.S.C.

COUNTY CLERK'S OFFICE

NEW YORK

- 1. Check one:
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE
- NON-FINAL DISPOSITION

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

STATE OF NEW YORK, COUNTY OF NEW YORK, SS:

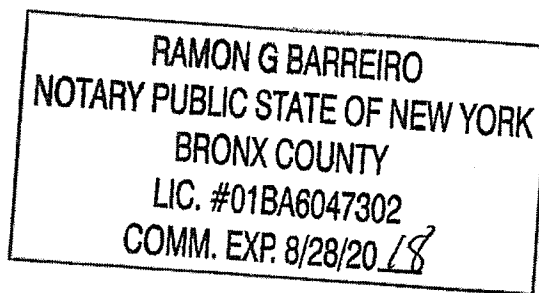
I, **Erin Andrews-Chirila** the undersigned, being duly sworn, deposes and say: on the 27th day of October 2015 she served the annexed **Notice of Entry and Order** upon: **Special Hagan Law office of Special Hagan, Esq.** Herein by depositing a copy of the same, enclosed in a prepaid properly addressed wrapper, in a post office/official depository, under the exclusive care and custody of the United states Postal Service, within the State of New York, directed by said attorney at, **196-04 Hollis Avenue, St. Albans, New York 11412** being the address designated by said attorney for that purpose.

Erin Andrews-Chirila

ERIN ANDREWS-CHIRILA

Sworn to before me this 27th day,
of October 2015

Ramon G Barreiro
NOTARY PUBLIC



Index No. 101265/2014

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DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.

NOTICE OF ENTRY & ORDER

ZACHARY W. CARTER
Corporation Counsel
Stephen Pischl, ACC
Attorney for Respondents
100 Church Street, 2-142
New York, N.Y. 10007
(212) 356-2429

Matter No. 2014-044294

*Due and timely service of a copy of the within Notice of Entry is
hereby admitted.*

New York, N.Y., 2015


..... Esq.

Attorney for

PLEASE TAKE NOTICE that an Order
of which the within is a copy, was duly entered in
the office of the Clerk of the Supreme Court, New
York County on the 23th day of October 2015.

ZACHARY W. CARTER
*Corporation Counsel
Attorney for Respondents
New York, New York
Dated: October 27, 2015*

By:


Stephen Pischl
Assistant Corporation Counsel

To:

Special Hagan
Law Office of Special Hagan, Esq.
196-04 Hollis Avenue
St. Albans, New York 11412
(917) 337-2439

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OCT 27 2015
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