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SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

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APR 11 2013

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

CLAIMS & LITIGATION
POUGHKEEPSIE OFFICE

SUPREME COURT : STATE OF NEW YORK
COUNTY OF ORANGE

-----x
RICHIE F. LEVINE,

Petitioner,

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,
Respondent.

Index No. 1415/2013
Motion Date: March 15, 2013
(Adjourned to April 5, 2013)

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The following papers numbered 1 to 6 were read on this petition for a CPLR Article 78 proceeding seeking judicial review of the denial of the FOIL request:

- Notice of Petition-Verified Petition-Memorandum of Law-Exhibits 1-4
- Answer-Exhibits 5-6

Upon the foregoing papers it is ORDERED that the petition is disposed of as follows:

Petitioner seeks an order pursuant to CPLR § 7804 compelling the production of certain documents stemming from denials of his FOIL requests for same. Petitioner admits having been informed in writing of the decisions denying his FOIL request on November 17, 2011 and September 11, 2012. Previously, petitioner sought the same relief which itself was denied for various reasons by Hon. Lori Currier Woods in a related action bearing Index No. 3349/2012 and issued on July 12, 2012 pertaining to the November 17, 2011 request.

In opposition, respondent asserts several legal theories not the least of which is that the action is barred by statute of limitations and by res judicata.

CPLR § 217(1) states in pertinent part: “Unless 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 or the person whom he represents in law or in fact, or after the respondent's refusal, upon the demand of the petitioner or the person whom he represents, to perform its duty . . .” “[I]nasmuch as the resolution of rights sought by the parties could have been obtained in a CPLR article 78 proceeding, the applicable Statute of Limitations is the four-month statute governing proceedings under article 78. (*Solnick v. Whalen*, 49 N.Y.2d 224, 425 N.Y.S.2d 68, 401 N.E.2d 190.)” *Bd. of Ed. of Altmar-Parish-Williamstown Cent. Sch. Dist. v. Ambach*, 49 NY2d 986, 987 (1980).

Petitioner acknowledged receiving the denial letter of September 11, 2012 immediately thereafter. Petitioner had 4 months of receipt of that letter to apply for the relief requested herein. Petitioner's application was filed on February 19, 2013, beyond the statute of limitations to apply for the relief and therefore petitioner's application is time barred as a matter of law. Therefore, petitioner's application is denied in its entirety.

Furthermore, petitioner seeks the same relief after requesting the same information was previously sought from Judge Woods except now under a later cover letter requesting same, hoping to revive his time to request the information. That too is improper. The doctrine of law of the case precludes a party from relitigating issues previously decided by order of the same court. *See, Baron v Baron*, 128 AD2d 821 (2nd Dept. 1987); *Hoffman v Landers*, 146 AD2d 744 (2nd Dept. 1989); *Detko v McDonald's Restaurants of New York, Inc.*, 198 AD2d 208 (2nd Dept.

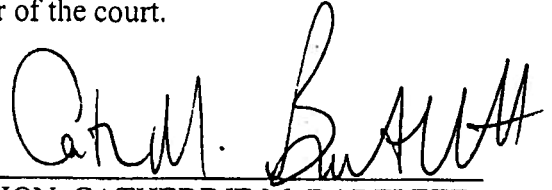
1993). “The doctrine of res judicata prohibits a party from relitigating any claim which could have been or which should have been litigated in a prior proceeding” (*County of Nassau v. New York State Pub. Empl. Relations Bd.*, 151 A.D.2d 168, 185, 547 N.Y.S.2d 339, *affd.* 76 N.Y.2d 579, 561 N.Y.S.2d 895, 563 N.E.2d 266; *Hyman v. Hillelson*, 79 A.D.2d 725, 726, 434 N.Y.S.2d 742, *affd.* 55 N.Y.2d 624, 446 N.Y.S.2d 251, 430 N.E.2d 1304; *Coliseum Towers Assocs. v. County of Nassau*, 217 A.D.2d 387, 389, 637 N.Y.S.2d 972). “[O]nce a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy” (*O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 357, 445 N.Y.S.2d 687, 429 N.E.2d 1158).” *Finkelstein v Ilan*, 239 AD2d 545, 546 (2nd Dept. 1997). Whether the doctrine be known as *res judicata*, collateral estoppel or issue preclusion, a judgment or confirmed decision in one action is conclusive not only of matters previously litigated, but also as to any matters which might have been so litigated. *See, Schuykill Fuel Corporation v B. & C. Nieberg Realty Corporation*, 250 NY 304, 306 (1929). This is true even as to matters based upon different theories, so long as they arise from the same transaction or series thereof, since once an issue has been tried, all litigation between the parties arising therefrom should be finally determined. *See, Coliseum Towers Associates v County of Nassau*, 217 AD2d 387, 389-390 (2nd Dept. 1996); *Braunstein v Braunstein*, 114 AD2d 46, 53 (2nd Dept. 1985).

Whether petitioner seeks to “judge shop” or has different motives is unclear. However, the substantial identity of the parties, the Court’s prior determination, and the issues raised in this case which so closely track those which were already litigated warrants dismissal. Any “new theories” could have and should have been raised in the prior litigation and to do so now is

precluded by res judicata. As such, petitioner's application is denied in its entirety with \$100.00 motion costs awarded to respondent from petitioner.

The foregoing constitutes the decision and order of the court.

Dated: April 8, 2013 E N T E R
Goshen, New York

A handwritten signature in black ink, appearing to read "Catherine M. Bartlett". The signature is written in a cursive style with a large initial "C" and "B".

HON. CATHERINE M. BARTLETT,
A.J.S.C.
**JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE**