SUPREME COURT
STATE OF NEW YORK COUNTY OF SUFFOLK

IN THE MATTER OF THE APPLICATION OF:

KEVIN BERG **INDEX NO.**

PETITIONER, **VERIFIED PETITION**

HYBRID PROCEEDING/ACTION FOR JUDGMENT PURSUANT TO CPLR ARTICLES 78 AND 30, AND 42 U.S.C. § 1983

-against-

WADING RIVER FIRE DISTRICT, and
WADING RIVER FIRE DISTRICT BOARD OF FIRE COMMISSIONERS.

RESPONDENTS.

Petitioner, by and through his attorneys, Pinsky Law Group, PLLC, as and for his Petition, alleges as follows:

THE PARTIES

1. This is a hybrid Article 78 proceeding and 42 U.S.C. § 1983 action, and as a secondary matter, seeks a declaratory judgment, pursuant to CPLR §§ 3001, 7803(2), and 7803(3).

2. Petitioner is resident of the county of Suffolk with a physical address of 211 Hulse Avenue, Wading River, New York 11792 and is an active volunteer firefighter in the Wading River Fire Department of the Wading River Fire District. Petitioner held the rank of Chief of the Wading River Fire Department until he was unlawfully removed.

3. Wading River Fire District, hereinafter "Respondent Fire District", is a political subdivision of the state of New York in the county of Suffolk, state of New York, with an office located at 1503 North Country Road, Wading River, New York 11792.

4. The Wading River Fire District Board of Fire Commissioners, hereinafter "Respondent Board of Fire Commissioners", is the final policymaker and the authorized decision maker of the Wading River Fire District in the county of Suffolk, state of New York, with an office located at 1503 North Country Road, Wading River, New York 11792.

5. Each of the Respondents above are referred to collectively as "Respondents".

BRIEF RECITATION OF THE LAW

6. Town Law § 174(7) provides that fire districts are political subdivisions of the state.

7. Town Law § 176 provides that the board of fire commissioners of a fire district is the final policymaker and an authorized decision maker of the district, with numerous powers over the fire department of the fire district, including that the board of fire commissioners, "may … provide for the removal of such members for cause."

8. Therefore, pursuant to Town Law §§ 176(10) and (11), Respondent Board of Fire Commissioners has the authority to discipline members of the fire department, subject to the process provided by General Municipal Law § 209-l.

9. A fire district and its board of fire commissioners are required to provide an accused volunteer firefighter with a hearing and full due process as required by General Municipal Law § 209-l.

HISTORY OF THE MATTER

10. On or about November 2, 2023, Petitioner was verbally informed by the Chair of the Wading River Fire District Board of Fire Commissioners that he was suspended until further notice. No reason was provided for his suspension.

11. Upon information and belief, Respondent Board of Fire Commissioners voted to suspend Petitioner from membership at its public meeting on November 2, 2023. No reason for the suspension was provided.

12. By letter dated November 14, 2023, the Chair of the Wading River Fire District Board of Fire Commissioners notified Petitioner "that the Board of Fire Commissioners (BOFC) […] voted to continue the suspension against you imposed by the BOFC at the last meeting..." No reason for the suspension was provided. A true and accurate copy of this letter is attached hereto as **Exhibit 1**.

13. By letter dated November 27, 2023, the Chair of the Wading River Fire District Board of Fire Commissioners notified Petitioner that the "Board of Fire Commissioners approved a motion to relinquish your Chief Duties…" No reasons for this removal was provided. A true and accurate copy of this letter is attached hereto as **Exhibit 2**.

14. Respondents also stated (**Exhibit 2**) that Petitioner was "reinstate[d]…to active status as a Class A Firefighter", but did not state or suggest that Petitioner's record was cleared.

15. Petitioner remains removed from the office of Fire Chief.

16. Petitioner has a permanent disciplinary record of a suspension from membership and removal from the office of Fire Chief.

17. Throughout the entire process of suspension to removal, Respondents failed to comply in any respect with General Municipal Law § 209-l.

18. Respondents have taken a public stance on Petitioner's guilt without providing Petitioner with a hearing or any other due process.

19. Respondents suspended Petitioner without alleging any charges or giving any reason whatsoever.

20. Respondents found Petitioner guilty without a hearing and without due process in violation of his statutory and constitutional rights.

21. Petitioner was never provided a hearing as contemplated by General Municipal Law § 209-l or with any other statutorily mandated due process, including but not limited to a notice of the charges, a notice of the policies violated, the right to present and cross-examine witnesses, and so much more.

22. Therefore, Petitioner was not provided his full panoply of rights as required by General Municipal Law § 209-l.

23. The meetings of Respondents Fire District and its Board of Fire Commissioners are public meetings and all actions taken at such meetings are a matter of public record. The findings of the Respondents, such as the suspension of Petitioner and his permanent removal from office, are a matter of public record and his determination of guilt is a public statement.

24. Therefore, Respondents, in deciding Petitioner's guilt and removing him from the office of Fire Chief without a hearing at a public meeting, have publicly pre-judged Petitioner's guilt in violation of his statutory and constitutional rights to due process.

25. At this point in time a hearing is pointless and the violations of General Municipal Law § 209-l and of Petitioner's constitutional rights cannot be remedied by a hearing, as Respondents have publicly adjudged Petitioner's guilt after taking time to "investigate the facts" (**Exhibit 1**), imposed a final removal from office upon Petitioner, made its determination as to Petitioner's guilt known to the public at a public meeting, and reaffirmed its findings and penalty in a letter to Petitioner. Moreover, as stated below, Respondents cannot cure their blatant disregard for Petitioner's statutory rights by providing a hearing when no due process was ever provided to him.

DUE PROCESS REQUIREMENTS

26. General Municipal Law § 209-l establishes the framework and minimum due process requirements which must be provided to an active volunteer firefighter before a fire district and the board of fire commissioners may remove an officer from office.

27. General Municipal Law § 209-l statute grants persons such as Petitioner the following rights:

- the right not to be removed from office "except for incompetence or misconduct" (G.M.L. §209-l[2]);

- the right that a long-term suspension may occur "only after a hearing upon due notice and upon stated charges" (G.M.L. §209-l[3]);

- the right that the stated "charges shall be in writing" and that the "burden of proving incompetency or misconduct shall be upon the person alleging the same" (G.M.L. §209-l[3]);

- the right to receive notice of the hearing which shall specify the time and place of such hearing and state the body or person before whom the hearing will be held (G.M.L. §209-l[4][b]);

- the right to receive the notice of the hearing and a copy of the charges by personal service at least ten (10) days but not more than thirty (30) days before the date of the hearing (G.M.L. §209-l[4][c]);

- the right not be terminated or be given a long-term suspension until after the hearing (G.M.L. §209-l[5]).

28. The Appellate Division also has held that a suspended firefighter must be advised of his "full panoply of rights" or the notice of a hearing is defective. *Bell v. Village of Delhi*, 4 A.D.3d 572, 574, 772 N.Y.S.2d 109 (3rd Dept. 2004). Such rights include the right to bring an attorney, the right to present witnesses, the right to cross-examine witnesses, and the right to a transcribed hearing.

29. The Appellate Division additionally requires that the notice identify the policy alleged to have been violated. *Bigando v. Heitzman*, 187 A.D.2d 917, 918-19, 590 N.Y.S.2d 553, 554 (3rd Dept. 1992).

POINT I

PETITIONER WAS DENIED DUE PROCESS REQUIRED BY GENERAL MUNICIPAL LAW § 209-l

Petitioner was suspended as a member, and removed from the office of Fire Chief without due process

30. Petitioner repeats and realleges each of the prior paragraphs as if fully stated herein.

31. General Municipal Law § 209-l(3) provides Petitioner the right that a permanent suspension and/or removal from office may occur "only after a hearing upon due notice and upon stated charges".

32. General Municipal Law § 209-l(5) provides Petitioner the right not to be removed from office or to be given a permanent suspension until after the hearing.

33. Respondents suspended Petitioner for approximately one month as a member and permanently removed Petitioner from the office of Fire Chief without ever providing a hearing or without providing Petitioner with any other rights required by General Municipal Law § 209-l.

34. It is axiomatic that a hearing consists of proof submitted by the accuser, the presentation of witnesses, the right to cross-examine witnesses, the right of Petitioner to present witnesses, and so much more.

35. Petitioner was never afforded the chance to face his accuser, to cross-examine any witnesses, to present any witnesses, or to offer any evidence in favor of his defense.

36. The Appellate Division has made clear that a volunteer firefighter may only be temporarily suspended if charges have been filed and a disciplinary process involving a hearing is underway. No charges were ever issued and no hearing ever granted.

37. A suspension or removal from office, such as the ones imposed upon Petitioner, may not be imposed without a hearing. The Second Department held:

> "[A] volunteer firefighter must be afforded due process in disciplinary proceedings" (*Matter of Greene v. Medford Fire Department*, 6 A.D.3d 705, 706, 775 N.Y.S.2d 538; *see Matter of Pawlowski v. Big Tree Volunteer Firemen's Company, Inc.*, 12 A.D.3d 1030, 1031, 784 N.Y.S.2d 785). This is true whether the penalty that is ultimately imposed entails the firefighter's permanent removal from his or her position, or a suspension from the position. As set forth in General Municipal Law § 209–*l* (5), "[t]he officer or body having the power to remove the person charged with incompetence or misconduct may suspend such person after charges are filed and pending disposition of the charges, *and after the hearing* may remove such person *or may suspend him or her for a period of time not to exceed one year* " (emphasis added). The plain meaning of this provision is that a volunteer firefighter may only be temporarily suspended, without a hearing, from the time that the charges are filed until the ultimate disposition of the charges, but that a hearing is required to actually dispose of the charges, and that a final penalty of suspension, not to exceed one year, may only be imposed after that hearing.

McEvoy v. Oyster Bay Fire Co. No. 1, 117 A.D.3d 953, 954-955, 986 N.Y.S.2d 187, 190 (2nd Dept. 2014).

38. Respondents never granted Petitioner a hearing. Respondents' suspension of Petitioner as a member, and removal from office of Fire Chief, both without a hearing and both without any other due process were in violation of Petitioners' statutory and constitutional rights to due process.

POINT II

A POST-DEPRIVATION HEARING IS UNAVAILABLE AS A MATTER OF LAW

39. Petitioner repeats and realleges each of the prior paragraphs as if fully stated herein.

40. A post-deprivation disciplinary hearing is not an available remedy here because a post-deprivation hearing is not available as a remedy when Respondents afforded Petitioner no due process in violation of General Municipal Law § 209-l. *Reed v. Medford Fire Dept, Inc.*, 806 F. Supp. 2d 594, 612 (E.D.N.Y. 2011).

41. In *Reed,* the Court fully discusses the law of whether an Article 78 proceeding or subsequent hearing can remedy a complete deprivation of rights under General Municipal Law § 209-l. The Court concluded that it cannot. As stated by the District Court:

> The Plaintiff's contention that he did not receive constitutionally adequate notice of the December 9, 2009 Hearing, if true, would render the pre-termination hearing void. In this regard, "[t]he availability of a post-termination hearing under Article 78, when there was no pre-termination hearing, does not satisfy due process because it violates *Loudermill's* requirement than employee have minimum due process before being terminated." …If he was terminated without those protections, the constitutional deprivation was then complete….
>
> *Reed, supra at* 613 (internal citations omitted).

42. The controlling inquiry is solely whether the fire district was in a position to provide a pre-deprivation process. *Ratajack v. Brewster Fire Department, Inc. of the Brewster-Se. Joint Fire Dist.*, 178 F. Supp. 3d 118, 139 (S.D.N.Y. 2016) *citing Hellenic Am. Neighborhood Action Comm. v. City of New York,* 101 F.3d 877 (2nd Cir. 1996). If it is found that "an adequate prior hearing was required, a postdeprivation hearing, by way of an Article 78

proceeding or an action for damages […] is inadequate, by definition, to meet the requirements of due process." *Patterson v. Coughlin*, 761 F.2d 886, 893 (2nd Cir. 1985).

43. Post-deprivation hearings are only adequate when the deprivation of an individual's property interest is incurred by an unsanctioned act that is "random and unauthorized". *DiBlasio v. Novello*, 344 F.3d 292, 302 (2nd Cir. 2003). As Petitioner's suspension from membership and removal from office without due process was not "random and unauthorized", no post-deprivation hearing can remedy the violation.

44. Respondents' failure to comply in any respect with General Municipal Law § 209-l was not "random and unauthorized" as the Fire District was required to provide Petitioner with due process. "[G]overnment actors' conduct cannot be considered random and unauthorized […] if the state delegated to those actors 'the power and authority to effect the very deprivation complained of ... [and] the concomitant duty to initiate the procedural safeguards set up by state law,' even if the act in question 'was not ... sanctioned by state law.'" *Rivera-Powell v. New York City Bd. of Elections*, 470 F.3d 458, 465 (2nd Cir. 2006) quoting *Zinermon v. Burch*, 494 U.S. 113, 135, 110 S. Ct. 975, 988 (1990).

45. The Second Circuit "has since relied on *Zinermon* to hold that the acts of high-ranking officials who are 'ultimate decision-maker[s]' and have 'final authority over significant matters,' even if those acts are contrary to law, should not be considered 'random and unauthorized' conduct for purposes of a procedural due process analysis." Rivera-Powell, 470 F.3d at 465.

46. Petitioner was suspended by the Board's "high-ranking official[s]" with final authority over fire district matters. *DiBlasio*, supra., 344 F.3d at 302-303.

47. Respondents suspended Petitioner without any due process whatsoever, in violation of General Municipal Law § 209-l. The Board's acts cannot be characterized as "random and unauthorized". See *Rivera-Powell*, supra., 470 F.3d at 465; *See also*, *Zinermon*, supra., 494 U.S. at 135, 110 S. Ct. at 988.

48. A post-deprivation hearing cannot satisfy Respondents' due process violations and is "inadequate, by definition, to meet the requirements of due process." *Patterson*, supra., 761 F.2d at 893.

POINT II-A

RESPONDENTS PRE-JUDGED PETITIONER'S GUILT

49. Petitioner repeats and realleges each of the prior paragraphs as if fully stated herein.

50. Respondents cannot cure their blatant violations of Petitioner's due process rights by now complying with General Municipal Law § 209-l.

51. Once Respondents made their determinations and made a public statement at a public meeting about Petitioner's guilt and punishment, they had pre-judged Petitioner's guilt.

52. Respondents made clear that they pre-judged Petitioner's guilt in their letter to Petitioner when they stated that the Board of Fire Commissioners "voted to continue the suspension against you" (**Exhibit 1**), and stated that the Board of Fire Commissioners "approved a motion to relinquish your Chief Duties…" (**Exhibit 2).**

53. In a case involving the due process rights of volunteer firefighters, the Fourth Department, held:

> Petitioners were entitled to impartial factfinders even though they were not entitled to a hearing. Petitioners contend that members of the fact-finding Board of Inquiry filed the instant charges against petitioners. "Due process is violated in an administrative adjudication where 'an administrative official has taken a public position about specific facts at issue in a pending adjudicatory proceeding'" (*Ferrara*, 191 A.D.2d at 968, quoting *Matter of 1616 Second Ave. Rest. v New York State Liq. Auth.*, 75 N.Y.2d 158, 165 [1990]).

Matter of Pawlowski v. Big Tree Volunteer Firemen's Company, Inc., 12 A.D.3d 1030, 1031-1032, 784 N.Y.S.2d 785, 786-787 (4th Dept. 2004) (emphasis supplied).

54. Just as in *Pawlowski*, Respondents pre-judged Petitioner's guilt and took a "public position" on the charges, the facts and the suspension and removal from office of Petitioner. As stated by the Court of Appeals:

> [D]isqualification may be required for prejudgment of specific facts at issue in an adjudicatory proceeding… It has been noted, moreover, that public statements that indicate prejudgment are especially problematic. While conscientious officials are presumably able to put aside privately held prejudgments, public statements touching on the facts of a proceeding create special problems. Such statements "may have the effect of entrenching [the official] in a position which he has publicly stated, making it difficult, if not impossible, for him to reach a different conclusion in the event he deems it necessary to do so after consideration of the record."
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> Thus, where, as in this case, an administrative official has made public comments concerning a specific dispute that is to come before him in his adjudicatory capacity, he will be disqualified on the ground of prejudgment if " 'a disinterested observer may conclude that [he] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.'"

1616 Second Avenue Restaurant, Inc., v. New York State Liquor Authority, 75 N.Y.2d 158, 162, 551 N.Y.S.2d 461, 463 (1990) (citations omitted).

55. As made crystal clear in **Exhibit 1** and **Exhibit 2**, Respondents "pre-judged" the factual finding of the investigation, pre-judged Petitioner's guilt and pre-judged Petitioner's discipline.

56. The Court of Appeals has enunciated the test to be applied when determining if an administrator must be disqualified from participation in adjudicatory proceedings. In *1616 Second Avenue Restaurant, Inc. v. New York State Liquor Authority, infra,* the New York Appeals Court had to determine whether public statements made by the Chair of the State Liquor Authority, in which the Chair discussed the charges pending in a case against a licensee, should disqualify the Chair from participating in the administrative review of the case. The Court held that the Chair was disqualified because he made statements which, viewed in their entirety, evidenced that the Chair believed the licensee violated the law.

57. The Court of Appeals held:

> It is beyond dispute that an impartial decision maker is a core guarantee of due process, fully applicable to adjudicatory proceedings before administrative agencies *(Withrow v Larkin*, 421 U.S. 35, 46-47; *Matter of Warder v Board of Regents*, 53 N.Y.2d 186, 197; State Administrative Procedure Act § 303). No single standard determines whether an administrative decision maker should disqualify himself from a proceeding for lack of impartiality (*see,* 3 Davis, Administrative Law § 19:1 [2d ed 1978]). Many concepts are embraced under the heading of bias, including advance knowledge of facts, personal interest, animosity, favoritism and prejudgment. Not all require disqualification in all circumstances. Disqualification is more likely to be required where an administrator has a preconceived view of facts at issue in a specific case as opposed to prejudgment of general questions of law or policy….
> ***
> While conscientious officials are presumably able to put aside privately held prejudgments, public statements touching on the facts of a proceeding create special problems. Such statements "may have the effect of entrenching [the official] in a position which he has publicly stated, making it difficult, if not impossible, for him to reach a different conclusion in the event he deems it necessary to do so after consideration of the record." …
> ***

> [a public official] will be disqualified on the ground of prejudgment if "'a disinterested observer may conclude that [he] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.'"

In 1616 Second Avenue Rest, Inc. supra at 161, 551 N.Y.S.2d at 461; *See also, Botsford v. Bertoni*, 112 A.D.3d 1266, 1269, 977 N.Y.S.2d 497 (3rd Dept. 2013). Respondents' public discussions, findings and impositions of an immediate suspension and removal from office easily give a "disinterested" person the "impression" that Respondents adjudged Petitioner to be guilty. *1616 Second Avenue Rest., supra*.

58. Respondents' imposition of a suspension and of the removal from the office of Fire Chief is absolute confirmation of Respondents' pre-judgment of Petitioner's guilt. Respondents' statements in Exhibit 1 and Exhibit 2 that Petitioner was suspended and removed from office of Chief is irrefutable proof of Respondents' prejudgment.

AS AND FOR A CAUSE OF ACTION FOR DAMAGES:

PETITIONER WAS DENIED DUE PROCESS UNDER 42 U.S.C. § 1983

59. Petitioner repeats and re-alleges each of the prior paragraphs as if fully stated herein.

60. Petitioner is a volunteer firefighter with the Wading River Fire District and Fire Department.

61. Petitioner has a property interest in his position as a volunteer firefighter and as the Fire Chief. *See, Reed v. Medford Fire Dept., Inc.*, 806 F. Supp. 2d 594 (E.D.N.Y. 2011).

62. Respondents found Petitioner guilty, imposed a suspension upon Petitioner and removed Petitioner from membership and from office without ever providing a hearing or providing Petitioner with any other rights granted pursuant to General Municipal Law § 209-l.

63. Respondents deprived Petitioner of his property interests of membership and office without due process.

64. Respondent Fire District is a political subdivision of the state.

65. Respondent Board of Fire Commissioners is the final policymaker and an authorized decision maker of the district.

66. Respondents created, adopted, endorsed, or otherwise authorized bylaws and policies that deprive Petitioner of his rights.

67. Respondents created, adopted, endorsed, or otherwise authorized Petitioner's suspension and removal without adequate due process.

68. Respondents created municipal policies and customs by endorsing a formal policy.

69. Respondents created, adopted, endorsed, or otherwise authorized municipal policies and customs by and through the actions of authorized decision makers and/or those who establish governmental policy.

70. Respondents created, adopted, endorsed, or otherwise authorized constitutional violations resulting from the policymaker's failure to train employees.

71. Since Petitioner was not provided with any rights of due process as required by General Municipal Law § 209-l, his suspension must be reversed and removed from his record.

72. A Fire District's failure to provide Petitioner "with a pre-termination hearing constitutes a deprivation of a property interest without the due process of law guaranteed by the Fourteenth Amendment." *Leonardi v. Bd. of Fire Commissioners of Mastic Beach Fire Dist.*, 643 F.Supp. 610 (E.D.N.Y. 1986). Petitioner is due compensation from the time that he was suspended and from the time that he was removed from office until at least this Court renders its decision. *Id.*

73. Petitioner would have received substantial credit towards his Length of Service Award Program (LOSAP) benefits by serving as the Fire Chief. Fire Chief's receive twenty-five (25) points towards the required fifty (50) points to earn a year of credit. Removal from Chief affected both Petitioner's ability to earn a year of credit.

74. Removal as a member and from the very public position as the community's Fire Chief has irreparably damaged Petitioner's reputation amongst the community.

PETITIONER REQUESTS ATTORNEYS' FEES, COSTS & EXPENSES

75. Petitioner requests that this Court award Petitioner attorneys' fees, costs and expenses of this action. Petitioner has incurred attorney's fees to challenge his unconstitutional suspension. Attorneys' fees and costs are available in § 1983 actions, specifically where the financial damages are not significant.

76. As stated by a District Court:

> Under § 1988, "a court has discretion to 'allow the prevailing party, other than the United States, a reasonable attorney's fee' in a civil rights lawsuit filed under 42 U.S.C. § 1938." …. "A plaintiff who has prevailed on a claim under § 1983 should ordinarily recover an attorney's fee unless special circumstances would render an award unjust." …. "[P]laintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the

> parties sought in bringing suit."…. The Supreme Court has described this standard as "generous," such that nominal damages of one dollar are enough to bring the plaintiff across the "prevailing party" threshold.

DeFerio v. City of Syracuse, 2018 WL 3069200 (N.D.N.Y. 2018)(internal citations omitted).

77. Further:

> A "prevailing party" in a civil rights action is entitled to an award of attorneys' fees and costs. Furthermore, a prevailing party is also entitled to reimbursement for time reasonably expended in preparing his attorneys' fee application. A "prevailing party" is a party who achieves a " 'material alteration of the legal relationship of the parties' ...." In other words, " 'plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.' "Thus, "to qualify as a prevailing party, a civil rights plaintiff must obtain at least some relief on the merits of his claim." Finally, "a plaintiff who wins nominal damages is a prevailing party under § 1988" for purposes of attorneys' fees.
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> *Dingle v. City of New York,* 2012 WL 1339490 (S.D.N.Y. 2012) (internal quotes omitted).

78. As stated by the Second Circuit:

> [W]e have indicated that this discretion is narrowed by a presumption that successful civil rights litigants should ordinarily recover attorneys' fees unless special circumstances would render an award unjust. As we explained in *Kerr,* the "function of an award of attorney's fees is to encourage the bringing of meritorious civil rights claims which might otherwise be abandoned because of the financial imperatives surrounding the hiring of competent counsel." *Id.*
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> *Raishevich v. Foster,* 247 F.3d 337, 344 (2nd Cir. 2001) (internal citations omitted).

79. The primary relief sought is the clearance of wrongdoing from Petitioner's record. If there were no opportunity for an attorney to recover the full and fair amount for their services, few attorneys would take on these claims.

80. The actual monetary damages are insufficient to compensate Petitioner for this significant amount of attorneys' fees, costs and expenses that Petitioner has accrued.

81. Petitioner will submit his itemized request for a specific amount of attorneys' fees after the decision on the merits for this Court's review.

WHEREFORE, Petitioner hereby requests an Order, pursuant to 42 U.S.C. § 1983 and CPLR §§ 3001, 7803(2), and 7803(3) as follows:

A. Declaring Petitioner's suspension and removal from membership and office by Respondent to be null and void;

B. Prohibiting Respondents from pursuing charges related to this unconstitutional suspension of membership and removal from office;

C. Clearing Petitioner's personnel record of the findings of guilt related to Respondents' disciplinary actions;

D. Ordering Respondents to pay all Court costs as well as all reasonable attorneys' fees and expenses for Petitioner;

E. Granting Petitioner damages in the amount of $50,000; and

F. Granting any and such further relief as the Court deems just and proper.

Dated: March 18, 2024

PINSKY LAW GROUP, PLLC

BY:

Bradley M. Pinsky, Esq.
Attorneys for Petitioner
4311 East Genesee Street
Syracuse, New York 13214
(314) 428-8344

VERIFICATION

Kevin Berg, being duly sworn, deposes and states that he is the Petitioner in the within action; that he has read the foregoing Petition and knows the contents thereof; and that the same is true to his knowledge, except as to the matters stated therein to be alleged upon information and belief, and as to those matters as he believes them to be true.

Kevin Berg

Sworn to before me this
18th day of March, 2024

Notary Public

ROBERT S. KANAS
Notary Public, State of New York
Registration #01KA6013577
Qualified In Suffolk County
Commission Expires Sept. 21, 2026