COURT OF APPEALS
STATE OF NEW YORK

----------x

In the Matter of the Application of

ROY DEN HOLLANDER,

Petitioner-Appellant,

-against-

THE CITY OF NEW YORK COMMISSION ON HUMAN RIGHTS,

Respondent-Respondent.

AFFIRMATION IN OPPOSITION TO MOTION FOR REARGUMENT

New York County Sup. Ct.
Index No. 100299/13

New York Court of Appeals
APL-2014-00240

----------x

INGRID R. GUSTAFSON, an attorney admitted to practice before the courts of this state, affirms, in accordance with C.P.L.R. 2106, that the following statements are true, subject to the penalties of perjury:

1. I am an attorney in the office of ZACHARY W. CARTER, Corporation Counsel of the City of New York and attorney for respondent-respondent the City of New York Commission on Human Rights ("the Commission") in the above-referenced special proceeding. Having successfully represented the Commission in the appeal of petitioner-appellant Roy Den Hollander ("petitioner") to the Appellate Division, First Department, I am familiar with the facts of this case.

2. I submit this affirmation in opposition to petitioner's motion, returnable December 15, 2014, for reargument of an order of this Court entered

November 24, 2014. The November 24 order followed: (1) an earlier order of this Court, entered September 16, 2014, which granted petitioner leave to appeal to this Court from a decision and order of the Appellate Division, and (2) a motion by the Commission, returnable October 6, 2014, to dismiss petitioner's appeal from the Appellate Division's decision and order as moot. In its November 24 order, this Court treated the Commission's October 6 motion to dismiss the appeal as a motion for reargument of petitioner's motion for leave; granted the motion for reargument; and, upon reargument, denied the motion for leave.

3. For the reasons set forth in the Commission's June 26, 2014, affirmation in opposition to petitioner's motion for leave to appeal and in the Commission's October 6, 2014, motion to dismiss the appeal as moot, this Court should deny petitioner's motion for reargument. Petitioner has had two opportunities to argue the merits of his motion for leave to appeal — (1) the motion for leave itself, and (2) his affirmation in opposition to the Commission's motion to dismiss the appeal — and should not now be granted a third.

4. Furthermore, in moving for reargument, petitioner does not argue that this Court overlooked or misapprehended points made in his original motion for leave to appeal or in his affidavit in opposition to the Commission's motion to dismiss. Rather, he improperly relies on new arguments. *See* 22 N.Y.C.R.R. § 500.24(d) ("The motion [for reargument] shall not be based on the assertion for the first time of new arguments or points of law . . . ."). Indeed, without explaining why he did not address the point in his affidavit in opposition to the Commission's motion to dismiss the appeal as moot, he now contends that this

Court should grant him leave even if the appeal is moot. *See* Appellant's Memorandum in Support of Reargument of the Court of Appeals Decision to Grant Respondent's Reargument Motion ("App.'s Mem.") (Nov. 29, 2014) at 6.[1]

5. Petitioner also seeks to assert a new, second ground for appeal, *see id.* at 8-12, despite the fact that he explicitly disclaimed reliance on that ground in his motion for leave to appeal, *see* Den Hollander Affidavit in Support of Motion for Leave to Appeal ("Den Hollander Aff.") (June 17, 2014) ¶ 5 ("The only issue to be appealed is . . . ."), which is a binding limitation. *See Quain v. Buzzetta Constr. Corp.*, 69 N.Y.2d 376, 379 (1987) ("[I]f a party in its application for leave to appeal specifically limits the issues it seeks to have reviewed, it is bound by such limitation and may not raise additional issues on appeal."). To the extent that petitioner is, in effect, asking this Court to grant him leave to appeal anew, he should be precluded from doing so on timeliness grounds. *See* Den Hollander Aff. ¶ 3 (petitioner served with notice of entry by mail on June 5, 2014); C.P.L.R. 5513(b) (motion for leave to appeal must be filed within thirty days of service of notice of entry).

[1] In any event, as set forth in the Commission's October 6 motion, the exception to the mootness doctrine does not apply in this case, as the issue involved does not evade review. *See* Affirmation in Support of Motion to Dismiss Appeal (Sept. 22, 2014) at 4 n.1. Indeed, it was petitioner's own limitation of this appeal that rendered it academic. Furthermore, the issue presented here is not so novel or substantial as to warrant deviation from this Court's well-establish principles of justiciability. *See id.*

WHEREFORE, for all of the above-stated reasons, the motion for reargument should be denied, with costs.

Dated: New York, New York
December 11, 2014

INGRID R. GUSTAFSON