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### Decision in CPLR Article 78 proceedings - Mercado, Freddie

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

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In the Matter of the Application of  
FREDDIE MERCADO, DIN 82-A-5907

DECISION & ORDER

INDEX NO. 1676/2016

Petitioner,

For a Judgment Pursuant to Article 78  
Of the Civil Practice Law and Rules

-against-

TINA M. STANFORD, Chairwoman,  
NEW YORK STATE BOARD OF PAROLE,

Respondent.

-----X  
P R E S E N T : HON. ELAINE SLOBOD, JSC

The following sets of papers numbered 1 to 4 were considered on the petitioner's application for a judgment annulling the determination of the Parole Board which denied him parole and granting him a *de novo* hearing:

Order to show cause; petition and exhibits 1-11	1,2
Answer and return and exhibits 1-11 (exhibits 1, 3 and 11 submitted separately for in camera review)	3
Reply	4

Upon review of the foregoing, it is hereby ORDERED that the petitioner's application for a *de novo* hearing is granted. The petitioner's *de novo* hearing shall be before a board whose members have not previously reviewed the petitioner's applications for parole. Further, the sentencing minutes of February 20, 1987 (Browne, J.) shall be removed from the petitioner's file prior to the hearing.

If a denial of parole could be based upon the seriousness of the petitioner's underlying offense alone, the Court would affirm the Board's decision. This, however, is not the case. See *Ramirez v Evans*, 118 AD3d 707 (2d Dept 2014). Here, no other reason was articulated by the Board for its conclusory findings that granting parole "would not be compatible with the welfare of society at large, and would tend to deprecate the seriousness of the instant offenses and undermine respect for the law."

This decision constitutes the order of the Court.

E N T E R

Dated: March 24, 2017  
Goshen, New York

*Elaine Slobod*

HON. ELAINE SLOBOD, JSC

FREDDIE MERCADO, DIN 82-A-5907  
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