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January 2020

### Decision in CPLR Article 78 proceedings - Mercado, Freddie (2017-06-07)

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
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 and 2 were considered on the respondent's application to reargue with respect to the Court's decision and order dated March 24, 2017, which granted the petitioner's application for a *de novo* parole hearing:

Notice of motion, Strickland Smith affirmation, and exhibits 1-5	1
Mercado affidavit in opposition and exhibits A&B	2

Upon review of the foregoing, it is hereby ORDERED that the respondent's motion is denied. However, the Court will clarify its prior order in that only those commissioners who previously interviewed the petitioner are disqualified from conducting the *de novo* determination.

The respondent takes issue with three aspects of the Court's March 24, 2017 decision and order: (1) the Court's directive that the sentencing minutes from the petitioner's February 20, 1987 appearance in Queens County Supreme Court be removed from the petitioner's file before the *de novo* determination; (2) this Court's use of the term "hearing" rather than "interview;" and (3) the respondent's puzzlement over which commissioners are disqualified from participating in the *de novo* determination ordered by the Court.

A motion to reargue must include copies of all of the papers submitted on the prior motion. CPLR 2214(c); *see Plaza Equities, LLC v Lamberti*, 118 AD3d 687, 688 (2d Dept 2014). The respondent did not submit a copy of the petition, which contained the petitioner's arguments for excluding the February 20, 1987 sentencing minutes from consideration at the petitioner's interview.

This decision constitutes the order of the Court.

E N T E R

Dated: June 7, 2017  
Goshen, New York

  
\_\_\_\_\_  
HON. ELAINE SLOBOD, JSC

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