

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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In the Matter of the CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY,

Petitioner,

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

NOTICE OF PETITION

Index No: _____

- against -

LOURDES ZAPATA, in her capacity as Director
of the Department of Planning and Development for
the City of Newburgh and as Administrative Director
of the City of Newburgh Industrial Development Agency,
CHARLES EMBERGER, in his capacity as Director of
Finance for the City of Newburgh and as City Comptroller
of the City of Newburgh and DWIGHT DOUGLAS, in his
capacity as Acting City Manager of the City of Newburgh,

2009 004867

Respondents.

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PLEASE TAKE NOTICE, that upon the annexed petition of the City of
Newburgh Industrial Development Agency, verified on the ⁶ day of ^{MAY} ~~June~~, 2009, and
upon the supporting papers annexed to the Verified Petition, an application will be made
to an Individual Assignment Part of this court to be held at the Orange County
Courthouse located at 285 Main Street, Goshen, New York on the 5th day of June, 2009 at
9:30 am in the forenoon of that day or as soon thereafter as counsel can be heard, for a
judgment pursuant to CPLR article 78 directing the respondents to immediately forward
to the Petitioner a check from the City of Newburgh Community Development Block

Grant account in the amount of \$388,825.97 to restore the funds unlawfully removed from the Petitioner's Operating/Fees account, and for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that an answer and supporting affidavits, if any, shall be served at least five days before the aforesaid date of hearing.

The basis of venue is that Orange County is the county where the respondents refused to return the demanded funds to Petitioner.

Dated: White Plains, New York
May 6, 2009



Thomas Whyatt, Esq.
OXMAN TULIS KIRKPATRICK WHYATT &
GEIGER LLP
120 Bloomingdale Road - Suite 100
White Plains, New York 10605
(914) 422-3900 - office
(914) 422-3636 - facsimile
twhyatt@oxmanlaw.com
*Attys. for Petitioner City of Newburgh
Industrial Development Agency*



Stuart E. Kahan, Esq.
OXMAN TULIS KIRKPATRICK WHYATT &
GEIGER LLP
120 Bloomingdale Road - Suite 100
White Plains, New York 10605
(914) 422-3900 - office
(914) 422-3636 - facsimile
skahan@oxmanlaw.com
*Attys. for Petitioner City of Newburgh
Industrial Development Agency*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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In the Matter of the CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY,

Petitioner,

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

VERIFIED PETITION

Index No: _____

- against -

LOURDES ZAPATA, in her capacity as Director
of the Department of Planning and Development for
the City of Newburgh and as Administrative Director
of the City of Newburgh Industrial Development Agency,
CHARLES EMBERGER, in his capacity as Director of
Finance for the City of Newburgh and as City Comptroller
of the City of Newburgh and DWIGHT DOUGLAS, in his
capacity as Acting City Manager of the City of Newburgh,

Respondents.

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The Petitioner, the City of Newburgh Industrial Development Agency ("Agency")
by its attorneys Oxman Tulis Kirkpatrick Whyatt & Geiger LLP, as and for its Verified
Petition, sets forth as follows:

1. This Special Proceeding is brought pursuant to Article 78 of the CPLR by
the Agency to recover \$388,825.97 which amount was unlawfully removed from the
Agency's Operating Account and paid to the City of Newburgh Community Development
Block Grant ("CDBG") account without the Agency's knowledge or approval. The
payment to the City of Newburgh CDBG account violates the Agency's fiduciary
responsibilities as a public benefit corporation and public authority.

PARTIES

2. The Agency is organized pursuant to the laws of the State of New York and maintains offices at 83 Broadway, Newburgh, New York.
3. Pursuant to General Municipal Law Section 858 the purposes of the Agency, "shall be to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing industrial . . . facilities . . and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York . . ."
4. Pursuant to the Agency's bylaws, the Agency's officers include Chairman, Vice Chairman, Secretary and Treasurer.
5. Respondent Lourdes Zapata is the Director of the Department of Planning and Development for the City of Newburgh ("Department") and the Administrative Director for the Agency.
6. Respondent Zapata maintains her office at 83 Broadway, Newburgh, New York.
7. Respondent Charles Emberger is the Comptroller of the City of Newburgh and on information and belief, Respondent Emberger is the Director of Finance for the City of Newburgh and maintains offices at 83 Broadway, Newburgh, New York.
8. Respondent Dwight Douglas is the Acting City Manager of the City of Newburgh and maintains offices at 83 Broadway, Newburgh, New York.
9. The City of Newburgh is a duly constituted municipal corporation and a

