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Citing Judicial Budget Cuts, Manhattan Justice Denies Request for Judicial Hearing Officer to Oversee Discovery

“The court is not able to determine the discovery issues here expeditiously without extraordinary impingement on the court's regular business,” wrote Manhattan Supreme Court Commercial Division Justice Andrea Masley.

By Jason Grant | October 08, 2020



Manhattan Supreme Court Commercial Division Justice Andrea Masley

Citing the \$300 million state judicial budget cut, the resulting hiring freeze and the loss of justices on the Manhattan Supreme Court Commercial Division, longtime Commercial Division Justice Andrea Masley on Tuesday denied a joint-party request in a “complex commercial action” for appointment of a judicial hearing officer to supervise far-reaching discovery “burdened by a multitude of ... issues.”

In her three-page order ([//images.law.com/contrib/content/uploads/documents/292/Hindlin-special-master-order-1.pdf](https://images.law.com/contrib/content/uploads/documents/292/Hindlin-special-master-order-1.pdf)) addressing the request made in a 2018-filed contract-based action lodged by the highly successful songwriter Jacob Kashner Hindlin, known widely as “JKash,” against two music production companies, Masley wrote that “there are no judicial hearing officers available because of budget cuts.” She then instead appointed a volunteer special master to supervise the discovery. And she wrote that “the court is grateful to [the appointed] Mr. [Mark] Alcott,” a longtime of counsel of at Paul, Weiss, Rifkind, Wharton & Garrison “and the many other retired attorneys who volunteered to the Office of Court Administration,” under a New York County Lawyers Association program to assist during times of “economic crisis.”

“Unfortunately, there are no judicial hearing officers available because of budget cuts,” Masley wrote near the top of her order while citing state Chief Judge Janet DiFiore’s Monday message to the state court system. In the message, DiFiore explained, in part, that the pandemic economic fallout-driven budget cut had necessitated “a strict [judiciary] hiring freeze, deferral of [judiciary] raises, suspension of our JHO [Judicial Hearing Officer] program and other hard choices.”

After stating that there was no hearing officer available, Masley then wrote, “Likewise, the court’s referees are not available for discovery supervision. Further, this court, like many others, are understaffed indefinitely because of a hiring freeze,” before she added, “Accordingly, this court and its remaining staff cannot devote exclusive time and attention to this matter.”

Continuing in the same opening paragraph of the order, Masley said that “litigants should not suffer delay when this forum was established precisely to afford such business litigants efficiency,” while referring to the forum of the Commercial Division. The Commercial Division established in the mid-1990s as a specialized arm of the state court system that, most especially in Manhattan, tackles Wall Street-based and other highly complex business and finance-based litigation sometimes involving hundreds of millions of dollars.

Masley then cited the state’s Uniform Rules for Trial Cts § 202.70 Preamble, as stating “New York is the center of world commerce, the headquarters of international finance, the home of America’s leading businesses. As such, it strongly needs a modern, well-staffed, properly equipped forum for the swift, fair and expert resolution of significant commercial disputes.”

Later in the order appointing Alcott as special master, in which he was given the power to hear discovery disputes and to rule on them, Masley wrote, “The court is not able to determine the discovery issues here expeditiously without extraordinary impingement on the court’s regular business.”

She added, “This action is but one in a docket of over 400 hundred; a [Manhattan Commercial Division] docket that is growing every day especially as cases previously assigned to Justice Saliann Scarpulla [who in August left the Manhattan Commercial Division for the Appellate Division, First Appointment] are redistributed.”

“As the number of commercial cases increase, the number of judges is decreasing,” she further stated, while citing to a New York Law Journal article (<https://www.law.com/newyorklawjournal/2020/10/02/two-manhattan-commercial-division-justices-to-retire-as-judicial-budget-cut-takes-hold/>) on the recent news that two of her fellow Manhattan Commercial Division Judges, O. Peter Sherwood and Marcy Friedman, have announced their forthcoming retirements. Masley said appointing Alcott as a volunteer special master “will actually shorten the time for this proceeding by providing expert supervision.”

Andrew Goodman, a principal at the law firm Foster Garvey in Manhattan, is counsel in the commercial lawsuit to plaintiff Hindlin. He could not be reached for comment.

Christine Lepera, a partner at Mitchell Silberberg & Knupp in Manhattan, represents the company defendants in the lawsuit, Prescription Songs and Kasz Money. She could not be reached.

Alcott, the appointed special master, also was not reachable.

Mark Zauderer, a member of the state's Commercial Division Advisory Council and a veteran attorney who has worked as a compensated special master for the last five years in a disbanded law firm dispute case, said that he believes "the difficult financial circumstances facing the courts [due to the budget cut] will result in many opportunities for the Bar to contribute expertise in assisting litigants and the courts."

"Judges have at their disposal several tools to draw upon lawyers to assist, both as volunteers and as compensated professionals," he said. "The scope of their work can range from assistance in discovery matters to taking over any or all aspects of the case, with the agreement of the parties. I think we are going to see much creative use by judges of these valuable resources."

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