

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Jacqueline Silbermann  
Administrative Order

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MARK S. BRANTLEY,

Petitioner,

- v -

INDEX NO. 104616/2008

MUNICIPAL CREDIT UNION,

Respondent.

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Administrative Order:

By letter dated April 9, 2008, counsel for respondent Municipal Credit Union ("MCU") timely requests a transfer of this special proceeding from I.A.S. Part 48 (Diamond, J.) to the Commercial Division pursuant to Uniform Rule 202.70(e). Petitioner Mark S. Brantley objects, arguing that MCU is engaging in judge-shopping.

Petitioner Mark S. Brantley commenced this proceeding against MCU on March 31, 2008 by order to show cause seeking certain injunctive relief in connection with decisions made by MCU's board of directors relevant to the election process for MCU's directors and supervisory committee members. The matter was assigned to Justice Marilyn G. Diamond, who held a hearing on April 3, 2008. Counsel for MCU did not, at any time prior to or during this hearing, inform Judge Diamond of his intention to seek a transfer to the Commercial Division. After hearing argument from both sides, Judge Diamond issued an order temporarily staying MCU from holding any election for the board of directors and/or supervisory committee, but allowed the annual meeting, as presently scheduled, to be held without any attendant election, and reserved decision on the merits of the petition.

Counsel for MCU argues that this proceeding should be reassigned to the Commercial Division, because it involves the "internal affairs of business organizations," citing Uniform Rule 202.70(b)(7), and the petition seeks equitable and declaratory relief.

The request for a transfer is denied on two grounds. First, MCU is not a "business organization," but a not-for-profit credit union organized pursuant to Article 11 of the New York State Banking Law. Second, having failed to raise the issue with Judge Diamond prior to her issuance of a ruling adverse to MCU on April 3rd, I am of the opinion that judicial economy and fairness are not served by transferring this action to a new judge at this point in time.

Accordingly, MCU's request for a transfer to the Commercial Division is denied.

Dated: April 14, 2008

ENTER: \_\_\_\_\_, A.J.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION