

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 6
NASSAU COUNTY

IN RE: LONG ISLAND POWER AUTHORITY
RATEPAYER LITIGATION,
Incorrectly Captioned as:

INDEX No. 003149/06

CARMINE F. VASILE,

MOTION DATE: Nov. 17, 2006
Motion Sequence # 004

Plaintiff,

-against-

LONG ISLAND POWER AUTHORITY and
KEYSPAN ENERGY DELIVERY,

Defendants.

The following papers read on this motion:

Notice of Motion..... X
Affirmation/Affidavit in Opposition..... XX
Reply/Supplemental Reply Affidavit..... XX

This motion, by a plaintiff Carmine Vasile, for an order granting:

- I. A Default Judgment against defendant Long Island Power Authority ("LIPA") for failing to answer or oppose plaintiff's Notice of Motion dated May 5, 2006 (Exhibit A);
- II. A Default Judgment against the defendant KeySpan Energy Delivery ("KeySpan") for failing to appear in this action, answer or oppose said Notice of Motion dated May 5, 2006;

- III. An order granting compensatory and punitive damages against defendant KeySpan for collecting unconstitutional fuel surcharges after this action was commenced, and for such other and further relief as to the Court may seem just and proper,

is **denied** as to the defendant Long Island Power Authority.

This Court, by an order dated July 13, 2006 removed Mr. Vasile's action from District Court, County of Suffolk, Sixth District, Brookhaven, to this Court, changed venue to this Court and was coordinated into the class action entitled **In Re: Long Island Power Authority Ratepayer Litigation**.

That action, **In Re: Long Island Power Authority Ratepayer Litigation** was **dismissed** by order of this Court dated September 27, 2006. The dismissal of the class action binds all by the res judicata doctrine. (see, **Cooper v Federal Reserve Bank of Richmond**, 467 U.S.867, 104 S.Ct. 2794, 1984). To permit subsequent litigation by this movant would seriously undermine the concept and purpose of class actions which is to promote efficiency, conserve judicial resources, to avoid inconsistent judgments, and to provide access by multiple litigants to the courts. (see, generally, Siegel, New York Practice 4th ed, §§ 139 - 147).

Accordingly, the instant motion by Mr. Vasile is **denied** and his action against Long Island Power Authority is **dismissed** as well. Further, the action against Keyspan Energy Delivery is **severed** and that action and that portion of the pending motion is **transferred** to District Court, County of Suffolk, 6th District, Brookhaven for hearing and determination.

The Clerk of Nassau County is directed to transmit/transfer the specific file relating to the action entitled **Vasile v Long Island Power Authority and KeySpan Energy Delivery**, under BRSC#263/06, to the Clerk of the District Court, Suffolk County, 6th District.

This order concludes the within matter assigned to me pursuant to the Uniform Rules for New York State Trial Courts.

So Ordered.

Dated JAN 22 2007


XXX J.S.C.