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STATE OF NEW YORK COUNTY OF SCHENECTADY
SUPREME COURT

In The Matter of LUIS PENA,
Petitioner,

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

-against- Index #2013-2263

NEW YORK STATE GAMING COMMISSION,
Respondent.

Schenectady County Courthouse
612 State Street
Schenectady, NY 12305

November 21, 2013

ARTICLE 78 PROCEEDING
DECISION OF THE COURT

B E F O R E: HON. VINCENT J. REILLY, JR.,
SUPREME COURT JUSTICE

A P P E A R A N C E S:

FOR THE PETITIONER:
MEYER, SUOZZI, ENGLISH & KLEIN, PC
990 Stewart Avenue
Suite 300
P.O. Box 9194
Garden City, NY 11530-9194
BY: ANDREW J. TURRO, ESQ.

FOR THE RESPONDENT:
ATTORNEY GENERAL OF THE STATE OF NEW YORK
ERIC T. SCHNEIDERMAN
The Capitol
Albany, NY 12224
BY: KEITH MUSE, ESQ.
ASSISTANT ATTORNEY GENERAL

ALSO PRESENT: Tammy J. Beck, Court Clerk

LISA A. STADTLANDER
Official Senior Reporter

1 MATTER OF PENA/DECISION OF THE COURT

2 commenced by the Respondents was dismissed, as I said,
3 by this Court on Constitutional grounds by a decision
4 and order dated October 1st, 2013.

5 The issue has been joined in this proceeding
6 and the Court has received all the papers, and by virtue
7 of counsel's representation the Respondent acknowledges
8 that the matter should be decided based on the present
9 arguments before the Court, there being no need for any
10 factual determination with regard to the issues raised.

11 The order that I issued on October 1, 2013
12 was intended to be a self-affecting order which was
13 granted on Constitutional grounds and it terminated the
14 administrative proceeding. The decision of the Court is
15 now on appeal.

16 Because the Court's decision is deemed by it
17 to be self-affecting, there is no automatic stay that
18 would apply. Any stay that might be available to the
19 Respondents should be sought in the Appellate Division
20 or on a separate application before this Court, which
21 has not been made, and which this Court would
22 anticipatorily say it would not be willing to grant.

23 In this Court's opinion were the Respondent
24 Gaming Commission to take any further action in
25 connection with the administrative proceeding Matter of

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2 Luis Pena, MO-141-2012, it would be acting in excess of
3 its jurisdiction and in violation of the lawful
4 procedures established by law.

5 The Petitioner's application for a judgment
6 under Article 78 is hereby granted and the Respondent is
7 prohibited from taking any further action in the
8 administrative proceeding identified previously, Luis
9 Pena, MO-141-2012, because it has not been demonstrated
10 to the Court because it has been previously been
11 dismissed by the Court on Constitutional grounds the
12 affirmative defenses in the nature of points of law
13 raised in the Answer are rejected by this Court, and
14 therefore I would direct you, Mr. Turro, on notice to
15 Mr. Muse, to submit an order granting the relief you
16 sought in the petition as set forth by me in this
17 decision.

18 MR. TURRO: Would that be an Order and
19 Judgment, your Honor? Because you mentioned before it
20 was a Judgment.

21 THE COURT: Order and Judgment.

22 MR. TURRO: Okay.

23 THE COURT: Same.

24 MR. TURRO: Okay. Thank you.

25 THE COURT: No cost or anything like that.

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All right. Thanks.

MR. TURRO: Thank you.

MR. MUSE: Thank you, your Honor.

(Matter was concluded at 2:20 P.M.)

REPORTER'S CERTIFICATE

I, LISA STADTLANDER, Court Reporter and
Notary Public in and for the State of New York, do
hereby certify that I recorded stenographically the
foregoing proceedings, taken at the time and place as
mentioned, and the preceding is a true and accurate
transcript thereof, to the best of my knowledge and
belief.

Lisa Stadlander 4/21/13

LISA STADTLANDER
SENIOR COURT REPORTER