

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 21, 2018

524991

In the Matter of CARLOS
ABREU,
Appellant,
v

MEMORANDUM AND ORDER

CENTRAL OFFICE REVIEW
COMMITTEE et al.,
Respondents.

Calendar Date: May 8, 2018

Before: McCarthy, J.P., Lynch, Aarons, Rumsey and Pritzker, JJ.

Carlos Abreu, Marcy, appellant pro se.

Appeal from a judgment of the Supreme Court (McNally Jr., J.), entered March 13, 2017 in Albany County, which, in a proceeding pursuant to CPLR article 78, granted respondents' motion to dismiss the petition.

Petitioner commenced this CPLR article 78 proceeding seeking to challenge a determination by the Department of Corrections and Community Supervision that limited his access to advances on legal postage and copies for one year. In lieu of answering, respondents moved to dismiss the proceeding on various grounds, including that petitioner failed to exhaust his administrative remedies. Supreme Court granted respondents' motion on that ground, and petitioner appeals.

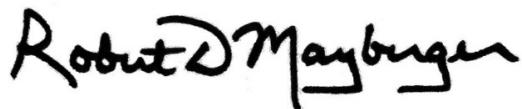
Respondents have now withdrawn their exhaustion of administrative remedies defense, noting that a final determination had been issued by respondent Central Office Review

Committee. Given that respondents have not had the opportunity to submit an answer, the matter must be remitted to Supreme Court for further proceedings (see Matter of Hammond v LaValley, 117 AD3d 1266, 1266 [2014]; Matter of Haughey v Artus, 96 AD3d 1242, 1243 [2012]).

McCarthy, J.P., Lynch, Aarons, Rumsey and Pritzker, JJ.,
concur.

ORDERED that the judgment is reversed, on the law, without costs, motion denied, and matter remitted to the Supreme Court to permit respondents to serve an answer within 20 days of the date of this Court's decision.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court