

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JESSE FRIEDMAN,

Petitioner,

-against-

MEMORANDUM & ORDER
06-CV-3136(JS)

JOE REHAL, Parole Officer, and
ROBERT DENNISON, Chairman of the
New York State Division of Parole,

Respondents, and

THE ATTORNEY GENERAL OF THE STATE
OF NEW YORK,

Additional
Respondent.

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APPEARANCES:

For Petitioner: David Pressman, Esq.
Ronald Kuby, Esq.
Kuby & Perez, LLP
119 W. 23rd Street, Suite 900
New York, New York 10011

For Respondents: Judith R. Sternberg, Esq.
District Attorney
Nassau County District Attorney's Office
262 Old Country Road
Mineola, New York 11501

SEYBERT, District Judge:

On June 23, 2006, Petitioner Jesse Friedman ("Petitioner") filed a writ of habeas corpus. On September 11, 2006, Respondents moved to dismiss the Petition for untimeliness. On July 20, 2007, this Court dismissed two of Petitioner's claims for untimeliness and ordered oral argument and/or an evidentiary hearing for Petitioner's third claim based on hypnosis. See Friedman v. Rehal, 06-CV-3136 (E.D.N.Y. July 20, 2007) (partially

granting and denying Respondents' motion to dismiss).

On August 1, 2007, Petitioner moved this Court for an order permitting Petitioner to commence limited discovery as to the hypnosis methods used in the investigation leading up to Petitioner's conviction. On August 14, 2007, instead of opposing Petitioner's motion for discovery, Respondents requested that they may be allowed to file an answer to the merits of the Petition and hold in abeyance Petitioner's motion for discovery. In this answer, Respondents also wanted to address the timeliness of Petitioner's third claim - which is the subject of the oral argument scheduled for September 18, 2007. Instead of waiting for this Court to rule on Respondents' request to file an answer, Respondents filed their answer without this Court's permission on August 21, 2007.

The Court now rejects Respondents' answer for several reasons. First and foremost, Respondents filed such answer without permission of the Court. Respondents requested to file an answer, and then waited a mere five business days before they decided on their own to file such answer. Second, Respondents have already had the opportunity to raise timeliness arguments - and they did raise such arguments. This Court already ruled on those arguments. Third, this Court directed the parties to appear in Court to address the timeliness of the hypnosis claim - specifically, whether due diligence on the part of Petitioner would have led to

the discovery of the hypnosis methods used on the children. Thus, filing the answer that addressed the timeliness of the hypnosis claims was unnecessary because the parties can do that in person before the Court. And lastly, the Court should determine first whether the claim based upon hypnosis is timely before it reaches the merits of such claim.

Accordingly, the Court rejects Respondents' answer and orders the parties to appear on September 18, 2007. At this conference, the parties shall address the timeliness of Petitioner's hypnosis claim and whether due diligence would have led Petitioner to discover the hypnosis claim in a timely manner. As for Petitioner's motion for limited discovery, this Court shall decide whether discovery is necessary after hearing the parties' oral arguments and deciding whether the hypnosis claim is timely.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: September 7, 2007
Central Islip, New York