

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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NOTICE OF CROSS  
MOTION FOR SUMMARY  
JUDGMENT

ALFRED G. OSTERWEIL,

*Plaintiff,*

09-CV-825  
GLS/DRH

-against-

GEORGE R. BARTLETT, III., in his official capacity as  
Licensing Officer in the County of Schoharie,

*Defendant.*

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**PLEASE TAKE NOTICE THAT** upon the annexed Declaration of Defendant George R. Bartlett, III, dated October 25, 2010, the exhibits attached thereto; defendant's Statement Pursuant to Local Rule 7.1 (a)(3); Memorandum of Law and upon the pleadings and all prior papers by and between the parties of this action, the undersigned shall move for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting defendant summary judgment in this action together with such other and further relief as to the Court may seem just and proper on May 10, 2011, at 9:00 a.m., **upon submit**, before the Hon. Gary L. Sharpe, United States District Judge, United States District Court, Northern District of New York, James T. Foley U.S. Courthouse, 445 Broadway, Room 441, Albany, NY 12207.

PLEASE TAKE FURTHER NOTICE, that pursuant to Rule 56(e) of the Federal Rules of Civil Procedure when a motion for summary judgment is made and properly supported, you may not simply rely upon your complaint, but you must respond, by affidavits or as otherwise provided in that rule, setting forth specific facts showing that there is a genuine issue of material fact for trial. Any factual assertions in our affidavits will be accepted by the District Judge as being true unless you submit affidavits or other documentary evidence contradicting our assertions. If you do not so respond, summary judgment, if appropriate, may be entered against

you. If Summary Judgment is granted against you, your case will be dismissed and there will be no trial.

NOTE ALSO that Local Rule 7.1 (a)(3) of the Northern District of New York requires that you must include a separate short and concise statement of any material facts as to which you contend there exists a genuine issue. In the absence of such a statement, all material facts set forth in our Rule 7.1 (a)(3) statement will be deemed admitted.

DATED: Albany, New York  
March 11, 2011

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
Attorney for Defendant Bartlett  
The Capitol  
Albany, NY 12224

*s/ Roger W. Kinsey*

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

**NOTIFICATION OF THE CONSEQUENCES OF FAILING TO  
RESPOND TO A SUMMARY JUDGMENT MOTION**

A motion for summary judgment seeks dismissal of some or all of the claims you have asserted in your complaint. You are hereby advised that if a motion for summary judgment is filed by the defendant(s) in the above-referenced action, any factual assertions in the defendant's affidavits will be taken as true by the District Court unless you contradict these assertions in affidavit form.<sup>1</sup>

You may not simply rely on your complaint to oppose this motion. You must file a written response in opposition to this motion with the Court, and send a copy of same to opposing counsel.

Pursuant to Local Rule 7.1 of the Northern District of New York you are required to submit the following papers in opposition to this motion: (I) a **memorandum of law** (containing relevant factual and legal argument); (ii) **one or more affidavits** in opposition to the motion and (iii) a **short and concise statement of material facts** as to which you claim there are genuine issues in dispute. **These papers must be filed and served in accordance with the time set by Local Rule 7.1.**

If you do not submit a short and concise statement of material facts as to which you claim there are genuine issues in dispute, all material facts set forth in the statement filed and served by the defendant(s) shall be deemed admitted.

**If you do not respond in opposition to the motion, summary judgment, if appropriate, will be entered against you. If partial summary judgment is granted against you, the portions of your case as to which summary judgment was granted will be dismissed; there will be no trial as to these portions of your complaint. If summary judgment is granted as to your entire complaint, your case will be dismissed and there will not be any trial concerning any of the aspects asserted in your complaint.**

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<sup>1</sup> Rule 56(e) of the Federal Rules of Civil Procedure governs the form of affidavits. It states "In supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided by this rule, an adverse party may not rest on the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."