

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D74695
N/htr

_____AD3d_____

Argued - January 4, 2024

COLLEEN D. DUFFY, J.P.
ROBERT J. MILLER
DEBORAH A. DOWLING
CARL J. LANDICINO, JJ.

2020-06757

DECISION & ORDER

In the Matter of Gabriella Velardi-Ward, appellant,
v New York State Department of Environmental
Conservation, et al., respondents.

(Index No. 705019/20)

Pace Environmental Litigation Clinic, Inc., White Plains, NY (Todd D. Ommen of counsel), for appellant.

Letitia James, Attorney General, New York, NY (Anisha S. Dasgupta and Matthew W. Grieco of counsel), for respondent New York State Department of Environmental Conservation.

Kramer Levin Naftalis & Frankel LLP, New York, NY (Jeffrey L. Braun, Charles S. Warren, and Toni L. Finger of counsel), for respondent Josif A., LLC.

In a hybrid proceeding pursuant to CPLR article 78 and action for declaratory relief, the petitioner/plaintiff appeals from an order and judgment (one paper) of the Supreme Court, Queens County (Robert I. Caloras, J.), entered August 12, 2020. The order and judgment, insofar as appealed from, granted those branches of the separate cross-motions of the New York State Department of Environmental Conservation and Josif A., LLC, which were pursuant to CPLR 3211(a) to dismiss the amended petition and, in effect, dismissed the proceeding.

ORDERED that the order and judgment is affirmed insofar as appealed from, with one bill of costs.

The petitioner/plaintiff (hereinafter the petitioner) commenced this hybrid proceeding

May 29, 2024

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ENVIRONMENTAL CONSERVATION

pursuant to CPLR article 78 and action for declaratory relief, alleging that the respondent/defendant, New York State Department of Environmental Conservation (hereinafter DEC), violated the State Environmental Quality Review Act (hereinafter SEQRA) in issuing a freshwater wetlands permit to the intervenor-respondent/defendant, Josif A., LLC. DEC and Josif A. LLC separately cross-moved, inter alia, pursuant to CPLR 3211(a) to dismiss the amended petition on the ground, among others, that the causes of action thereof were time-barred by the 30-day statute of limitations set forth in Environmental Conservation Law § 24-0705(6) or the four-month statute of limitations set forth in CPLR 217(1). By order and judgment entered August 12, 2020, the Supreme Court, inter alia, granted those branches of the cross-motions and dismissed the proceeding. The petitioner appeals.

To the extent that the amended petition alleges noncompliance with SEQRA, the four-month statute of limitations set forth in CPLR 217(1) is applicable (*see Matter of Young v Board of Trustees of Vil. of Blasdell*, 89 NY2d 846, 848; *Matter of Stengel v Town of Poughkeepsie Planning Bd.*, 167 AD3d 752, 754). “[A] proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner” (CPLR 217[1]). Such determination is final and binding “when the decisionmaker arrives at a definitive position on the issue that inflicts an actual, concrete injury” (*Stop-The-Barge v Cahill*, 1 NY3d 218, 223 [internal quotation marks omitted]; *see Matter of Town of Huntington v County of Suffolk*, 195 AD3d 851, 852; *Matter of Stengel v Town of Poughkeepsie Planning Bd.*, 167 AD3d at 754).

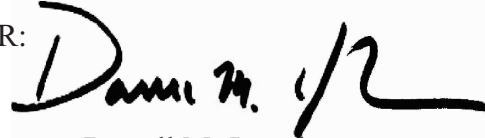
Under the circumstances present here, the final agency action took place on September 6, 2017. On that date, after a public hearing and public comments, the lead agency, the New York City Department of City Planning, issued written findings pursuant to SEQRA, including that the “[p]roject would not result in any unmitigated significant adverse impacts” (*see Stop-The-Barge v Cahill*, 1 NY3d at 223; *Matter of Stengel v Town of Poughkeepsie Planning Bd.*, 167 AD3d at 754; *see also Matter of Rimler v City of New York*, 172 AD3d 868, 869; *Matter of Coalition Against Lincoln W., Inc. v Weinshall*, 21 AD3d 215, 220). Since this proceeding was commenced well over four months later, on February 19, 2020, the Supreme Court properly determined that so much of the amended petition as alleges noncompliance with SEQRA is time-barred.

To the extent that the petitioner seeks judicial review of the permit application process, the applicable statute of limitations is 30 days, as set forth in Environmental Conservation Law § 24-0705(6). Article 24 of the Environmental Conservation Law governs freshwater wetlands. Environmental Conservation Law § 24-0705(6) provides, in pertinent part, that review of a determination by the local government or DEC on a freshwater wetlands permit “shall be” made “within a period of [30] days after the filing thereof” (*cf. Matter of Atlantic States Legal Found., Inc. v New York State Dept. of Envtl. Conservation*, 119 AD3d 1172, 1172-1174). Since the subject permit was issued on October 23, 2019, and this proceeding was not commenced until February 19, 2020, the Supreme Court properly determined that this challenge is time-barred (*see ECL 24-0705[6]*; *Matter of Fenton, Town of v New York State Dept. of Envtl. Conservation*, 117 AD2d 920, 922).

The petitioner's remaining contention need not be reached in light of our determination.

DUFFY, J.P., MILLER, DOWLING and LANDICINO, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", with a stylized flourish at the end.

Darrell M. Joseph
Clerk of the Court