

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

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Submitted - March 5, 2007

ROBERT W. SCHMIDT, J.P.
ROBERT A. SPOLZINO
ANITA R. FLORIO
PETER B. SKELOS, JJ.

2006-10037

DECISION & ORDER

In the Matter of Paul Desir, appellant, v
Joel Klein, as Chancellor of the New York City
Department of Education, et al., respondents.

(Index No. 562/06)

Wolin & Wolin, Jericho, N.Y. (Alan E. Wolin of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and
Ann E. Scherzer of counsel), for respondents.

In a proceeding pursuant to CPLR article 78 to review a determination of the respondent Joel Klein, as Chancellor of the New York City Department of Education, dated June 28, 2005, discontinuing the petitioner's probationary service as a special education teacher, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Queens County (Polizzi, J.), dated August 22, 2006, which, inter alia, granted that branch of the respondents' cross motion which was to dismiss the proceeding pursuant to CPLR 3211(a)(5) as time barred.

ORDERED that the order and judgment is affirmed, with costs.

The petitioner's claim that his probationary employment was improperly terminated accrued on June 28, 2005, the date on which the determination to terminate that employment became effective, and thus became final and binding upon the petitioner (*see Matter of Blaize v Klein*, 23 AD3d 650; *Matter of Johnson v Board of Educ. of City of N.Y.*, 291 AD2d 450; *Matter of Budihas v Board of Educ. of City of N.Y.*, 285 AD2d 549). The petitioner did not commence this proceeding

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pursuant to CPLR article 78, however, until January 2006. Accordingly, the Supreme Court correctly granted that branch of the respondents' cross motion which was to dismiss the proceeding pursuant to CPLR 3211(a)(5) as barred by the applicable four-month statute of limitations (*see* CPLR 217).

SCHMIDT, J.P., SPOLZINO, FLORIO and SKELOS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court