

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

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_____AD3d_____

Argued - December 11, 2009

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
PLUMMER E. LOTT
SHERI S. ROMAN, JJ.

2008-10166

DECISION & ORDER

In the Matter of Anthony J. Segreto, et al., appellants,
v Alexander B. Grannis, etc., respondent.

(Index No. 25776/08)

Anthony J. Segreto and Linda M. Segreto, Oakdale, N.Y., appellants pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Benjamin N. Gutman,
Robert C. Weisz, and Sudarsana Srinivasan of counsel), for respondent.

In a proceeding, in effect, pursuant to CPLR article 78 to review a determination of Alexander B. Grannis, Commissioner of the New York State Department of Environmental Conservation, dated February 1, 2008, the petitioners appeal from an order and judgment (one paper) of the Supreme Court, Suffolk County (Weber, J.), dated September 18, 2008, which granted the respondent's motion to dismiss the petition and, in effect, dismissed the proceeding.

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

The Supreme Court properly granted the motion to dismiss the petition on the ground that it had already rendered a determination on the issues raised. Pursuant to the doctrine of res judicata, a valid final judgment bars future actions between the same parties on the same cause of action (*see Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 347). The issues raised in the instant proceeding are the same issues raised in the petitioners' prior CPLR article 78 proceeding (*see Matter of Karmel v Delfino*, 293 AD2d 473), and the relief sought here is essentially the same as that sought in the first proceeding (*see Yerg v Board of Educ. of Nyack Union Free School Dist.*, 141 AD2d 537). The Supreme Court made a determination on the merits in the first proceeding that there

was no basis to disturb the respondent's determination. The dismissal of the first proceeding, by judgment dated July 22, 2008, mandated dismissal of the petitioners' claims in the instant proceeding under the doctrine of res judicata (*see Rapoli v Village of Red Hook*, 41 AD3d 456).

If the petitioners were dissatisfied with the court's determination in the first proceeding, their remedy was to appeal from that judgment within the applicable time period, not to initiate another proceeding (*see Matter of Vogel v Board of Educ. for Dunkirk City School Dist.*, 259 AD2d 831). To the extent that the petitioners rely on CPLR 5516, we note that this statute only applies to judicial orders and judgments, not administrative determinations.

In light of our determination, we need not reach the petitioners' remaining contentions.

SKELOS, J.P., DICKERSON, LOTT and ROMAN, 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