

**Suburban Restoration Co., Inc. v New York State
Unemployment Ins. Appeal Bd.**

2007 NY Slip Op 30008(U)

March 5, 2007

Supreme Court, New York County

Docket Number: 0108427

Judge: Joan A. Madden

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SCANNED ON 3/9/2007
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JOAN A. MADDEN PART 11
Justice

SUBURBAN RESTORATION CO., INC.

Petitioner,

- v -

NEW YORK STATE UNEMPLOYMENT INSURANCE
APPEAL BOARD, and LINDA ANGELLO, COMMISSIONER,
NEW YORK STATE DEPARTMENT OF LABOR,

Respondents.

INDEX NO. : 108427/06

MOTION DATE:

MOTION SEQ. NO. 001

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this Article 78 proceeding is determined in accordance with the annexed decision, order and judgment.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: March 5, 2007

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
In the Matter of the Application of SUBURBAN
RESTORATION CO., INC.

INDEX NO. 108427/06

Petitioner,

For a Judgement under Article 78 of the Civil Practice
Law and Rules annulling and/or modifying and/or
remitting Unemployment Insurance Appeal Board's
Decision sustaining the Administrative Law Judge's
decision finding petitioner liable for additional
unemployment insurance contributions,

-against-

NEW YORK STATE UNEMPLOYMENT
INSURANCE APPEAL BOARD, and
LINDA ANGELLO, COMMISSIONER, NEW YORK
STATE DEPARTMENT OF LABOR,

Respondents.

-----X
JOAN A. MADDEN, J.:

In this Article 78 proceeding, petitioner seeks judicial review of a determination of the Unemployment Insurance Appeal Board that it is liable for additional contributions of \$20,325.14. In response to the petition, respondents cross-move to dismiss the proceeding pursuant to CPLR 7804(f), on the ground that this court lacks subject matter jurisdiction to review disputes concerning unemployment insurance benefits or contributions.

The motion to dismiss is granted. Pursuant to Labor Law §626, the sole and exclusive procedures for challenging determinations rendered with respect to unemployment insurance claims are set forth in Labor Law sections 620 through 625. See Prowse v. State of New York, 4 AD3d 581 (3rd Dept 2004); Matter of Midway Cadillac Limousine Service Ford Bros. Inc. v.

Cuevas, 255 AD2d 328 (2nd Dept 1998); Vartanian v. Research Foundation of State University of New York, 227 AD2d 744 (3rd Dept 1996, lv app den 89 NY2d 965 (1997)); Institute for Resource Management, Inc. v. Roberts, 122 AD2d 465 (3rd Dept), app den 69 NY2d 602 (1986).

Under Labor Law §624, a party, such as the petitioner in the instant proceeding, seeking review of a decision of the Unemployment Insurance Appeal Board, must file an appeal with only the Appellate Division, Third Department, and such appeal must be filed within 30 days of the mailing or personal delivery of such decision. See Prowse v. State of New York, *supra*.

Here, petitioner admits that it not only failed to file its appeal with the Appellate Division, Third Department, but also failed to file an appeal within the 30-day time period. Petitioner argues, however, that this court nevertheless has subject matter jurisdiction to consider this Article 78 proceeding under “under the guise of CPLR 103” by converting it to a motion to vacate under CPLR 5015. This argument is not persuasive as it is directly contrary to the clear legislative mandate of Labor Law §626, that the procedures of the Labor Law “shall be the sole and exclusive procedure notwithstanding any other provision of law.” See Prowse v. State of New York, *supra*; Matter of Midway Cadillac Limousine Service Ford Bros. Inc. v. Cuevas, *supra*; Vartanian v. Research Foundation of State University of New York, *supra*; Institute for Resource Management, Inc. v. Roberts, *supra*. Petitioner’s reliance on Commission of Labor of the State of New York v. Hinman, 103 AD2d 886 (3rd Dept 1984), is also misplaced, as that case did not address any issue as to the procedure mandated under Labor Law §§ 624 and 626.

In Matter of MacGilfrey v. Pugh, 217 AD2d 888 (3rd Dept 1995), lv app den 88 NY2d 888 (1996), Appellate Division Third Department held that the Supreme Court had subject matter jurisdiction over an Article 78 proceeding against the Unemployment Insurance Appeal

Board. The facts of that case, however, are distinguishable from those at bar. In that proceeding, petitioner sought to compel the Board to furnish a current index, by topic, of the principles of law of its decisions and court decisions involving unemployment insurance, as required by Labor Law §534. The Third Department reasoned that the proceeding “did not seek review of the type of Board decision contemplated by the Legislature in providing the exclusive review procedure in Labor Law §§ 624 and 626,” as those sections “relate to decisions of the Commission of Labor or appeals therefrom . . .when claimants are aggrieved after a decision of the Board The instant proceeding instead, seeks relief in the nature of mandamus pursuant to CPLR article 78 and thus, the petition was properly brought pursuant to CPLR 7804(b).” In contrast, the proceeding herein involves a review of the type of Board decision completed by the procedures mandated in Labor Law §§ 624 and 626.

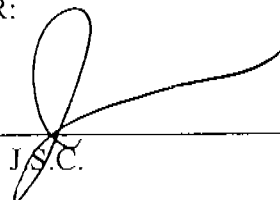
Thus, as petitioner failed to follow the sole and exclusive procedure for review detailed in the Labor Law, this court is without jurisdiction to review the determination of the Unemployment Insurance Appeal Board, and this Article 78 proceeding must be dismissed. See Prowse v. State of New York, supra; Matter of Midway Cadillac Limousine Service Ford Bros. Inc. v. Cuevas, supra; Vartanian v. Research Foundation of State University of New York, supra.

Accordingly, it is hereby

ORDERED AND ADJUDGED that respondent’s cross-motion to dismiss is granted and the proceeding is dismissed.

DATED: March 5, 2007

ENTER:


J.S.C.