

**Shrayman v City of New York Dept. of Fin. & Parking  
Violations Bur.**

2010 NY Slip Op 32372(U)

August 27, 2010

Supreme Court, New York County

Docket Number: 400575/10

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon Joan A. M. Eden

PART 11

Index Number : 400575/2010  
**SHRAYMAN, GREGORY**  
 VS.  
**CITY OF NEW YORK**  
 SEQUENCE NUMBER : 001  
 ARTICLE 78

INDEX NO. \_\_\_\_\_  
 MOTION DATE 6/24/10  
 MOTION SEQ. NO. \_\_\_\_\_  
 MOTION CAL. NO. \_\_\_\_\_

*application*  
this motion is for Article 78 relief

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
 Answering Affidavits — Exhibits \_\_\_\_\_  
 Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed Memorandum Decision Order + 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: August 27, 2010 \_\_\_\_\_ J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
 Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_ FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
In the Matter of the application  
GRIGORY SHRAYMAN

Index No: 400575/10

Petitioner,  
-against-

THE CITY OF NEW YORK DEPARTMENT OF  
FINANCE AND PARKING VIOLATIONS  
BUREAU,

Respondents  
-----X

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141B).

JOAN A. MADDEN, J.:

In this Article 78 proceeding, petitioner Grigory Shrayman, appearing *pro se*, challenges various parking violations issued by respondent Parking Violations Bureau ("PVB"), and seeks a full refund for all tickets paid, money damages for the intentional and/or negligent infliction of emotional harm, and an order declaring PVB's ticketing rules null and void and unconstitutional. Respondents cross move to dismiss the proceeding, arguing, *inter alia*, that the proceeding is barred by the applicable statute of limitations and the doctrine of collateral estoppel and that the petition fails to state a cause of action.

In this proceeding, which was commenced on March 3, 2010, petitioner challenges thirty-two (32) parking violations issued to him between May 1990 and August 2009. In 2008, petitioner brought an Article 78 proceeding, challenging two parking violations issued to him in 2005 ("the 2008 proceeding"), which are also the subject of this proceeding. By decision and order dated January 27, 2009, Justice Jane S. Solomon dismissed the 2008 proceeding as barred by the statute of limitations and for failure to state a cause of action.

With respect to the timeliness of this proceeding, it is well settled law that a challenge to an administrative determination must be commenced within four months after the determination becomes final and binding upon the petitioner. Todd v New York City Housing Auth., 262 AD2d 202 (1st Dept 1999); CPLR 217. “A strong public policy underlies the abbreviated statutory time frame: the operation of government agencies should not be unnecessarily clouded by potential litigation.” Best Payphones, Inc. v. Department of Information Technology and Telecommunications of the City of New York, 5 NY3d 30, 34 (2005).

“For a determination to be considered final it must be clear that petitioner seeking review has been aggrieved by it”(Lubin v Board of Educ. of the City of New York, 60 NY2d 974, 976 (1983), cert denied 469 US 823 [1984]), and petitioner must be notified of the final determination. See Edmead v. McGuire, 67 NY2d 714, 716 (1986). “[W]hen the determination is unambiguous and its effect certain, the statutory period commences as soon as the aggrieved party is notified.” Id., at 716.

Here, with one possible exception indicated below, there is no dispute that petitioner received notice of the violations on the date that he was issued the ticket, and that he received the administrative determinations made during the appeals process shortly thereafter.<sup>1</sup> With respect to the most recent violation issued on August 12, 2009, for obstructing an intersection, the final determination was made by the PVB on September 10, 2009, and there is no dispute that petitioner received notice of the determination shortly thereafter. However, petitioner did not commence the instant Article 78 proceeding until March 3, 2010, approximately two months after the four-month statute of limitations expired for challenging the September 10, 2009

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<sup>1</sup>It appears that with the exception of a violation issued on July 1, 2009, petitioner appealed all of the violations that are the subject of this proceeding.

determination relating to the last parking violation challenged by petitioner, and almost twenty years after the four-month statute of limitations expired with respect to parking violations issued in 1990.

That being said, it is unclear from the record when petitioner received notice of an administrative determination issued on January 3, 2008. Specifically, petitioner wrote on top of the determination that he did not receive notice of it since he moved in 2008 and the notice was never forwarded to him. However, even if the challenge to this determination is timely, it does not provide a basis for relief.

In Article 78 proceedings, the only issue for consideration by the court is whether the record reflects a rational basis for administrative determination or whether the action is arbitrary and capricious. Matter of Pell v. Board of Educ., 34 NY2d 222, 230-231 (1974). A rational basis exists when the evidence adduced is adequate to support an agency's action. Sewell v. City of New York, 182 AD2d 469, 473 (1st Dept), lv denied, 80 NY2d 756 (1992). Here, it cannot be said that PVB's determination upholding the violation based on the failure to display a current inspection ticket or certificate in accordance with New York State Vehicle and Traffic Law was irrational since it was based on a finding that petitioner's statement that "he forgot to have the car inspected" was not a valid defense to the violation.

With respect to the parking violations issued in 2005, in addition to being untimely, petitioner's challenge related to these violations is barred by the doctrine of collateral estoppel. The doctrine of collateral estoppel prevents a party from relitigating an issue which has previously been decided against him in a prior proceeding in which he had a fair opportunity to fully litigate the issue. Gilberg v Barbieri, 53 NY2d 285 (1981). The policies underlying the application of collateral estoppel are avoiding relitigation of a decided issue and the possibility

of an inconsistent result. D'Arata v New York Central Mutual Fire Insurance Co., 76 NY2d 659 (1990 ). Here, the decision of Justice Solomon which was issued after petitioner had a full and fair opportunity to be heard with respect to the violations issued in 2005, bars petitioner from challenging these violations before this court.

Next, to the extent the petition seeks to recover money damages in tort against respondents, it must be dismissed for failure to state a cause of action. "Governmental immunity ... does not attach to every act, but when official action involves the exercise of discretion ... and is not exclusively ministerial, a municipal defendant generally is not answerable in damages for the injurious consequences of that action." Haddock v City of New York, 75 NY2d 478, 484 (1990). The immunity shield "reflects a value judgment that—despite injury to a member of the public—the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by fear of second-guessing and retaliatory lawsuits outweighs the benefits to be had from imposing liability for injury." Id. "[D]iscretionary or quasi-judicial acts involve the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result." Tango by Tango v Tulevich, 61 NY2d 34, 41 (1983).

Here, PVB's issuance of parking violations and its administrative determinations upholding such violations are discretionary and quasi-judicial in nature and are entitled to absolute immunity.

Finally, petitioner's argument that the fines imposed on him violate the due process clause of the state and federal constitutions is without merit. See Walker v. New York City, 262


AD2d 151 (1<sup>st</sup> Dept), lv denied, 94 NY2d 753 (1999)(holding that parking violation procedures did not violate due process).

In view of the above, it is

ORDERED that respondent's cross-motion to dismiss is granted; and it is further

ORDERED and ADJUDGED that the petition is denied and dismissed.

Dated: August <sup>27</sup> 2010  
H

  
\_\_\_\_\_  
J.S.C.

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