

**Matter of Chevron U.S.A., Inc. v Commissioner of
the New York State Dept. of Env'tl. Conservation**

2010 NY Slip Op 33181(U)

November 15, 2010

Supreme Court, Albany County

Docket Number: 6001-10

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of
CHEVRON U.S.A., INC.,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

DECISION and ORDER
INDEX NO. 6001-10
RJI NO. 01-10-ST1798

-against-

COMMISSIONER OF THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

Respondent.

Supreme Court Albany County All Purpose Term, October 22, 2010
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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Attorney General of the State of New York
Attorney for the Respondent
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TERESI, J.:

Petitioner commenced this combined CPLR Article 78 proceeding / declaratory judgment

action, seeking to compel Respondent to review Petitioner's MPFL¹ fee refund claim², to declare Petitioner's right to receive Respondent's administrative determination of its refund claim³ and to declare the amount Respondent is required to refund to Petitioner.⁴ Prior to answering, Respondent moves to dismiss this action/proceeding on numerous grounds, including the expiration of the statute of limitations and laches. Petitioner opposes the motion. Because Respondent demonstrated that this action/proceeding is barred by the doctrine of laches, its motion is granted.

In analyzing the application of the statute of limitations in this action/proceeding this court "must look to the essence of the claim and not to the form in which it is pleaded." (Guzman v. 188-190 HDFC, 37 AD3d 295 [1st Dept. 2007]; Horne v. New York State Dept. of Health, 287 AD2d 940 [3d Dept. 2001]; Town of Olive v. City of New York, 63 AD3d 1416 [3d Dept. 2009]).

Despite Petitioner's specification of its second and third causes of action as seeking declaratory relief, both actually set forth mandamus to compel claims.⁵ While Petitioner's second cause of action purportedly seeks a declaration that it is entitled to the Respondent's fee calculation, the essence of such claim is to compel Respondent to complete and disclose a refund

¹ Major Petroleum Facility License.

² First cause of action.

³ Second cause of action.

⁴ Third cause of action.

⁵ Petitioner explicitly alleges its first cause of action seeks an "order compelling" Respondent to review its MPFL fee refund claim.

calculation. Similarly, although Petitioner's third cause of action allegedly seeks a declaration of its refund due, in the context of this proceeding the essence of such claim is to compel Respondent to calculate and release Petitioner's claimed refund. Moreover, Petitioner's reply papers candidly admit that this is a "proceeding to compel [Respondent] to act on [Petitioner's] refund claims..." Reading the petition as a whole, it clearly seeks to enforce an allegedly "clear legal right where the public official has failed to perform a duty enjoined by law." (Matter of Glenman Indus. & Commercial Contr. Corp. v New York State Off. of the State Comptroller, 75 AD3d 986, 989 [3d Dept. 2010], quoting Matter of Schmitt v. Skovira, 53 AD3d 918 [3d Dept. 2008]; *see also* City Bldg. Emp. Ass'n v. Levitt, 49 NY2d 1033 [1980]). The alleged "clear legal right" being: Respondent's calculation and refund of Petitioner's MPFL fee overpayment pursuant to Navigation Law §174, 17 NYCRR §30.9 and Chevron USA, Inc. v. The State of New York (Ct Cl, January 12, 2010, Collins, J., Motion No. M-77154).

Because each of Petitioner's causes of action set forth CPLR Article 78 mandamus to compel claims, CPLR §217(1)'s four month statute of limitations applies. As such, before commencing this mandamus to compel proceeding, Petitioner was required to make a demand and await refusal. (Hassig v. New York State Dept. of Health, 5 AD3d 846 [3d Dept. 2004]; Letourneau v. Town of Berne, 56 AD3d 880 [3d Dept. 2008]). "The Statute of Limitations begins to run on the date of the refusal and expires four months thereafter." (Vestal Teacher's Ass'n v. Vestal Cent. School Dist., 5 AD3d 922, 923 [3d Dept. 2004], quoting Matter of Agoado v. Board of Educ. of City School Dist. of City of N.Y., 282 AD2d 602 [3d Dept. 2001]).

On this record, Petitioner timely commenced this mandamus to compel action. By letter dated May 6, 2010, Petitioner demanded Respondent "to refund the mistakenly paid MPFL fees...

or... provide [it] with a determination stating the amount of MPFL fees due and the reasons why such license fees are due.” Such letter duly demand each cause of action Petitioner set forth in this proceeding. Although no specific refusal was issued by Respondent, Petitioner’s letter demanded a response by May 26, 2010. Respondent’s failure to respond to Petitioner’s demand, in the context of this dispute and considering Petitioner’s prior litigation on this issue,⁶ is deemed a refusal; and the statute of limitations for Petitioner’s claims accrued on May 26, 2010. As Petitioner commenced this action/proceeding on September 3, 2010, within four months of May 26, 2010, its petition is not barred as untimely.

Although the statute of limitations does not bar Petitioner’s claims because it commenced this action/proceeding within four months from its demand and refusal, “a petitioner may not delay in making a demand in order to indefinitely postpone the time within which to institute the proceeding. The petitioner must make his or her demand within a reasonable time after the right to make it occurs, or after the petitioner knows or should know of the facts which give him or her a clear right to relief, or else, the petitioner's claim can be barred by the doctrine of laches.”

(Barresi v. County of Suffolk, 72 AD3d 1076 [2d Dept. 2010]; Thomas v. Stone, 284 AD2d 627 [3d Dept. 2001]; Zupa v. Zoning Bd. of Appeals of Town of Southold, 64 AD3d 723 [2d Dept. 2009]; Sheerin v. New York Fire Dept. Articles 1 and 1B Pension Funds, 46 NY2d 488 [1979][stating that “when the doctrine [of laches] is invoked in an article 78 proceeding in the nature of mandamus, proof of unexcused delay without more may be enough”]).

Here, the doctrine of laches bars Petitioner’s claims because Petitioner has known the

⁶ See Chevron USA, Inc. v. The State of New York, Ct Cl, January 12, 2010, Collins, J., Motion No. M-77154.

facts, which give it an alleged right to relief, since October 2007. All of Petitioner claims herein are based upon its alleged overpayment of MPFL fees between June 2003 and August 2007. It is uncontested that Petitioner became aware of this alleged overpayment, at the latest, in October 2007. As such, Petitioner delayed issuing its demand for the relief it seeks for more than two and one half years from the time it first knew of the facts underlying its demand. Moreover, Petitioner offers no excuse for the delay that has occurred since October 2007. Due to such unreasonable and unexcused delay, Petitioner's claims are barred by the doctrine of laches.

Accordingly, Respondent's motion is granted and the petition is dismissed.

This Decision and Order is being returned to the attorneys for Respondent. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry. All original papers submitted on this motion are being held by this Court pending further consideration of this proceeding.

So Ordered.

Dated: November 15, 2010
Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Verified Petition and Complaint, dated September 1, 2010; Verified Petition and Complaint, dated September 1, 2010, Affirmation of Michael Oropallo, dated

- September 1, 2010; with attached Exhibits 1-4.
2. Notice of Motion, dated October 14, 2010; Affirmation of Susan von Reusner, dated October 14, 2010, with attached Exhibit 1.
3. Affirmation of David Burch, with attached Exhibit A.