

**Park Off Broadway LLC v New York City Water Bd.**

2022 NY Slip Op 31016(U)

March 29, 2022

Supreme Court, New York County

Docket Number: Index No. 156387/2021

Judge: Laurence Love

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. LAURENCE LOVE PART 63M**

*Justice*

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PARK OFF BROADWAY LLC,

Petitioner,

- v -

NEW YORK CITY WATER BOARD, NEW YORK CITY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
CITY OF NEW YORK

Respondents.

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INDEX NO. 156387/2021

MOTION DATE 12/14/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

The following read on the Verified Amended Petition commenced per CPLR 7803(3), on “whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed.”

Petitioner is a leaseholder at 40 Park Street, Brooklyn, NY and Respondents provide public water service to premises through account number 4000318787001. “Petitioner installed fire/sprinkler meter #V52313115 on the Premises, via a DEP permit. On April 16, 2019, DEP confirmed the meter was installed properly and ‘the ACC was prorated as of that date.’

However, despite the plain documentation establishing that fire/sprinkler meter #V52313115 is ¾ inches, DEP billed Petitioner ACC based on a four – inch meter – a gross error resulting in overcharges of over \$150,000 for the period of January 31, 2018 through April 16, 2019” (see NYSCEF Doc. No. 12 Pars. 12 – 13).

Petitioner submits a NYC Environmental Protection, March 27, 2020 letter. Said letter states, “[o]n January 31, 2018, DEP’s field inspector gained access and found a 4” unmetered fire/sprinkler line supplying a three – story commercial building, which is a violation of New York City law. A Theft of Service Account Administration fee of \$650.00 was imposed to the account, and Attributed Consumption Charges (ACC) was issued to the account starting January 31, 2018. As of March 27, 2020, the account has a balance due of \$183,154.93” (see NYSCEF Doc. Nos. 3, 13).

Respondents cross – move to dismiss, per CPLR 3211(a)(5) – statute of limitations, and CPLR 217(1) – “a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the Petitioner.”

The Water Board is an autonomous seven – member public benefit corporation, established in 1984 pursuant to the New York City Municipal Water Finance Authority Act, which is codified as Public Authorities Law (“PAL”) §1045-a. The regulations promulgated by the Water Board are set forth under Appendix A of Title 15 of the Rules of the City of New York (“RCNY”).

Respondent submits a DEP Cease and Desist Notice of February 28, 2018 (see NYSCEF Doc. No. 29), the NYC Environmental Protection Letter of March 27, 2020 (see NYSCEF Doc. No. 33), a letter of appeal from Moshe Fruchter dated May 1, 2020 (see NYSCEF Doc. No. 34), and the NYC Water Board’s Final Determination Letter of July 31, 2020, where Petitioner’s appeal was denied (see NYSCEF Doc. No. 35).

A May 1, 2020 Letter states, “I am the owner of 40 Park Street, Brooklyn, NY 11206. It was a vacant building that I was renovating, my water meter froze so I called down the DEP to

replace it, while they came down, they saw that Sprinkler did not have a meter. I was in middle of renovating and I redid the whole sprinkler” (see NYSCEF Doc. No. 34).

“The reason for the short statute is the strong policy, vital to the conduct of certain kinds of governmental affairs, that the operation of government not be trammelled by stale litigation and stale determinations” (see *Solnick v. Whalen*, 49 N.Y.2d 224, 232 [1980]).

Respondents contend in their Memorandum of Law. “In accordance with CPLR 217(1), the four – month statutory period commenced on or about July 31, 2020 and expired four months later, on or about November 30, 2020. Petitioner commenced this Article 78 proceeding outside the statute of limitation, as the Notice of Petition was filed on July 7, 2021” (see NYSCEF Doc. No. 42 P. 11).

Respondent continues to contend, “[t]hat Petitioner made additional requests for reconsideration on August 27, 2020, October 26, 2020, and February 8, 2021 to challenge the ACC imposed on the subject premises and received DEP’s letters dated October 19, 2020, December 23, 2020, and March 31, 2021 denying those reconsideration requests, respectively, do not extend or restart the four – month statute of limitations” (see NYSCEF Doc. No. 42 P. 12).

Submissions of Petitioner’s correspondence include the August 27, 2020 letter (see NYSCEF Doc. No. 16), the October 26, 2020 email (see NYSCEF Doc. No. 38), and the February 8, 2021 letter (see NYSCEF Doc. No. 40).

Respondent submits letters from October 19, 2020 (see NYSCEF Doc. No. 37), December 23, 2020 (see NYSCEF Doc. No. 39), and from March 31, 2021 (see NYSCEF Doc. No. 41).

A plain reading of the final letter of March 31, 2021 was clearly the last review of the billing matter by the Water Board. Although that letter made reference to the alleged “final determination” of July 31, 2020 the Court notes that the respondents continued to respond in writing on October 19, 2020, December 23, 2020 and finally on March 31, 2021. The March 31, 2021 states, “Accordingly your request for reconsideration of the Water Boards July 31, 2020 decision is denied”. As the Notice of Petition was filed on July 7, 2021 (see NYSCEF Doc. No. 2), the commencement of this Article 78 Proceeding is timely within the four – month statutory period of March 31, 2021.

ORDERED that the Petition shall proceed on the merits and Respondent shall have thirty days from date to interpose an Answer; and it is further

ORDERED that Respondents’ cross – motion to dismiss on Statute of Limitations Grounds is DENIED.

3/29/2022  
DATE

  
LAURENCE LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE