

**Matter of Performance Food Group, Inc. v City of
New York**

2025 NY Slip Op 33227(U)

August 29, 2025

Supreme Court, New York County

Docket Number: Index No. 155508/2024

Judge: Paul A. Goetz

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

-----X

IN THE MATTER OF THE APPLICATION OF
PERFORMANCE FOOD GROUP, INC., PERFORMANCE
TRANSPORTATION, LLC (P TRAN),

Petitioners,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT
OF FINANCE, NEW YORK CITY PARKING VIOLATIONS
BUREAU OF NEW YORK CITY DEPARTMENT OF
FINANCE, PRESTON NIBLACK

Respondents.

-----X

INDEX NO. 155508/2024
MOTION DATE 03/19/2025
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407

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

In this “plenary hybrid Article 78 proceeding . . . and [] proposed class action,” petitioners¹ challenge 3,814 commercial parking tickets that have been upheld by administrative law judges (ALJs) for New York City’s Parking Violations Bureau (PVB) (NYSCEF Doc No 1) and respondents cross-move pursuant to CPLR §§ 3211(a)(5) and (a)(2) to dismiss the petition.

BACKGROUND

Petitioners assert that they “have been aggrieved regarding certain of Respondents’ policies and practices concerning administrative adjudication of parking tickets [] they received from the City of New York parking ticket issuing agents” (NYSCEF Doc No 1 ¶ 1). Specifically,

¹ For the purposes of this decision and order, “petitioners” shall refer to the named petitioners and those they assert are similarly situated.

petitioners allege that the challenged parking tickets, all for Minnesota vehicles, indicate that the registration expiration year is “Not Shown” or “N/S,” however, “the registration expiration month and [] year were indeed shown on each of the license plates,” as “the state of Minnesota permanently embeds the month of registration [] on each plate” (*id.*) and petitioner “provides a sticker[] showing the year the registration expires,” and therefore, the tickets should have been dismissed.² Petitioners also allege that ALJs improperly permitted “an unauthorized, former broker³ [to] appear[] for Petitioners, though Respondents had received prior written notice of the former broker’s termination and Petitioners’ appointment of their new representative” (*id.*).

Petitioners seek an order: (i) “annul[ing] a rolling list of 2815 adverse determinations” (representing fines totaling \$279,042.57) “whereby [] ALJs upheld [on appeal] parking tickets [] despite incorrect information recorded in the registration expiration field” (NYSCEF Doc No 2 [Group A]); (ii) “annul[ing] 999 [initial] ALJ determinations (in the amount of \$101,500), [] which have the same” expiration date issue and in which “an unauthorized, former broker [] appeared for Petitioners” (NYSCEF Doc No 3 [Group B]); (iii) “[d]ismissing the adverse determinations [] as unlawfully upholding” the tickets; (iv) directing respondents to refund the fines paid by petitioners; (v) declaring that respondents’ policies of upholding such tickets is arbitrary and capricious; (vi) “enjoining Respondents’ ALJs . . . from upholding any [more such] tickets from the date of filing this petition”; (vii) “[r]equiring Respondents’ ALJs to dismiss all such tickets that now or henceforward are before them for adjudication”; and (viii) “[d]ismissing

² “[M]isdescription of any of the five mandatory identification elements” on a parking ticket, including the vehicle’s registration expiration date, “mandates dismissal” (*Wheels, Inc. v Parking Violations Bureau of DOT*, 80 NY2d 1014, 1015-16 [1992], citing *Matter of Ryder Truck Rental v Parking Violations Bur.*, 62 NY2d 667 [1984]).

³ A broker is “a person who: (i) is not the owner or operator of the summonsed vehicle; (ii) represents another person or firm [in PVB hearings]; (iii) requests a hearing three or more times within any six month period; and (iv) is not an employee of the respondent (as defined in 19 RCNY § 39-09(b)(1))” (RCNY § 39-09[a][1]).

any and all determinations previously made (and to be made on a rolling basis) by Respondents in which adjudications of guilt were issued on [such] tickets” (*id.*).

DISCUSSION

Statute of Limitations

Respondents first argue that though petitioners categorize this matter as a “hybrid” proceeding, in reality, it is an Article 78 proceeding—since petitioners seek “judicial review of [] determinations made[] by governmental officials and bodies”—and thus the Group A claims are barred under the four-month statute of limitations (NYSCEF Doc No 359). In opposition, petitioners assert at least 187 of the Group A tickets were affirmed on appeal in the four months prior to the filing of the petition, i.e., on or after February 16, 2024 (NYSCEF Doc No 366), and additional tickets have been upheld on appeal since the petition was filed (NYSCEF Doc Nos 367, 368). Petitioners also argue that “this case should be construed as a plenary action and a proposed class action” because petitioners are not only challenging the upholding of individual tickets but the PVB’s policies in making these determinations (i.e., “how the PVB agency interprets the applicable statute and case law”), and therefore a six-year statute of limitations applies (NYSCEF Doc No 365).

“Where an action could have been brought pursuant to CPLR article 78, the four-month statute of limitations applicable to such proceedings applies” (*Save The View Now v Brooklyn Bridge Park Corp.*, 156 AD3d 928, 931 [2nd Dept 2017]). Here, “the substance of [petitioners’] causes of action was a challenge to administrative decisions,” and therefore, petitioners “request[] relief pursuant to CPLR article 78, regardless of the form in which they [] pleaded” (*Hertzel v Town of Putnam Val.*, 131 AD3d 921, 924 [2nd Dept 2015]; *Matter of Coden v Town of Huntington*, 235 AD3d 744, 746 [2nd Dept 2025] [“Here, despite being couched in declaratory

language, the relief sought [] is available in the context of a CPLR article 78 proceeding, and thus, the [shorter] statute of limitations period [] applies”]; *Stevens v American Water Servs., Inc.*, 32 AD3d 1188, 1190 [4th Dept 2006] [“the issue here is . . . whether the determinations of the Water Board [] were ‘made in violation of lawful procedure, w[ere] affected by an error of law or w[ere] arbitrary and capricious or an abuse of discretion.’ The four-month statute of limitations applicable to CPLR article 78 proceedings therefore governs”], *quoting* CPLR § 7803(3). Accordingly, all the administrative appeal determinations issued before February 16, 2024 are time-barred.

Exhaustion of Remedies

Respondents argue that petitioners are not entitled to judicial review of the Group B claims “because they failed to first exhaust [all available] administrative remedies” (NYSCEF Doc No 359). They assert that “all the summonses listed in [Group] B were administratively challenged at initial hearings with decisions rendered no later than March of 2021[,] and were not administratively appealed” (*id.*). Petitioners argue that they “could not even file appeals on these first-round guilty determinations by PVB hearing examiners, because neither Petitioners nor their new broker PSE ever received the first-round hearing decisions which was required to file the appeal” (NYSCEF Doc No 365).

Regardless of whether petitioners received proper notice of the decisions made on the initial hearings, they are not discharged of the obligation to exhaust administrative remedies (*Matter of Saoulis v New York City Env'tl. Control Bd.*, 162 AD3d 779, 779 [2nd Dept 2018] [where petitioner “commenced this CPLR article 78 proceeding, contending that he did not receive notice of the [Environmental Control Board] violations and that the fines imposed were arbitrary and capricious[,] [t]he proceeding was properly dismissed on the ground that petitioner

failed to exhaust his administrative remedies” by administratively challenging the fines first)).

The court cannot review initial hearing determinations that have not been appealed.

Accordingly, the Group B claims will not be reviewed for failure to exhaust administrative remedies.

Merits of the Remaining Claims

As to the remaining viable claims (i.e., the Group A parking tickets which were upheld on appeal on or after February 16, 2024), petitioners “request relief from having to appear before [certain] wayward ALJs” who, according to petitioners’ statistical analysis, “regularly uphold [] tickets[] while other [ALJs] accept [] identical arguments [and] evidence [] and dismiss these tickets” (NYSCEF Doc No 1 ¶ 61). Respondents correctly argue that “[p]etitioners cite no authority—and indeed there is none—to support the relief they seek, which is to select which ALJs hear their cases” (NYSCEF Doc No 359). That some ALJs tend to determine cases in a manner less favorable to petitioners’ position does not demonstrate that their determinations are “arbitrary and capricious” as petitioners suggest (NYSCEF Doc No 365). It is petitioners’ burden to allege that the determinations were made “without sound basis in reason and [] without regard to the facts” (*Pell v Board of Education*, 34 NY2d 222, 231 [1974]), which requires more than “showing a history of decisions overturned by [certain] ALJs” (NYSCEF Doc No 1 ¶ 62).

Petitioners assert that in the appeals determinations at issue, the ALJs improperly refused to follow *Gruen v Parking Violations Bureau*, 58 AD2d 48, 50 [1st Dept 1977], which held that a petitioner may meet its prima facie burden by offering testimony indicating that the summons was wrongly issued; and this shifts the burden to the respondent to prove “by a preponderance of the credible evidence[] that petitioner had in fact violated a parking regulation” (*id.* at 50).

Petitioners assert that at the hearings, it is typical for petitioners’ broker representative to submit

the “sworn testimony of Petitioners’ former Transportation Director Anthony Maffetone” and his “successor, Phillip Osley,” stating that the plates displayed the registration information, but that “the PVB ALJs reject this [] evidence while failing to refute it” (NYSCEF Doc No 1 ¶ 20, 67). Respondents argue that *Gruen* is distinguishable because in that case, “there was testimony by a party, i.e., the ticket recipient, with specific knowledge of the specific circumstances on the date and time the vehicle received a ticket” (NYSCEF Doc No 359), whereas here, the testimony consists of defective affidavits (NYSCEF Doc Nos 118, 119 [neither affidavit states that it was sworn or acknowledged before the notary, and Osley’s affidavit is unsigned]). In reply, petitioners do not address these defects and therefore fail to demonstrate that the PVB erred in finding these affidavits insufficient to establish petitioners’ prima facie case (*WJJ Acupuncture, P.C. v Liberty Mut. Fire Ins. Co.*, 26 Misc 3d 135[A], 135 [App Term 2nd Dept 2010] [“Since [Osley’s] ‘affidavit’ was not signed by the purported affiant, it [does] not constitute evidence in admissible form”]; *Doumanis v Conzo*, 265 AD2d 296, 296 [App Term 2nd Dept 1999] [“in order to make a competent, admissible affirmation, [the affiant] must [] appear before a notary or other such official and formally declare the truth of the contents of the document”]).⁴

Additionally, respondents cite *Gold Key Lease, Inc. v City of New York Dep’t of Fin. Parking Violations Bureau*, 276 AD2d 322 [1st Dept 2000], in which the court deferred to the respondent agency’s interpretation of “Vehicle and Traffic Law § 238 (2-a) as permitting ‘not available’ as a description of [] the vehicle registration expiration date on a parking summons” because “[r]espondent has a rational basis for presuming that vehicles with New York State registration have the full registration date on display, based on the format of windshield stickers

⁴ Even if the affidavits were deemed admissible, they do not establish that the registration *year*—as opposed to only the month—of expiration was always displayed (NYSCEF Doc Nos 118 [Maffetone’s affidavit does not mention the annual registration stickers], 119 [Osley stating only that he receives “annual registration sticker[s] from Minnesota which [he] dutifully place[s] on the plate year, upon receipt”]).

issued by the New York State Department of Motor Vehicles, while not making that presumption as to vehicles registered in other States” (*id.* at 322; *Matter of Josey v New York City Dept. of Fin., Adjudication Div.*, 2010 NY Slip Op 32814[U], *6 [SC NY Co 2010] [“Josey challenges the sufficiency of the summons, stating that it does not comply with VTL § 238(2-a) [because] the issuing officer indicated that the registration expiration date of the vehicle was ‘not shown.’ [S]uch a designation on an out of state vehicle satisfies the requirement set forth in VTL § 238(2-a)(a).”]). “The construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld” (*Samiento v World Yacht Inc.*, 10 NY3d 70, 79 [2008] [internal quotation marks omitted]), and petitioners fail to allege that it was “irrational or unreasonable” for the ALJs to accept “not shown” as a description on these out-of-state vehicles.

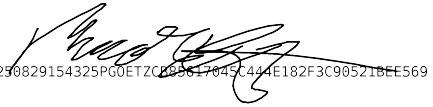
Most problematically—and unaddressed by the parties—is that while petitioners submit hundreds of exhibits, they fail to identify the decisions they seek to challenge in this proceeding (NYSCEF Doc No 2 [list of tickets upheld on appeal without underlying decisions]). The court cannot review, let alone annul, decisions that are not on the record before it. For this reason alone, the causes of action seeking to annul the ALJ’s decisions must be denied.

CONCLUSION

Based on the foregoing, it is

ORDERED that the petition is denied, and the cross-motion to dismiss the petition is granted; and it is further

ORDERED that the clerk is directed to enter judgment accordingly with costs and disbursements to respondents as taxed by the clerk.


20250829154325P00ETZCP85617045C444E182F3C90521BEE569

8/29/2025
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE