

Sands v New York State Attorney Gen.

2025 NY Slip Op 33633(U)

September 26, 2025

Supreme Court, New York County

Docket Number: Index No. 159807/2025

Judge: Lyle E. Frank

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. LYLE E. FRANK **PART** **11M**

Justice

-----X

PERRI SANDS,

Plaintiff,

- v -

THE NEW YORK STATE ATTORNEY GENERAL,
CHARITIES BUREAU, JAMES G. SHEEHAN, CHIEF OF
THE CHARITIES BUREAU TOGETHER WITH HIS
AGENTS, ASSISTANTS, EMPLOYEES, AND
SUCCESSORS IN OFFICE,

Defendant.

-----X

INDEX NO. 159807/2025
MOTION DATE 07/28/2025
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

Upon the foregoing documents and following oral argument, plaintiff’s petition is denied and respondent’s cross-motion to dismiss is granted. ¹

Background

This action arises out of the petitioner, Perri Sands, in her official capacity as the Administrator of the Estate of Charles Murdaugh, challenging the respondent’s failure to perform their statutory duties of oversight with respect to the allegedly fraudulent sale of property located at 804-806 Myrtle Avenue.

Respondent, James Sheehan, in his official capacity as Chief of the Charities Bureau for the office of the New York State Attorney General Office moves to dismiss the petition on the basis that (i) the petitioner is not entitled to mandamus due to the agency’s exercise of discretion,

¹ The Court would like to thank Noah Lowen and Cole Dorsey for their assistance in this matter.

(ii) the proceeding is barred by the four-month statute of limitations applicable to article 78 proceedings, and (iii) petitioner's cause of action is precluded by collateral estoppel and/or res judicata.

Perri Sands opposes the motion to dismiss on the grounds that (i) mandamus is proper where a statutory duty exists, or where non-statutory action is arbitrary, capricious, and unlawful, (ii) the proceeding is timely, and (iii) res judicata is inapplicable. For the reasons set forth below, the motion to dismiss is granted.

Facts

After Charles Murdaugh's 1999 death, real property that was part of his estate was allegedly unlawfully conveyed to Mt. Zion Church of Christ Disciples. The deed was allegedly fraudulently executed and recorded in 2000. In 2012, the church located on the subject property filed a RCL 12 petition Kings County index number 4687/2012 seeking permission to sell the property--providing a deed for a separate, adjacent property to the Court. The plaintiff alleges the Attorney General failed to verify the deed in breach of its statutory duty to supervise the transaction. Subsequently, in 2013, the church filed a second RCL§12 petition to sell the adjacent property (the one conveyed to the church in 2000) petitioner claims the church made fraudulent representations in the sale and that the Charities Bureau should have objected to its approval on that basis.

Petitioner claims the AG Charities Bureau had non-discretionary obligation to confirm the title and ownership of the property prior to court approval of the sale pursuant to RCL 12 and EPTL §11-1.1. In 2018, petitioner filed a partition action in Kings County Supreme Court to reverse the fraudulent 2012 transaction. The court dismissed this action, not disrupting the 2012 court approval of the sale. In February 2025 petitioner filed request for investigation and

correction of 2012 approval of the sale from the Attorney General. In March 2025 the Attorney General declined to take any investigative or corrective action.

Discussion

The Matter is Time Barred

As noted above, petitioner brings this writ of mandamus action to compel the Attorney General to initiate a CPLR §5015(a)(3) proceeding in Kings County Supreme Court to vacate the order approving the real property transactions from 2012 and 2013.

First, under CPLR § 217(1), an Article 78 proceeding must be brought within four months of the agency's determination becoming final and binding. Here, the Attorney General's decisions not to object to the Relig. Corp. Law § 12 petitions in 2012 and 2013, as well as the judicial approvals of the sales themselves, became final more than a decade before this proceeding was commenced in 2025. The determination became binding on the petitioner upon its notice of no objection appended to both the 2012 and 2013 orders granting approval of the sale of the properties. *Academy Street Associates, Inc v Spitzer*, 44 A.D.3d 592 [1st Dep't 2007] holding that "[an] article 78 proceeding seeking mandamus to compel accrues even in the absence of a final administrative determination.")

At the very latest, the statute of limitations would have begun to run in 2018, at the time of the partition action, when petitioner was no doubt aware of the actions of the respondent. Petitioner, clearly aware in 2018 that the original transactions were likely fraudulent and still were approved by the Attorney General, could have challenged the agency's actions at that time and did not. It is not the 2025 decision not to reopen the matter that petitioner ultimately seeks to

challenge, but the decision to permit the original transactions to stand. As such, this matter is time barred.

Mandamus Relief is Not Proper

Even if this matter were timely, it still must fail, as the petitioner seeks to have the Court force the respondent to engage in a discretionary action. Although the petitioner claims the Attorney General failed to comply with the ministerial duties set forth in RCL §12 and EPTL §11.1.1., the relief sought here, compelling the respondent to initiate an action, is discretionary and not ministerial. Thus, writ of mandamus is improper.

It is well settled that only ministerial acts that involve no exercise of discretion are subject to the extraordinary remedy of mandamus to compel. “The extraordinary remedy of mandamus is available in limited circumstances only to compel the performance of a purely ministerial act which does not involve the exercise of official discretion or judgment, and only when a clear legal right to the relief has been demonstrated”. *Matter of Rose Woods, LLC v Weisman*, 85 AD3d 801 [2d Dep’t 2011]. The decision whether to object to proposed transactions or to initiate litigation is an inherently discretionary act entrusted to the Attorney General. Courts have repeatedly held that mandamus is unavailable to compel such discretionary determinations. See *Matter of Melrose Credit Union*, 161 A.D.3d 742 [2d Dep’t 2018]; *VSF Coalition, Inc. v. Scoppetta*, 13 A.D.3d 517 [2d Dep’t 2004].

As the matter is being resolved for the above-described reasons, the Court need not reach the additional defenses of collateral estoppel or res judicata.

Accordingly, it is hereby

ORDERED and ADJUDGED that respondent’s motion to dismiss is granted, and the Petition is hereby dismissed.

20250926143501LFRANK6AE9D75C42954571882979B7C38E22AF



9/26/2025

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: