

Board of Mgrs. of Bridge Tower Place Condominium v City of New York
2026 NY Slip Op 31217(U)
March 27, 2026
Supreme Court, New York County
Docket Number: Index No. 152919/2026
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57M

Justice

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THE BOARD OF MANAGERS OF BRIDGE TOWER PLACE
CONDOMINIUM,

Petitioner,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF HOMELESS SERVICES, MOLLY
WASOW PARK, BRONX PARENT HOUSING NETWORK,
INC., BR FIRST PARTNERS LLC,

Respondents.

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INDEX NO. 152919/2026

MOTION DATE 03/06/2026,
03/19/2026

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 19, 20, 21, 22, 23, 24, 26, 27, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 91, 92, 93

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

BACKGROUND

Petitioner commenced this Article 78 proceeding alleging that the City and Respondents had not followed appropriate procedures pertaining to the environmental impact of a homeless shelter scheduled to open shortly on First Avenue in Manhattan’s Lenox Hill Neighborhood.

Pending before the Court are:

Petitioner’s request for a preliminary injunction enjoying Respondents from commencing operations at the proposed shelter or otherwise occupying the facility pending a final determination of this proceeding and completion of lawful environmental review in compliance with SEQRA and CEQR; and

Bronx Parent Housing Network d/b/a Housing Solutions of New York's ("HSNY") cross-motion to dismiss the petition; and

A motion by East Side Accountability Alliance, Inc. ("ESAA") to intervene in this proceeding and for related relief.

On March 26, 2026, the motions were fully submitted and the Court reserved decision. The motions are consolidated herein for determination.

For the reasons stated below, the relief sought by Petitioner and ESAA is denied, and the cross-motion to dismiss as to HSNY is granted.

ALLEGED FACTS

HSNY is a non-profit organization which operates over 30 shelter sites in New York City. BR FIRST PARTNERS LLC ("BRFP") is the owner of the real property located at 1114 First Avenue, the site of the Shelter, New York, New York. The Bridge Tower condominium is located at 401 East 60th Street across the street from the Shelter.

The transitional Shelter is intended to house 200 homeless women and was approved by the New York City Department of Homeless Services in July 2025. 48 employees will staff the facility.

In July 2025, the City prepared a comprehensive environmental assessment statement ("EAS") which found that the Shelter would have no adverse environmental impact.

The EAS measured internal noise levels inside the building and determined that the internal noise level during rush hour was "marginally unacceptable" and required remediation. This noise remediation has now been undertaken by the owner, who installed noise mitigating windows.

On or about July 28, 2025, DHS issued a Negative Declaration, determining that the Shelter would not have a significant adverse effect on the environment.

In January 2026, DHS entered a contract with HSNY, subject to approval by the New York City Comptroller to run the Shelter.¹

Pursuant to a resolution dated February 24, 2026, Community Board voted to support the plans to open the shelter (NYSCEF Doc # 67).

DISCUSSION

Motion Seq No 1

The Challenge to the Negative Declaration Issued by DHS in July 2025 is Time Barred

Article 78 is subject to a four-month statute of limitations. The gravamen of the petition is the improper issuance of a negative declaration, instead of a conditional negative declaration.

This was done in July 2025, approximately eight months before this petition was filed.

CPLR 217 provides in pertinent part:

Unless a shorter time is provided in the law authorizing the proceeding, 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 or the person whom he represents in law or in fact, or after the respondent's refusal, upon the demand of the petitioner or the person whom he represents, to perform its duty. . .

Thus, the petition must be brought within four months of the determination to be reviewed *see eg Frohlinger v. D'Ambrose*, 53 A.D.2d 580, 580 (1st Dept 1976) (*proceeding not commenced until 16 months barred by CPLR 217*); *Lenihan v. City of New York*, 85 A.D.2d 562, 562 (1st Dept 1981), *aff'd*, 58 N.Y.2d 679 (1982)(*proceeding not brought within four months after the Resolution adopted must be dismissed as untimely*); *New York City Health & Hosps.*

¹ No copy of the contract was submitted to the Court.

Corp. v. McBarnette, 84 N.Y.2d 194, 198(1994) (applying four-month statute of limitations to Article 78 proceeding).

Based on the foregoing, the Court finds that the relief sought in the first second and fourth causes of action relating to the Negative Declaration are time barred.

The Decision to Enter into The Contract is a Discretionary Act Not Subject to Challenge in this Article 78 Proceeding

In addition to seeking to vacate the Negative Declaration, Petitioner seeks to void the contract entered between the DHS and HSNY. As noted above, the contract was entered by the City subject to the approval of the comptroller in January 2026. Thus the challenge to the contract itself is not time-barred, however, as acknowledged by Petitioner in its verified pleading the DHS's decision to enter into the Contract was a discretionary action and thus not subject to mandamus.

Mandamus is only available to require an agency to perform a non-discretionary, ministerial act. CPLR §7803 provides:

The only questions that may be raised in a proceeding under this article are:

1. whether the body or officer failed to perform a duty enjoined upon it by law; or
2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or
3. 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; or
4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.

N.Y. C.P.L.R. 7803 (McKinney). None of the enumerated grounds would be available to challenge the City's discretionary act to enter the contract (*Atane Eng'rs, Architects & Land*

Surveyors, D.P.C. v. Nassau Cnty., 227 A.D.3d 708, 709 (1st Dept 2024)(*review and approval of a contract involved exercise of discretion and not subject to challenge in an Article 78 proceeding*).

Rather Petitioner is improperly attempting to boot strap its request to invalidate the contract to a finding that DHS acted in violation of the lawful procedure when it issued the negative declaration, a claim which, as noted above, the Court finds time barred.

Based on the foregoing Petitioner's motion for a preliminary injunction is denied.

HSNY's Cross-Motion to Dismiss²

Based on the above findings, HSNY's cross-motion to dismiss is granted, as the Court finds that the challenge to the declaration is time barred and that no cause of action lies in this proceeding with regard to the contract.

Motion Seq. No. 2

ESAA's motion to intervene is denied. The Court finds the Petition, verified only by counsel fails to establish injury sufficient to convey standing. To the extent that ESAA is comprised of people living at 401 East 60th Street, such residents' interest in this proceeding are already represented by Petitioner.

Additionally, as noted above, the statute of limitations has passed, nor does the Court find this is a case where the submission of an amicus brief would be valuable to the Court.

CONCLUSION

WHEREFORE it is hereby:

² The notice of cross-motion recites that it seeks dismissal pursuant to CPLR 3211(a)(7) and CPLR 7804(f). The parties both briefed the issue of statute of limitations, which technically should have been noticed as a request for dismissal pursuant to CPLR 3211(a)(5), but has the parties have briefed the issue and the Court finds it to be dispositive, the Court will overlook the defect in the notice of cross-motion which was in any event not raised by Petitioner.

ADJUDGED that HSNY’s cross-motion to dismiss is granted and the petition is dismissed, as to HSNY; and it is further

ADJUDGED that ESAA’s motion to intervene and for related relief is denied in its entirety; and it is further

ORDERED that Petitioner’s motion for a preliminary injunction is denied and all stays previously issued in this proceeding are hereby vacated; and it is further

ORDERED that the remaining respondents answer or move with respect to the amended petition within five days of service of a copy of this order with notice of entry; and it is further

ORDERED that the remaining parties appear for a virtual status conference on April 17, 2026, at 2pm.

This constitutes the decision and order of the Court.



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3/27/2026
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: