

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, FOURTH DEPARTMENT**

Green Thumb Lawn Care, Inc. v. Iwanowicz

107 A.D.3d 1402 (4th Dep't 2013) · Decided June 7, 2013

SUMMARY

The court upheld an administrative determination that Green Thumb Lawn Care, Inc. and its president violated New York pesticide-application statutes and regulations by failing to provide contracts specifying the total cost and approximate application dates. It also held that blanket waivers of application-date notice were impermissible. The court vacated the lower court's declaratory judgment because no justiciable controversy remained and affirmed dismissal of a challenge to a DEC policy as unripe.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Department
WRITING FOR THE COURT	Scudder, P.J.; Smith, J.; Centra, J.; Garni, J.; Sconiers, J.
JURISDICTION	New York
DECIDED	June 7, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from judgments in two CPLR article 78 proceedings and a declaratory judgment action. The first proceeding challenged an administrative determination by the Acting Commissioner of the New York State Department of Environmental Conservation imposing a penalty for violations of pesticide-application statutes and regulations. The second challenged a DEC policy statement as not ripe for judicial review.
STANDARD OF REVIEW	Administrative action is reviewed to determine whether it was arbitrary and capricious or lacked a rational basis. When the issue is one of pure statutory interpretation, an agency's interpretation receives considerably less weight, and a regulation contrary to clear statutory language receives no weight. Agency action is ripe for judicial review only when the agency has reached a final determination that causes actual, concrete injury that cannot be prevented or significantly ameliorated by further administrative action.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Green Thumb Lawn Care, Inc., John Knutson v. New York State Department of Environmental Conservation, Acting Commissioner of the New York State Department of Environmental Conservation

TOPICS

judicial review of agency action agency adjudication statutory interpretation ripeness administrative law

PRACTICE AREAS

administrative law environmental law statutory interpretation civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the Acting Commissioner's determination that petitioners violated ECL 33-1001 and 6 NYCRR 325.40 was arbitrary and capricious or lacked a rational basis.
2. Whether the petitioners were entitled to declaratory relief concerning a 2002 consent order and their ability to obtain waivers of notice of pesticide-application dates.
3. Whether the petitioners' challenge to the DEC's 2005 policy statement was ripe for judicial review.

HOLDINGS

1. The Acting Commissioner's determination was not arbitrary or capricious because the petitioners' agreement omitted the total price and specified application-date ranges that were not approximate, and the blanket waiver theory was inconsistent with the statute's purpose and text.
2. Declaratory relief was improper because no justiciable controversy remained concerning the 2002 consent order, and the requests regarding unidentified future consumers presented hypothetical issues.
3. The challenge was not ripe because the DEC had not applied the 2005 policy to petitioners' determination and petitioners had suffered no actual, concrete injury that further administrative action could not prevent or ameliorate.

KEY QUOTATIONS

“where ‘the question is one of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency and its interpretive regulations are therefore to be accorded much less weight. And, of course, if the regulation runs counter to the clear wording of a statutory provision, it should not be accorded any weight’” (107 A.D.3d at 1403)

“A declaratory judgment action thus ‘requires an actual controversy between genuine disputants with a stake in the outcome,’ and may not be used as ‘a vehicle for an advisory opinion’” (107 A.D.3d at 1405)

“In order to determine whether an agency determination is final, a two-part test is applied. ‘First, the agency must have reached a definitive position on the issue that inflicts actual, concrete injury and[,] second, the

injury inflicted may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party’” (107 A.D.3d at 1405-1406)

FACTUAL BACKGROUND

Green Thumb Lawn Care, Inc. and its president, John Knutson, applied lawn-care products without a written contract that complied with statutory and regulatory requirements. The agreement did not state the total price, and the proposed application dates covered ranges extending over more than half of the calendar year rather than approximate application dates. The petitioners also sought to use blanket waivers of notice of approximate application dates, which the Acting Commissioner concluded would undermine the statutory purpose of informing residents when potentially hazardous chemicals would be applied.

PROCEDURAL HISTORY

The DEC charged Green Thumb and Knutson with violating ECL 33-1001 and 6 NYCRR 325.40 by performing residential lawn care without a compliant written contract specifying application dates and total cost. The Acting Commissioner found violations and assessed a penalty. Supreme Court confirmed that determination and issued a declaration concerning notice waivers, while separately dismissing the challenge to the DEC's 2005 policy as unripe. The Appellate Division modified the first judgment by vacating the declaration and dismissing the declaratory-relief claim, and otherwise affirmed both judgments.

DISPOSITION

affirmed

CASES CITED

- Matter of Concetta T. Cerame Irrevocable Family Trust v. Town of Perinton Zoning Bd. of Appeals, 6 A.D.3d 1091, 1092 (3d Dep't 2004)
- Matter of Pell v. Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, 34 N.Y.2d 222, 231 (1974)
- Matter of Lighthouse Pointe Prop. Assoc. LLC v. New York State Dep't of Env'tl. Conservation, 14 N.Y.3d 161, 176 (2010)
- Matter of New York State Superfund Coalition, Inc. v. New York State Dep't of Env'tl. Conservation, 18 N.Y.3d 289, 296 (2011)
- Long Is. Light. Co. v. Allianz Underwriters Ins. Co., 35 A.D.3d 253, 253 (1st Dep't 2006), appeal dismissed, 9 N.Y.3d 1003 (2007)
- Ramunno v. Skydeck Corp., 30 A.D.3d 1074, 1074 (4th Dep't 2006)
- Matter of United Water New Rochelle v. City of New York, 275 A.D.2d 464, 466 (2d Dep't 2000)
- Megibow v. Condominium Bd. of Kips Bay Towers Condominium, Inc., 38 A.D.3d 265, 266 (1st Dep't 2007)
- Matter of County of Niagara v. Dairies, 79 A.D.3d 1702, 1704 (4th Dep't 2010), leave denied, 17 N.Y.3d 703 (2011)

- Matter of Best Payphones, Inc. v. Department of Info. Tech. & Telecom. of City of N.Y., 5 N.Y.3d 30, 34 (2005), reargument denied, 5 N.Y.3d 824 (2005)

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