

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT

Liere v. Sheehan

54 A.D.3d 862 (N.Y. App. Div. 2008) · Decided September 16, 2008

SUMMARY

The court annulled a New York State Department of Environmental Conservation determination imposing a \$142,500 civil penalty on a farm operator for alleged solid-waste-management violations. It held that the evidence established the operator processed only land-clearing debris, an activity exempt from the applicable DEC regulations, and therefore dismissed the charges.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Fisher, J.E.; Covello, J.; Angiolillo, J.; Balkin, J.
JURISDICTION	New York
DECIDED	September 16, 2008
DISPOSITION	other
PROCEDURAL POSTURE	Article 78 proceeding seeking judicial review of a New York State Department of Environmental Conservation Commissioner's determination adopting an Administrative Law Judge's findings that petitioner violated solid-waste-management regulations and imposing a \$142,500 civil penalty.
STANDARD OF REVIEW	Whether the administrative determination, made after a hearing required by law at which evidence was taken, is supported by substantial evidence.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Liere v. Sheehan, New York State Department of Environmental Conservation

TOPICS

- environmental law
- judicial review of agency action
- administrative law
- statutory interpretation
- standard of review

PRACTICE AREAS

environmental law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence established that petitioner received and processed regulated yard waste in addition to land-clearing debris.
2. Whether petitioner's activities were exempt from DEC regulation under 6 NYCRR 360-16.1(b).
3. Whether the Commissioner's determination was supported by substantial evidence.

HOLDINGS

1. The hearing evidence clearly established that petitioner received and processed only land-clearing debris, not yard waste collected at the curbside.
2. Because petitioner only received and processed land-clearing debris, his activities were exempt from the requirements of 6 NYCRR part 360.
3. The Commissioner's determination was not supported by substantial evidence and therefore had to be annulled.

KEY QUOTATIONS

“Thus, the evidence at the hearing clearly showed that the petitioner only received and processed land clearing debris.” (864)

“Under the circumstances, it cannot be said that the Commissioner’s determination is supported by substantial evidence.” (864)

FACTUAL BACKGROUND

Petitioner owned and operated a 110-acre farm where he accepted materials from landscapers, including leaves, grass, trees, and dirt, and used them to produce mulch and topsoil. After a DEC inspection, the agency charged him with violations of the Environmental Conservation Law and implementing regulations governing solid waste management facilities. The ALJ found that petitioner processed both land-clearing debris and yard waste, but petitioner's un rebutted testimony established that he did not accept curbside-collected yard waste.

PROCEDURAL HISTORY

Following a DEC inspection of petitioner's farm, the DEC commenced an administrative enforcement proceeding. After a hearing, the ALJ found most charges established and recommended a civil penalty, and the Commissioner adopted the ALJ's findings and conclusions. Petitioner commenced this CPLR article 78 proceeding, and the Appellate Division granted the petition, annulled the determination, and dismissed the charges.

DISPOSITION

other

CASES CITED

- Rowell v. Janvrin, 151 N.Y. 60, 67 (1896)
- 300 Gramatan Ave. Assoc. v. State Div. of Human Rights, 45 N.Y.2d 176, 179 (1978)
- 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 Marmo v. Department of Env'tl. Conservation, 150 A.D.2d 577, 578 (1989)

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