

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

Matter of Detering v. New York City Env'tl. Control Bd.

2025 NY Slip Op 06646 (Appellate Division of the Supreme Court of the State of New York First Department 2025) · No. Index No. 159847/23; Appeal No. 5273; Case No. 2024-04806 · Decided December 2, 2025

SUMMARY

The Appellate Division, First Department unanimously affirmed an order and judgment denying claims challenging Local Law No. 16 of 2024. The court held that the Noise Control Code did not create contractual or vested property rights for citizen complainants, and rejected the petitioners' impairment-of-contract, due process, takings, and retroactivity arguments. The court also held that the enactment was exempt from environmental review under SEQRA because it constituted a Type II action.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Renwick, P.J.; Scarpulla, J.; Kapnick, J.; Mendez, J.; O'Neill Levy, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	December 2, 2025
DOCKET	Index No. 159847/23; Appeal No. 5273; Case No. 2024-04806
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners appealed from an order and judgment of Supreme Court, New York County, in a hybrid CPLR articles 30 and 78 proceeding. The proceeding challenged Local Law No. 16 of 2024 as unconstitutional and sought annulment of the law as arbitrary and capricious for failure to conduct environmental review.
STANDARD OF REVIEW	The court reviewed the constitutional challenges and the claimed SEQRA violation in the CPLR article 78 proceeding; the opinion applied rational-basis analysis to the alleged retroactive legislation and determined whether the enactment was exempt from environmental review as a Type II action.
PRECEDENTIAL VALUE	Published

PARTIES

Dietmar Detering, et al. v. New York City Environmental Control Board, et al.

TOPICS

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administrative law

environmental impact review

due process

statutory interpretation

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Local Law No. 16 of 2024 impaired a contractual or vested right of citizen complainants to prosecute Noise Control Code enforcement proceedings and receive compensation.
2. Whether Local Law No. 16 violated due process or effected a taking by eliminating or changing petitioners' asserted right to compensation.
3. Whether the alleged retroactive application of Local Law No. 16 violated due process.
4. Whether Local Law No. 16 was subject to environmental review under SEQRA or was exempt as a Type II action.

HOLDINGS

1. The Noise Control Code did not create a contractual agreement between petitioners and the City concerning the ability to commence and prosecute administrative enforcement actions or the recovery of compensation.
2. Petitioners failed to establish a vested property interest because any entitlement to compensation was inchoate and contingent on completion of a proceeding, collection of a penalty by the City, and the Environmental Control Board's decision not to remit the penalty.
3. The alleged retroactive application of Local Law No. 16 did not violate due process because the law did not impair rights possessed when petitioners acted, increase liability for past conduct, or impose new duties concerning completed transactions.
4. Local Law No. 16 was exempt from SEQRA environmental review because it constituted a local legislative decision connected with civil administrative enforcement proceedings and met the criteria for a Type II action.

KEY QUOTATIONS

"absent some clear indication that the Legislature intends to bind the State contractually, a statute is presumed not to create private contractual or vested rights, but merely to declare a policy to be pursued until the Legislature shall ordain otherwise" (2025 NY Slip Op 06646)

“it is settled that, before a law may be deemed to amount to a contract between the State and a third party, the statutory language must be examined and found to be 'plain and susceptible of no other reasonable construction' than that a contract was intended” (2025 NY Slip Op 06646)

FACTUAL BACKGROUND

Petitioners were citizen complainants who asserted that the City's Noise Control Code authorized them to commence and prosecute civil enforcement proceedings at their own expense and to receive fair and reasonable compensation from penalties collected. Local Law No. 16 of 2024 amended the governing statutory scheme, and petitioners claimed that the amendment impaired a contract, violated due process, effected a taking, and required environmental review under SEQRA. The Environmental Control Board retained authority to remit all or part of a civil penalty if the respondent was no longer in violation at the relevant time.

PROCEDURAL HISTORY

Supreme Court, New York County, denied the challenged portions of the amended petition and complaint. Petitioners appealed, and the First Department unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Medical Socy. of State of N.Y. v. Sobol, 192 AD2d 78, 80 (3d Dept 1993), appeal dismissed, 82 NY2d 802 (1993), cert denied, 511 US 1152 (1994)
- Pennsylvania R.R. Co. v. State of New York, 11 NY2d 504, 511 (1962)
- American Economy Ins. Co. v. State of New York, 30 NY3d 136, 150, 157-158 (2017)
- General Motors Corp. v. Romein, 503 US 181, 186, 191 (1992)
- Lend Lease (US) Constr. LMB Inc. v. Zurich Am. Ins. Co., 28 NY3d 675, 684 (2017)
- Brooks v. Dunlop Mfg. Inc., 702 F3d 624, 632 (Fed Cir 2012)
- Rogers v. Tristar Products, Inc., 559 F Appx 1042, 1045 (Fed Cir 2012)
- Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. & Community Renewal, 35 NY3d 332, 365 (2020)
- Landgraf v. USI Film Products, 511 US 244, 280 (1994)
- Matter of Hazan v. Howe, 214 AD2d 797, 799-800 (3d Dept 1994)

OPINION

Matter of Detering v. New York City Env'tl. Control Bd. 2025 NY Slip Op 06646

PER CURIAM.

Matter of Detering v New York City Env'tl. Control Bd. (2025 NY Slip Op 06646) Matter of Detering v New York City Env'tl. Control Bd. 2025 NY Slip Op 06646 Decided on December 02,

2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: December 02, 2025 Before: Renwick, P.J., Scarpulla, Kapnick, Mendez, O'Neill Levy, JJ. Index No. 159847/23|Appeal No. 5273|Case No. 2024-04806| [*1]In the Matter of Dietmar Detering, et al., Petitioners-Appellants, v New York City Environmental Control Board, et al., Respondents-Respondents. Cohen & Green PLLC, Ridgewood (J. Remy Green of counsel), for appellants. Muriel Goode-Trufant, Corporation Counsel, New York (Amy McCamphill of counsel), for respondents. Order and judgment (one paper), Supreme Court, New York County (Arlene P. Bluth, J.), entered on or about June 13, 2024, which, to the extent appealed from as limited by the briefs, denied so much of the amended petition and complaint, in this hybrid proceeding brought pursuant to CPLR articles 30 and 78, seeking a judgment declaring unconstitutional an amendment to the Administrative Code of the City of New York enacted by respondent New York City Council (City Council) and seeking to annul passage of the law as arbitrary and capricious due to the failure to conduct an environmental review, unanimously affirmed, without costs. Petitioners' contentions that Local Law No. 16 of 2024 (Local Law 16) unconstitutionally impedes an alleged contract between them and the City under which they bring civil enforcement proceedings of the Noise Control Code at their own expense, violates their due process rights, and effects a taking of private property without just compensation are meritless (see Administrative Code of City of NY § 24-261[d]-[e]; Local Law No. 16 [2024] of City of NY, §§ 1-2). "[A]bsent some clear indication that the Legislature intends to bind the State contractually, a statute is presumed not to create private contractual or vested rights, but merely to declare a policy to be pursued until the Legislature shall ordain otherwise" (Medical Socy. of State of N.Y. v Sobol , 192 AD2d 78, 80 [3d Dept 1993], appeal dismissed 82 NY2d 802 [1993], cert denied 511 US 1152 [1994]). Indeed, "it is settled that, before a law may be deemed to amount to a contract between the State and a third party, the statutory language must be examined and found to be 'plain and susceptible of no other reasonable construction' than that a contract was intended" (Pennsylvania R.R. Co. v State of New York , 11 NY2d 504, 511 [1962] [internal quotation marks and citation omitted]). The Noise Control Code does not create a contract between petitioners, as citizen complainants, and the City regarding either complainants' ability to commence and prosecute administrative enforcement actions or their eventual recovery of "fair and reasonable compensation" to be paid "out of the proceeds collected" (Administrative Code § 24-261[c]-[e]; see generally American Economy Ins. Co. v State of New York , 30 NY3d 136 , 150 [2017], quoting General Motors Corp. v Romein , 503 US 181, 186 [1992]). The fact that the respondent agency, the Environmental Control Board (ECB), "may remit, in whole or in part . . . a civil penalty if, at the conclusion of the hearing or at the time of the board determination . . . the respondent is no longer in violation" (Administrative Code § 24-257[b][5]), renders any purported agreement to pay compensation under the Noise Control Code illusory (see Lend Lease (US) Constr. LMB Inc. v Zurich Am. Ins. Co. , 28 NY3d 675, 684 [2017]). Moreover, the citizen

enforcement provision is akin to federal qui tam statutes allowing citizens to assert claims in litigation on behalf of the government and collect from any judgment imposed. The federal courts have rejected the argument that such a law is "a unilateral contract offer" as "inconsistent with the history of qui tam provisions" (*Brooks v Dunlop Mfg. Inc.* , 702 F3d 624, 632 [Fed Cir 2012]). Because "there is no existing contractual agreement regarding the terms changed by the legislation, there is no need to consider whether there was in fact an impairment and whether it was substantial" (*Consumers Union of U.S., Inc. v State of New York* , 5 NY3d 327, 359 [2005]). Similarly, petitioners fail to demonstrate the existence of a "vested property interest and then demonstrate how the legislative amendment adversely impacts that property interest," sufficient to support the constitutional takings and due process violations asserted (*American Economy Ins. Co.* , 30 NY3d at 157). Petitioners' asserted rights are not vested but "inchoate and subject to contingencies" because any right to recover does not inure to a citizen complainant's benefit until a proceeding is concluded and the City has collected the penalty, and because ECB is empowered to remit the penalty entirely (*American Economy Ins. Co.* , 30 NY3d at 157; see Administrative Code § 24-257[b][5]; see also *Brooks* , 702 F3d at 632 ; *Rogers v Tristar Products, Inc.* , 559 F Appx 1042, 1045 [Fed Cir 2012]). Additionally, the alleged retroactivity of Local Law 16 does not violate due process, as it does not "impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed" (*Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal* , 35 NY3d 332 , 365 [2020], quoting *Landgraf v USI Film Products* , 511 US 244, 280 [1994]). Even if the challenged law were retroactive, the record demonstrates that the City Council had "'a legitimate legislative purpose furthered by rational means'" (*American Economy Ins. Co.* , 30 NY3d at 157-158, quoting *General Motors Corp.* , 503 US at 191). Turning to petitioners' allegations of a SEQRA violation, it is "manifestly clear that the activity involved meets the criteria defining a particular class of type II actions" (*Matter of Hazan v Howe* , 214 AD2d 797, 799-800 [3d Dept 1994]). Local Law 16 constitutes a "local legislative decision[] in connection with" civil administrative enforcement proceedings, and thus, it is exempt from environmental review (6 NYCRR 617.5[c][33], [35]). We have considered petitioners' remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 2, 2025