

**STATE OF NEW YORK
SUPREME COURT****COUNTY OF ESSEX****DECISION, ORDER AND
JUDGMENT**

In the Matter of MICHAEL HOPMEIER,

Petitioner,

-against-

Index No.: CV26-0063

RJ No.: 15-1-2026-0021E

BOARD OF NEW YORK STATE ADIRONDACK PARK AGENCY, RUSH HOLT, in his capacity as a Member of the Board of New York State Adirondack Park Agency, BARBARA RICE, in her capacity as Executive Director of New York State Adirondack Park Agency, and DAVID N. GREENWOOD, in his capacity as Administrative Law Judge for New York State Adirondack Park Agency,

Respondents.

Documents considered: NYSCEF Docs # 1-16, 19-20, 23-42.

Appearances: Matthew D. Norfolk, Esq. of the Norfolk Beier PLLC, 55 Barn Road, Suite 201 Lake Placid, 12946 on behalf of Petitioner Michael Hopmeier

Taylor M. Hopkins, Esq. of the Office of the New York State Attorney General Environmental Protection Bureau - The Capital, Albany, NY 12224 on behalf of Respondents Board of the New York State Adirondack Park Agency, Rush Holt, Executive Director Barbara Rice, and Administrative Law Judge David Greenwood.

McGAHAY, J.

This special proceeding pursuant to Article 78 of the New York State Civil Practice Law and Rules (CPLR) was commenced by the Verified Petition of Michael Hopmeier (hereinafter Petitioner), filed with the Essex County Clerk on January 30, 2026.

THE PETITION

The claims before the Court arise from Petitioner's application made to the New York State Adirondack Park Agency (hereinafter APA) for a permit for Project No. 2021-0276 (hereinafter the Application), which seeks approval to develop a ballistics firing range for the purpose of testing the internal ballistics of 155 mm howitzer cannon barrels, on land situated in the Town of Lewis, County of Essex, State of New York.

The Hearing Determination

Petitioner, in the First, Second, Third and Fourth Claims for Article 78 relief (hereinafter the Hearing Determination Claims), set forth in the Amended Verified Petition (hereinafter the

Amended Petition)¹, seeks an order and judgment of the Court, annulling, vacating, and setting aside the determination of Respondent Board of New York State Adirondack Park Agency (hereinafter the APA Board), made at a meeting thereof on November 14, 2025, to conduct a public hearing to decide whether to approve or deny the Application in accordance with Executive Law § 809 and 9 NYCRR 580.2, which determination was memorialized in the “Notice of Agency Intent to Proceed to Public Hearing,” dated November 14, 2025, and directed in the “Project Order”, dated November 14, 2025 (hereinafter referred to as the Hearing Determination).

The grounds for such relief arise from the alleged participation of Respondent Rush Holt (hereinafter Holt), a member of the APA Board, in the Hearing Determination. Specifically, Petitioner claims Holt participated in both the November 13, 2025 APA Regulatory Programs Committee recommendation to the APA Board that the Application go to a public hearing, and the November 14, 2025 vote of the APA Board to direct a public hearing on the Application, all while Holt allegedly had an undisclosed conflict of interest that precluded his involvement in matters related to the Application, pursuant to 9 NYCRR 587.3 and Public Officer Law §§ 73 and 74.

According to Petitioner, since at least the year 2022, until Holt’s appointment to the APA Board in June of the year 2025, if not later, Holt served as a board member of Adirondack Council, a privately-funded, nonprofit organization which “works to preserve the ecological integrity and wild character of the Adirondack Park through conservation, advocacy and education”, and upon information and belief, was/is a dues-paying member and donor to Adirondack Council.

As set forth in Petitioner’s papers, the Application has been continuously pending before the APA since the year 2021 and from at least the year 2022 to the filing of the Amended Petition, Adirondack Council has remained staunchly and publicly opposed to the Application. Petitioner further claims that by letter to Respondent Barbabra Rice, Executive Director of the APA (hereinafter Director Rice), dated September 1, 2022, Adirondack Council has opposed the Application. Petitioner asserts that on February 19, 2026, after this Article 78 proceeding was commenced, Holt subsequently recused himself from the deliberations and vote on whether a potential intervenor in the public hearing should be given party status, offering no explanation or disclosure of the reason.

¹ On February 24, 2026, before Respondents’ time to answer or otherwise respond to the Verified Petition expired, Petitioner filed an Amended Verified Petition.

In light of the foregoing, Petitioner, seeks annulment of the Hearing Determination, on the basis that Holt and the APA Board failed to perform a duty enjoined upon them by law (the First and Second Claims), and that the Hearing Determination was made in violation of lawful procedure, was affected by an error of law, and was arbitrary and capricious and an abuse of Holt's and the APA Board's discretion (the Third and Fourth Claims). Petitioner asserts Holt had a duty pursuant to 9 NYCRR 587.3 and Public Officer Law §§ 73 and 74 to disclose his ties to Adirondack Council as a conflict of interest and abstain from participating in all matters pertaining to the Application, and that the APA Board had a duty to ensure Holt complied with his obligations. Petitioner alleges Holt and the APA Board breached that duty when Holt, without making any disclosure, participated in both the November 13, 2025 APA Regulatory Programs Committee recommendation to the APA Board that the Application go to a public hearing, and the November 14, 2025 vote of the APA Board to direct a public hearing on the Application.

The Disqualification Determination

Petitioner, in the Fifth Claim for CPLR Article 78 relief (hereinafter the Disqualification Determination Claim), seeks an order and judgment of the Court, annulling, vacating, and setting aside the determination of Respondent Director Rice, made on January 27, 2026, which denied Petitioner's application seeking disqualification of respondent David N. Greenwood, Administrative Law Judge (hereinafter referred to as the Hearing Officer) as hearing officer for the public hearing on the Application (hereinafter the Disqualification Determination).

As alleged, following the Hearing Determination, by letter dated November 20, 2025, the Hearing Officer was appointed by the APA to preside over and conduct the public hearing on the Application, along with the pre-hearing proceedings, in accordance with 22 NYCRR 580.8(a) and 580.14[a][1]).

Petitioner states his claims concerning the Hearing Officer's fitness to serve in the appointed role were first raised by the letter of the Petitioner's counsel, dated November 24, 2025. In such letter, Petitioner's counsel requested that the Hearing Officer voluntarily recuse himself due to a claimed conflict of interest, and/or the appearance of impropriety, based upon the allegation that the Hearing Officer was formerly employed by Adirondack Council, from January of the year 1993 through August of the year 2000.

As set forth in the Amended Petition, by letter dated December 1, 2025, the Hearing Officer declined Petitioner's request that he voluntarily recuse himself. In said letter, the Hearing Officer

claims to have made “full disclosure, as part of the record, of all information relevant to the issue of bias or disqualification”, pursuant to 9 NYCRR §580.8(a); however, letter did not disclose his alleged tenure as a officer or employee of Adirondack Council.

Petitioner asserts that on January 20, 2026, in anticipation of a pre-hearing conference scheduled to occur on the following day, January 21, 2026, Petitioner’s counsel sent an affidavit to Director Rice, on notice to the other parties and the Hearing Officer, challenging the Hearing Officer’s qualifications to serve as hearing officer on the Application (*see* 22 NYCRR 580.8[b]) based upon a conflict of interest/bias stemming from the Hearing Officer’s alleged former employment with Adirondack Council, from January of the year 1993 through August of the year 2000.

On January 21, 2026, Director Rice issued a letter to the Hearing Officer and the parties of the public hearing proceedings directing them to raise and discuss any issues concerning the disqualification of the Hearing Officer at the pre-hearing conference scheduled to occur later that day. The letter further directed that if any issues remain unresolved, then all parties shall be given an opportunity to submit either a challenging affidavit, or any responding affidavits under a schedule agreeable to all parties.

According to Petitioner, the disqualification issues raised in Petitioner’s challenging affidavit addressed went unresolved at the conference occurring on January 21, 2026.

Thereafter, on January 27, 2026, Director Rice issued the Disqualification Determination, denying disqualification of the Hearing Officer , finding, *inter alia*:

The Applicant has identified a prior employment connection with the Adirondack Council. It is undisputed, however, that that relationship ended 26 years ago and 22 years before comments were issued on the Project by the Adirondack Council. No facts have been alleged that support that ALJ Greenwood’s prior employment would have informed the comments submitted by the Adirondack Council 22 years later; nor any facts concerning current membership, an ongoing employment relationship, or any other personal, professional or pecuniary relationship with the Adirondack Council or any other party. No specific evidence was offered to show that ALJ Greenwood has or had any relationship with the Adirondack Council outside of this proceeding, or that ALJ Greenwood’s conduct or actions was in any way biased.

Petitioner argues the Disqualification Determination should be annulled as arbitrary and capricious because there is nothing in the record providing grounds for Director Rice’s finding that the Hearing Officer does not have a conflict of interest due to his ties with Adirondack Council.

According to Petitioner, the only reason for denying said motion to disqualify the Hearing Officer was that Petitioner failed to put forth enough evidence to find a conflict of interest. Petitioner claims the Hearing Officer did not submit an opposition affidavit or deny affiliation or membership with Adirondack Council in response to Petitioner's motion to disqualify.

Petitioner further claims that upon presentation of the Hearing Officer's alleged prior employment with Adirondack Council, the APA should have shifted the burden to the Hearing Officer to rebut a presumption of conflict, or at the very least, have him put on the record that he does not have an affiliation or membership with Adirondack Council by submitting an affidavit swearing to his lack of personal, professional and financial connections that might raise an issue of bias or other disqualification. Based thereon, Petitioner concludes the Disqualification Determination was arbitrary and capricious, in violation of lawful procedure, was affected by an error of law, and an abuse of discretion.

PROCEDURAL BACKGROUND

Accompanying Petitioner's commencing papers was a proposed order to show cause, which was addressed to the overall relief sought in the Petition, and which purported to grant immediate relief to Petitioner, without notice to Respondents, in the form of an order staying the public hearing on the Application, and all related pre-hearing proceedings, pending the determination of the Petition.

On February 4, 2026, the Court issued the Order to Show Cause, directing Respondents to show cause why such relief should not be granted. The Order to Show, further directed, "to the extent the Petitioner's papers seek for the Court to issue a stay of such public hearing and all pre-hearing proceedings on Petitioner's application for a permit for for [sic] Project No. 2021-0276, the Court declines to consider such application in *ex parte* fashion (see *McArdle v Temporary New York State Commn. of Investigation*, 41 AD2d 401 [3d Dept 1973]; *Matter of Murray v. Tofany*, 36 AD2d 665 [3d Dept 1971]), and absent further order of the Court, will consider such relief at the return date scheduled herein as part of Petitioner's request for such other and further relief the Court deems just and fair".

On March 19, 2026, Respondents the APA Board, Holt, Hearing Officer and Director Rice formally appeared in this special proceeding through service of a pre-answer motion to dismiss (NYSCEF Motion Seq. #2).

Petitioner subsequently served a cross-motion for a stay of the public hearing and all pre-hearing proceedings on Petitioner's application for a permit for Project No. 2021-0276 (NYSCEF Motion Seq. #3)

Oral argument on Respondents' motion to dismiss and on Petitioner's motion(s) for injunctive relief occurred on April 20, 2026, at which time the Court reserved decision.

The Court herein decides Respondents' motion to dismiss and Petitioner's motion and cross-motion for a stay of proceedings, upon consideration of the documents referenced above, and the oral argument that occurred on April 20, 2026.

STANDARD OF REVIEW

Initially, where, as here the Court is tasked with resolving a motion to dismiss pursuant to CPLR 3211, the Court must accept the facts as alleged in the pleading as true and accord the petitioner the benefit of every possible favorable inference (*see Faison v. Lewis*, 25 NY3d 220, 224 [2015]; *Zumpano v. Quinn*, 6 NY3d 666, 681 [2006]; *Leon v. Martinez*, 84 NY2d 83, 87-88 [1994]).

DISMISSAL OF HEARING DETERMINATION

Ripeness/Finality

Respondents Holt and the APA Board seek dismissal of the Hearing Determination Claims in the Amended Petition, arguing, that this special proceeding is premature as there is no final agency action ripe for challenge under CPLR Article 78 . In sum, Respondents claim Petitioner has not suffered an actual, concrete injury flowing from the Hearing Determination.

Petitioner objects to dismissal, claiming he has suffered injuries stemming from the Hearing Determination as he will have to expend substantial time and money participating in the hearing process which cannot be recouped, and that the public hearing renders Petitioner's application subject to denial.

Respondents, in reply, argue that being required to participate in the administrative process, and spend money toward that end, cannot be considered injury. They further argue that any claim that the Application could be denied because of the Hearing Determination is speculative as the Application could all the same be granted following the hearing. Both sides have cited legal authority for their respective positions.

Administrative actions as a rule are not final “unless and until they impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process” (*Chicago & S. Air Lines v. Waterman Corp.*, 333 US 103, 113 [1948]). In determining whether an administrative action is ripe for review, the Court must first consider whether it “is final and whether the controversy may be determined as a ‘purely legal’ question” (*Church of St. Paul & St. Andrew v. Barwick*, 67 NY2d 510, 519 [1986], *cert. denied* 479 US 985 [1986]; *see Matter of Adirondack Council, Inc. v Adirondack Park Agency*, 92 AD3d 188, 190 [3d Dept 2012]). An action will be deemed final if “a pragmatic evaluation” reveals that “the decision-maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury” (*Church of St. Paul & St. Andrew v. Barwick*, 67 NY2d at 519; *accord Matter of Gordon v. Rush*, 100 NY2d 236, 242 [2003]; *Matter of Essex County v. Zagata*, 91 NY2d 447, 453 [1998]). The Court must then consider whether “the anticipated harm is insignificant, remote or contingent [;] ... if the claimed harm may be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party,” the matter is not ripe (*Church of St. Paul & St. Andrew v. Barwick*, 67 NY2d at 520; *see Matter of Gordon v. Rush*, 100 NY2d at 242). That is, if the claimed harm “is contingent upon events which may not come to pass, the claim ... is nonjusticiable as wholly speculative and abstract” (*Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL-CIO v. Cuomo*, 64 NY2d 233, 240 [1984]; *see Matter of Federation of Mental Health Ctrs. v. DeBuono*, 275 AD2d 557, 561 [3d Dept 2000]) “This rule is ‘easier stated than applied’ ” (*Matter of Catskill Regional Off-Track Betting Corp. v. New York State Racing & Wagering Bd.*, 56 AD3d 1027, 1028 [3d Dept 2008], quoting *Matter of Essex County v. Zagata*, 91 NY2d at 453; *see Matter of Ctr. of Deposit, Inc. v. Vil. of Deposit*, 90 AD3d 1450 [3d Dept 2011]). Nevertheless, “the Court of Appeals has declined to adopt any bright-line rules designating particular actions as final, preferring instead to apply the foregoing test on a case-by-case basis in order to avoid inappropriate results in particular circumstances” (*Matter of Guido v. Town of Ulster Town Bd.*, 74 AD3d 1536, 1537 [3d Dept 2010][internal quotation marks and citations omitted]).

Here, Petitioner’s claim of injury based upon the potential that the Application could be denied after the hearing is speculative, as the APA Board could all the same approve the Application following the public hearing. As an approval of the Application could ameliorate the possibility that the Application could be denied, it cannot serve as a basis for the Court to find a

justiciable controversy (*see Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL-CIO v. Cuomo*, 64 NY2d at 240).

As for Petitioner's claim of injury based upon his having to participate in the public hearing, to include expending time and money doing so, the Court first highlights the nature of *Matter of Gordon v. Rush* (100 NY2d 236 [2003]), the case cited by Petitioner in support of such argument.

Gordon involved a challenge to a Town Board's positive declaration of potential significant environmental effects concerning proposed land use permit applications, and the Board's requirement that the property owners conduct a DEIS (*id.* at 242). The Board had declared itself as a lead SEQRA agency when issuing the declaration, notwithstanding that it had previously advised the Department of Environmental Conservation (DEC) that it did not wish to assume the role of lead agency and requested that DEC serve in such capacity (*id.* at 240–241). In response to the Board's request, DEC assumed lead agency status and eventually issued a negative environmental impact declaration, along with wetland permits to the property owners (*id.* at 240–242). When the owners then sought coastal erosion permits, the Board issued the positive declaration (*id.*).

The Court of Appeals concluded that the Board's administrative action was ripe for judicial review because the Board's SEQRA declaration imposed an obligation on the petitioners to prepare and submit a DEIS, after they “had already been through the coordinated review process and a negative declaration had been issued by the DEC as lead agency,” and where no apparent further proceedings would remedy the injury caused by the unnecessary and unauthorized expenditures associated with conducting a DEIS (*id.* at 243).

In *Matter of Ranco Sand and Stone Corp. v. Vecchio*, (27 NY3d 92, 100 [2016]), the Court of Appeals revisited its holding in *Gordon*, stating, *inter alia*:

...the ruling in *Gordon* was never meant to disrupt the understanding of appellate courts that a positive declaration imposing a DEIS requirement is usually not a final agency action, and is instead an initial step in the SEQRA process (*see e.g. Matter of Rochester Tel. Mobile Communications v. Ober*, 251 A.D.2d 1053, 1054, 674 N.Y.S.2d 189 [4th Dept.1998]). Instead, *Gordon* stands for the proposition that where the positive declaration appears unauthorized, it may be ripe for judicial review, as, for example, when the administrative agency is not empowered to serve as lead agency (*see Gordon*, 100 N.Y.2d at 242–243, 762 N.Y.S.2d 18, 792 N.E.2d 168), when the proposed action is not subject to SEQRA (*Matter of Center of*

Deposit, Inc. v. Village of Deposit, 90 A.D.3d 1450, 1452, 936 N.Y.S.2d 709 [3d Dept.2011]), or when a prior negative declaration by an appropriate lead agency appears to obviate the need for a DEIS suggesting that further action is improper (*Gordon*, 100 N.Y.2d at 243, 762 N.Y.S.2d 18, 792 N.E.2d 168).

(*Matter of Ranco Sand and Stone Corp. v Vecchio*, 27 NY3d 92, 100 [2016])

Here, the Court finds the Hearing Determination is a definitive position to hold a public hearing, that it may be unauthorized due to the participation of a conflicted member, and that the Petitioner has suffered injury in that he will have to expend time and money related to the proceeding that is otherwise unrecoverable in the administrative process. Under the circumstances, and upon a pragmatic evaluation, the Court finds that the Hearing Determination is final and therefore subject to review (see *Gordon v. Rush*, 100 NY2d at 242–243; *Matter of Essex County v. Zagata*, 91 NY2d at 453). The Court, accordingly, is denying so much of the moving Respondents' motion addressed to this issue.

Statute of Limitations

Respondents Holt and the APA Board also seek dismissal of the Hearing Determination Claims in the Amended Petition as barred by the applicable statute of limitations.

"To dismiss a cause of action pursuant to CPLR 3211(a)(5) on the ground that it is barred by the applicable statute of limitations, a defendant[/respondent] bears the initial burden of demonstrating, *prima facie*, that the time within which to commence the action has expired" (*Leace v Kohlroser*, 151 AD3d 707, 708 [3d Dept 2017] [internal quotation marks and citations omitted]; see *Lavelle-Tomko v Aswad & Ingraham*, 191 AD3d 1142 [3d Dept 2021]; *Matter of Steinberg*, 183 AD3d 1067, 1070 [3d Dept 2020]; *Haynes v. Williams*, 162 AD3d 1377, 1378 [3d Dept 2018], *lv denied* 32 NY3d 906 [2018]; *Krog Corp. v. Vanner Group, Inc.*, 158 AD3d 914, 915 [3d Dept 2018]). If the respondent meets this burden, "[t]he burden then shifts to the plaintiff to raise a question of fact as to whether the statute of limitations has been tolled or was otherwise inapplicable, or whether the action was actually commenced within the period propounded by the defendant" (*State of N.Y. Workers' Compensation Bd. v Wang*, 147 AD3d 104, 110 [3d Dept 2017])[internal quotation marks and citations omitted]; see *Krog Corp. v. Vanner Group, Inc.*, 158 AD3d at 915).

Here, Respondents assert the Hearing Determination Claims accrued on November 14, 2025, upon the issuance of the project order that directed the public hearing, which followed the

challenged meeting of the APA Board that concluded on the same date. In support thereof, Respondents highlight Executive Law 818 as operative, which states, “[a]ny act, omission, or order of the [Adirondack Park] [A]gency or of any officer or employee thereof, pursuant to or within the scope of this article, may be reviewed at the instance of any aggrieved person in accordance with article seventy-eight of the civil practice law and rules, but *application for such review must be made not later than sixty days from the effective date of the order or the date when the act or omission occurred*” (Executive Law 818[1])(court’s emphasis). As set forth by the moving Respondents, this proceeding commenced with the filing of the Petition on January 30, 2026, which is seventy-seven days after November 14, 2025, thus outside the sixty-day statute of limitations set forth at Executive Law 818.

Upon consideration of the foregoing, the Court finds that the moving Respondents have met their initial burden on the motion, thus shifting the burden to Petitioner to raise a question of fact as to whether the statute of limitations has been tolled or was otherwise inapplicable, or whether the action was actually commenced within the period propounded by the defendant (see *Krog Corp. v. Vanner Group, Inc.*, 158 AD3d at 915; *State of N.Y. Workers' Compensation Bd. v Wang*, 147 AD3d at 110).

In opposition to the motion, Petitioner argues the Hearing Determination Claims are not time-barred as the 60-day statute of limitations of Executive Law §818 was tolled, pursuant to CPLR 203(g) and the doctrine of equitable estoppel, until January 16, 2026, the day Petitioner discovered Respondent Holt’s alleged conflict of interest and participation in the Hearing Determination.

In support thereof, Petitioner asserts the failure of Respondents Holt, Director Rice and the APA Board to disclose Holt’s alleged conflict of tolled the statute of limitations because they are equitably estopped from asserting such defense and benefitting from their own wrongdoing.

Respondent asserts he has no duty to investigate and determine whether APA Board members have conflicts of interest, as such an affirmative duty to put interested parties on notice of a conflict of interest lies with Respondents Holt, Respondent Rice and the APA Board. Petitioner asserts he did not discover that he was aggrieved until learning of Respondent Holt’s conflict of interest on January 16, 2026, and the accrual of the statute of limitations, thus, began on that date.

Petitioner's reliance upon the doctrine of equitable estoppel is misplaced. Equitable estoppel may be invoked to defeat a statute of limitations defense so long as the plaintiff establishes that it "was induced by fraud, misrepresentations or deception to refrain from filing a timely action" (*Zumpano v. Quinn*, 6 NY3d 666, 674 [2006] [internal quotation marks and citation omitted]), and "that it was diligent in commencing the action 'within a reasonable time after the facts giving rise to the estoppel have ceased to be operational' " (*Marincovich v. Dunes Hotels & Casinos, Inc.*, 41 AD3d 1006, 1010 [3d Dept 2007], quoting *Simcusi v. Saeli*, 44 NY2d 442, 450 [1978]). Significantly, "equitable estoppel does not apply where the misrepresentation or act of concealment underlying the estoppel claim is the same act which forms the basis of the plaintiff's underlying substantive causes of action" (*Torrance Constr., Inc. v. Jaques*, 127 AD3d 1261, 1265 [3d Dept 2015] [internal quotation marks, brackets and citations omitted]; see *State Workers' Compensation Bd. v Wang*, 147 AD3d 104, 113 [3d Dept 2017]; *Kosowsky v. Willard Mtn., Inc.*, 90 AD3d 1127, 1130–1131[3d Dept 2011]; *Robare v. Fortune Brands, Inc.*, 39 AD3d 1045, 1046 [3d Dept 2007], *lv. denied* 9 NY3d 810 [2007]).

Here, the misrepresentations or acts of concealment underlying the estoppel claim as asserted by Petitioner, the failure of Respondents Holt, Director Rice and the APA Board to disclose Holt's alleged conflict of interest and refrain from participating in the Hearing Determination, are the same acts which forms the basis of the Petitioner's underlying substantive claims for annulment of the Hearing Determination. Equitable estoppel therefore does not apply (see *State Workers' Compensation Bd. v Wang*, 147 AD3d at 113).

Petitioner's reliance on CPLR 203(g) is also misplaced. Such law allows, in relevant part, "...where the time within which an action must be commenced is computed from the time when facts were discovered or from the time when facts could with reasonable diligence have been discovered, or from either of such times, the action must be commenced within two years after such actual or imputed discovery or within the period otherwise provided, computed from the time the cause of action accrued, whichever is longer" (CPLR 203[g][1])(Court's emphasis). However, as argued by Respondents, since the limitations period imposed by Executive Law § 818(1) expressly runs "from the effective date of the order or the date when the act or omission occurred," rather than from discovery, CPLR 203(g) does not apply. To the extent Petitioner argues *Rural Community Coalition, Inc. v. Vil. of Bloomingburg* (118 AD3d 1092, 1097 [3d Dept. 2014]) is

relevant to the factual allegations before this Court, the Court has considered and reject such argument.

Petitioner also argues the statute of limitations is tolled by the continuing wrong doctrine, which “is usually employed where there is a series of continuing wrongs and serves to toll the running of a period of limitations to the date of the commission of the last wrongful act.” (*Selkirk v. State of New York*, 249 AD2d 818, 819 [3d Dept 1998]). As claimed by Petitioner, the actual, concrete injury he is suffering is that he is being subjected to an unconstitutional, biased legal proceeding or, at the very least, an ongoing legal proceeding undermined by the fact that it was ordered by a conflicted tribunal and not a neutral decisionmaker. He further claims that each day the public hearing proceeding continues is a day the APA Board and Respondent Rice commit a wrong by allowing the proceeding to go forward and is a day Petitioner’s injuries continue.

Notwithstanding Petitioner’s arguments, the Court cannot find the continuing wrong doctrine is applicable to this matter, as the doctrine “may only be predicated on continuing unlawful acts and not on the continuing effects of earlier unlawful conduct” (*Selkirk v. State of New York*, 249 AD2d 818, 819, [3d Dept 1998]; see *Salomon v Town of Wallkill*, 174 AD3d 720, 721 [2d Dept 2019]; *Peckham v. Island Park Union Free Sch. Dist.*, 167 AD3d 641, 642 [2d Dept 2018]). “The distinction is between a single wrong that has continuing effects and a series of independent, distinct wrongs” (*Henry v. Bank of Am.*, 147 AD3d 599, 601 [1st Dept 2017] [internal quotation marks omitted]; see *Matter of Salomon v Town of Wallkill*, 174 AD3d 720, 721 [2d Dept 2019]). Here, Petitioner seeks to annul the Hearing Determination, based upon Respondent Holt’s alleged failure to disclose a conflict of interest and to refrain from participating therein. Petitioners’ alleged injuries arise from the continuing effects of the Hearing Determination and not from a series of continued wrongs.

In light of the foregoing, the Court finds Petitioner has failed to meet his shifted burden, is granting so much of the moving Respondents’ motion for dismissal pursuant to CPLR 3211(a)(5) and is dismissing the Hearing Determination Claims.

DISMISSAL OF THE DISQUALIFICATION DETERMINATION

Respondents Hearing Officer and Director Rice mover for dismissal of the Disqualification Determination Claim set forth in the Amended Petition, for failure to state a cause of action.

In moving for dismissal of the Disqualification Determination, Respondents argue, in sum: (1) that to the extent Petitioner challenges the Hearing Officer's and/or Director Rice's compliance with the lawful procedure addressed to bias and disqualification of the Hearing Officer, the Amended Petition fails to state a cause of action as their respective actions have at all time been in compliance with the procedure set forth at New York State Administrative Procedure Act (SAPA) § 303 and 9 NYCRR 580.8; and (2) Petitioner's challenges ultimately rely solely on claims of bias/conflict of interest that the Hearing Officer, approximately twenty-five years before his appointment, was employed by Adirondack Council, an opponent to the Application participating in the public hearing, and such claims alone, even if accepted as true, are insufficient to establish that the Disqualification 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.

In opposition, Petitioner's counsel argues Petitioner's cause of action is based upon the claim that Respondent Rice abused her discretion pursuant to CPLR §7803(3), and that it is sufficiently alleged that "it was arbitrary and capricious for Respondent Rice to conclude there was no conflict of interest when the administrative law judge (Respondent Greenwood) made no admissible submissions disclosing his conflicts of interest nor mention of his tenure as an officer of Adirondack Council". Petitioner's counsel also argues "the record before her [Director Rice] indicated only facts supporting a finding that there is a conflict of interest, or at the very least, that there should be further inquest into the matter".

Petitioner's counsel also asserts Petitioner "has successfully alleged the existence of Respondent Greenwood's conflict of interest". Notably, that "[h]e was an officer of Adirondack Council, which has publicly opposed the application for which there is an ongoing public hearing proceeding and over which he now presides". According to counsel, it is for these reasons the Disqualification Determination should be annulled and Petitioner's motion to disqualify Respondent Greenwood reheard on a complete record with submissions from Respondent Greenwood who has still not made a formal disclosure of his conflicts of interest as required by law and regulation.

"On a motion to dismiss a pleading pursuant to CPLR 3211(a)(7), all of the allegations in the petition are deemed true and the petitioner is afforded the benefit of every favorable inference" (*Matter of Grecco v. Cimino*, 100 AD3d 892, 897 [2d Dept 2012]; see *Faison v. Lewis*, 25 NY3d at 224; *Zumpano v. Quinn*, 6 NY3d at 681; *Leon v. Martinez*, 84 NY2d at 87-88). "In determining

such a motion, the sole criterion is whether the petition sets forth allegations sufficient to make out a claim that the determination sought to be reviewed was “made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion” (CPLR 7803[3]; *see Matter of Oddone v. Suffolk County Police Dept.*, 96 AD3d 758, 762 [2d Dept 2012]).

The procedure to be followed when seeking disqualification of an agency’s designation of a hearing officer is set forth at New York State Administrative Procedure Act (SAPA) § 303, which provides:

Except as otherwise provided by statute, the agency, one or more members of the agency, or one or more hearing officers designated and empowered by the agency to conduct hearings shall be presiding officers. Hearings shall be conducted in an impartial manner. *Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the agency shall determine the matter as part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the adjudicatory proceeding.* Whenever a presiding officer is disqualified or it becomes impractical for him to continue the hearing, another presiding officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom. (SAPA 303)(emphasis added).

Additionally, pursuant to 9 NYCRR 580.8, which is applicable to hearing officers designated by the APA for a public hearing:

- (a) The agency shall select a hearing officer as early as possible following its determination to hold a hearing. *The hearing officer shall make full disclosure, as part of the record, of all information he deems relevant to the issue of bias or other disqualification.*
- (b) Any issue concerning the qualification of the hearing officer shall be resolved in a pre-hearing conference if possible. All parties shall be given sufficient opportunity to challenge his designation by filing the affidavit referred to in section 303 of the State Administrative Procedure Act with the executive director, on notice to the hearing officer and the other parties.
- (c) Upon receipt of a copy of the affidavit, the hearing officer and the other parties to the hearing *may* submit responding similar affidavits concerning bias or disqualification. *Failure to do so will be considered to mean that the selection of the hearing officer is acceptable to the party.*
- (d) *The executive director shall decide the challenge within two business days of receipt of the affidavit and any responding affidavits. If he deems the challenging affidavit insufficient, he may either allow the party filing it to submit further written evidence, or he may order that the proceedings continue.*

(9 NYCRR 580.8)(Court's Emphasis added)

Here, initially, as can be seen above, there is nothing in the law that requires the Hearing Officer to take any action in response to the Petitioner's challenging affidavit. There is also nothing in the law that requires, or expressly allows for, Director Rice to "shift[] the burden to the Hearing Officer to rebut a presumption of conflict, or at the very least, have him put on the record that he does not have an affiliation or membership with Adirondack Council by submitting an affidavit swearing to his lack of personal, professional and financial connections that might raise an issue of bias or other disqualification". Accordingly, to the extent that the Disqualification Claims are based upon the failure for such actions to occur, the Amended Petition fails to state a cause of action.

As for the remainder of the allegations, it should be noted that although Petitioner's counsel asserts "it was arbitrary and capricious for Director Rice to conclude there was no conflict of interest when the administrative law judge (Respondent Greenwood) made no admissible submissions disclosing his conflicts of interest nor mention of his tenure as an officer of Adirondack Council", a review of the Disqualification Determination does not reveal any such finding. The thrust of Director's Rice reasoning is set forth in the Disqualification Determination as follows:

The Applicant requests disqualification because ALJ Greenwood was previously employed by the Adirondack Council for seven years and that the organization has taken a public position in opposition to the project and is now a party to the administrative hearing. The Applicant alleges that there is "an undeniable appearance of impropriety and ALJ Greenwood's impartiality is reasonably being questioned."

...

A review of the materials before me shows an absence of facts demonstrating bias or prejudgment by ALJ Greenwood. I do not find any specific, current or recent disqualifying relationship, whether personal, professional, or pecuniary. The Applicant has identified a prior employment connection with the Adirondack Council. It is undisputed, however, that that relationship ended 26 years ago and 22 years before comments were issued on the Project by the Adirondack Council. No facts have been alleged that support that ALJ Greenwood's prior employment would have informed the comments submitted by the Adirondack Council 22 years later; nor any facts concerning current membership, an ongoing employment relationship, or any other personal, professional or pecuniary relationship with the Adirondack Council or any other party. No specific evidence was offered to show

that ALJ Greenwood has or had any relationship with the Adirondack Council outside of this proceeding, or that ALJ Greenwood's conduct or actions was in any way biased.

The Applicant states that disqualification is required because there is an "appearance of bias." ALJ Greenwood has previously stated that he believes that he is able to conduct this proceeding in a fair and impartial manner. There is an insufficient basis to disqualify ALJ Greenwood, especially where the relationship which allegedly creates an appearance of bias is now decades removed and where the Agency Board has reserved to itself the exclusive right to make its own findings of fact and conclusions of law as part of its final Agency determination and order.

As can be seen, Director Rice denied the disqualification challenge on the basis of a lack of factual allegations demonstrating bias or prejudice by the Hearing Officer, and/or a specific, current or recent disqualifying relationship, whether personal, professional, or pecuniary.

While Petitioner characterizes the Disqualification Determination Claim in different ways, the fact of the matter is that it rests on allegations of an appearance of bias/conflict of interest on the part of Hearing Officer, based solely on the fact that approximately twenty-five years before the subject appointment, the Hearing Officer was employed by Adirondack Council, an opponent to the Application participating in the public hearing. Such allegations alone, even if accepted as true, are insufficient to establish a violation of the Hearing Officer's ethical obligations (*see for example Matter of Nichols v. Vil. of Malone*, 229 AD2d 721 [3d Dept 1996]; Advisory Comm on Jud Ethics Op 87-26)) and are also insufficient to establish that the Disqualification 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 (*see Matter of Oddone v. Suffolk County Police Dept.*, 96 AD3d at 762). The Court, accordingly, is granting so much of the moving Respondents' motion for dismissal pursuant to CPLR 3211(a)(7) and is dismissing the Disqualification Determination Claims.

REMAINING RELIEF

In light of the Court's findings above, that all Claims contained in the Amended Petition are subject to dismissal: (1) the remainder of Respondents' grounds for dismissal are rendered academic; and (2) Petitioner's motion(s) for a preliminary injunction are rendered moot. Accordingly, and for the foregoing reasons, it is hereby

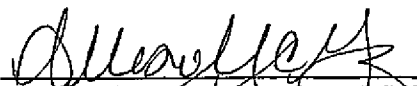
ORDERED that the Respondents' motion to dismiss is granted to the extent provided herein; and it is further

ORDERED ADJUDGED AND DECREED that the Amended Petition be, and hereby is, dismissed in its entirety, for the reasons provided herein; and it is further

ORDERED that this counsel for Respondents shall, within fourteen (14) days of the date hereof: 1) serve a copy of this Decision, Order and Judgment, with notice of entry, upon the Petitioner; and 2) file proof of such service.

SO ORDERED.

Dated: September 25, 2026
Elizabethtown, NY


Hon. Allison M. McGahay, J.S.C.

ENTERED + FILED
ESSEX COUNTY CLERKS OFFICE
09/25/2026

