Matter of Coman v Housing Trust Fund Corp.
2018 NY Slip Op 31896(U)
August 8, 2018
Supreme Court, New York County
Docket Number: 151677/18
Judge: Carol R. Edmead

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 35

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In the Matter of the Application of

BRENDA COMAN and FRANK McALONAN,
Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

Index No.: 151677/18
DECISION/ORDER

-against-

HOUSING TRUST FUND CORPORATION and GOVERNOR'S OFFICE OF STORM RECOVERY,
Respondents.

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HON. CAROL R. EDMEAD, JSC:

In this Article 78 proceeding, petitioners Brenda Coman (Coman) and Frank McAlonan (McAlonan; together, petitioners) seek a judgment to overturn an order of the respondent agencies as arbitrary and capricious (motion sequence number 001). For the following reasons, this petition is denied.

FACTS

Petitioners are the owners of a waterfront one-family cottage, located at 15 Browns River Road in the Town of Sayville, County of Suffolk, State of New York, that suffered flood damage on October 29 & 30, 2012, as a result of Superstorm Sandy. *See* verified petition, ¶¶ 6, 13-14. As a result, petitioners expended a large amount of money to both make structural repairs to their home, and also to elevate it as a precaution against possible future flooding. *Id.*, ¶ 15. Petitioners specify that they sought the necessary funds from three sources, and received: 1) a U.S. Small Business Administration disaster loan (the SBA loan); 2) insurance proceeds from

FEMA's National Flood Insurance Program (the NFIP proceeds); and 3) a grant from the NY Rising Housing Recovery Program (the NY Rising grant). *Id.*, ¶¶ 17-19. Petitioners state that the original amounts that they received pursuant to the SBA loan and the NFIP proceeds were later supplemented as a result of the SBA's Mitigation Loan Program (the Mitigation loan) and the NFIP's Increased Cost of Compliance Program (the ICC funds). The dispute that underlies this proceeding involves respondents' contention that these latter payments, of which they were initially unaware, should be classified as a "duplication of benefits" (DOB); i.e., extra funds for work that respondents had previously issued petitioners the NY Rising grant to undertake.

The respondent Housing Trust Fund Corporation (HTFC) is a New York licensed public benefits corporation that was established pursuant to the Private Housing Finance Law as a subsidiary of the New York State Housing Finance Agency. *See* verified answer, Lozito aff, ¶¶ 4-7; Administrative Record (Adm. Rec.), R0034-0045. HTFC's mission is to coordinate the resources of various government agencies and/or public benefits corporations into "programs" that are created to address various housing-related issues. *Id.* The NY Rising Housing Recovery Program (NY Rising) is one such program, whose goal was to distribute the federal block grant money that had been provided to New York State by the federal Department of Housing and Urban Development (HUD) to assist New York residents who had suffered flood or storm related damage to their property. *Id.* The co-respondent Governor's Office of Storm Recovery (GOSR) is another such program, whose goal is to administer NY Rising's operations for HTFC. *Id.*

Petitioners originally commenced an online application to NY Rising for assistance on June 11, 2013. *See* verified petition, ¶ 18. Thereafter, as part of the application process, petitioners executed a "Subrogation and Assignment Agreement" on September 5, 2013. *See*

verified answer, Lozito aff, ¶ 37; Adm. Rec., R0288-0292. The portions of that agreement that are pertinent to this proceeding include: 1) paragraph 1 (b), whereby petitioners acknowledge that benefits awarded by NY Rising are taken from the HUD block grant, and that their disbursement is governed by 42 USC §§ 5121-5207; a/k/a the "Stafford Act"; and 2) paragraph 1 (c), wherein petitioners agreed to subrogate and assign to HTFC any amounts that they might receive from other funding sources which HTFC or NY Rising might determine to constitute DOB payments, under the provisions of the Stafford Act. *Id.* Later, also as part of the application process, NY Rising sent an inspector to petitioners' property on January 9, 2014 to conduct a damage assessment. *Id.*, Lozito aff, ¶ 38. That inspection resulted in a report, dated January 20, 2014, which detailed the allowable activities ("AA") and the estimated cost of repairs ("ECR") as regards the renovation of petitioners' property, and the AA (but not the ECR) as regards the elevation of petitioners' property. *Id.*; Adm. Rec., R0315-0449.[1] The January 20, 2014 report concluded that petitioners had secured sufficient funds from other sources (i.e., the aforementioned SBA loan and NFIP proceeds) so that they had no need for additional grant money to use for their property's renovation, but that petitioners did have unmet financial need to complete their property's elevation. *Id.* As a result of the inspection report, on March 23, 2014 NY Rising sent petitioners an award letter that: 1) contained the finding that, even after taking into account the NFIP's ICC funds that petitioners had by that time acquired, petitioners still had $89,253.55 in unmet elevation expenses; and 2) that they were therefore entitled to an NY Rising grant in that amount. *Id.*, Lozito aff, ¶ 47; Adm. Rec. R0452-0457. Thereafter, on March 31,

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[1] HTFC explains that there was no need for the inspector to evaluate the ECR regarding elevation of petitioners' property, since the elevation work had been substantially completed before the inspection took place. *See* verified answer, Lozito aff, ¶ 44.

2014, petitioners executed an "NY Rising Homeowner Grant Agreement" with HTFC to obtain that money. *Id.*, Lozito aff, ¶ 50; Adm. Rec. R0458-0514. The relevant portions of the grant agreement: 1) recite that the grant is taken from a block grant fund that was given to New York State by HUD and is subject to the Stafford Act; 2) recite that the Stafford Act requires homeowners who receive grants to reimburse HTFC for any DOB payments; 3) set forth petitioners' agreement to make such DOB reimbursements; and 4) set forth petitioners' continuing obligation to submit additional documentation that might result in the modification of the grant amount. *Id.* HTFC states that petitioners submitted several "DOB and construction scope clarification" requests whereby they sought to challenge the AA and ECR determinations regarding both their renovation and elevation related expenses, and to recalculate the amounts of both their DOB determination and their grant amount. *Id.*, Lozito aff, ¶¶ 55-66; Adm. Rec. R0518-0628. The results of those requests were as follows.

During its review of petitioners' first "clarification request," HTFC increased the AA pertaining to petitioner's elevation-related expenses by permitting several previously disallowed items of work to be included on the list, and accordingly increased petitioners' grant eligibility from $89,253.55 to $94,918.92 because of the newly included expenses. *See* verified answer, Lozito aff, ¶¶ 58-60. HTFC notes that petitioners disagreed with the calculations, and felt that the final amount should have been higher. *Id.*, ¶ 60.

During its review of petitioners' second "clarification request," HTFC sought information regarding petitioners' SBA loan, and discovered that a portion of that loan had been authorized solely for elevation-related expenses (although HTFC had originally assumed that the loan was used entirely for repairs). *See* verified answer, Lozito aff, ¶¶ 61-66. HTFC states that, at this

time, it also discovered the existence of the ICC payments that petitioners had received from NFIP. *Id.* HTFC further states that these discoveries caused it to perform a new DOB calculation regarding petitioners' elevation-related expenses, which resulted in the finding that its grant award to petitioners to reimburse them for those expenses had been too high. *Id.*, ¶¶ 64-66.

As a result of its review, NY Rising sent petitioners a letter on January 25, 2016 that informed them that it had determined that their unmet elevation related expenses should be reduced to $26,018.92 from the original higher amount, with the result that their $79,455.89 grant amount included a $53,436.94 overpayment. *See* verified answer, Lozito aff, ¶ 67; Adm. Rec., R0629-0634.

Thereafter, on August 9, 2016, GOSR's reconciliation unit sent petitioners a letter that officially informed petitioners of NY Rising's findings, and demanded that they repay the $53,436.94 overpayment (the repayment letter). *See* verified answer, Lozito aff, ¶ 68; Adm. Rec., R0635-0639. The repayment letter stated, in pertinent part, as follows:

> "This letter is to inform you that your NY Rising Housing Recovery Program ('the Program') Grant Award has been updated. The Program has done a full reconciliation of your file, which has resulted in a revision to your Grant Award calculation.
>
> * * *
>
> "Federal law does not allow Grant funds to be awarded if any other funding has been received for the repair and/or construction of the property. Receiving funds from two different sources for the same project is considered a Duplication of Benefits. At the time of your Original Grant Award, the Program was aware of funds that you had received from other sources for your project. Subsequent to the Original Grant Award, the Program was made aware of changes in the amount of funds received from other sources for your project
>
> * * *

> "These changes caused a reduction in your Grant Award. The Program funding you have received exceeds the reconciled Grant Award. You have received an overpayment from NY Rising Housing Recovery Program in the amount of $53,436.94.
>
> * * *
>
> "Your Reconciliation Case Agent . . . is available to answer any questions or concerns you have about this information . . .
>
> "Should you wish to pay the FULL amount owed, please complete the attached Repayment Form and remit payment . . .
>
> "Should you disagree with the information above, please complete and send the enclosed Appeal Form by October 8, 2016."

Id., Adm. Rec., R0629-0634 (emphasis in original). Respondents state that petitioners submitted the appeal form on October 7, 2016, along with a third "DOB and construction scope clarification" request and a quantity of supporting documents. *Id.*, Lozito aff, ¶ 69; Adm. Rec., R0653-0767.

Respondents further state that NY Rising reviewed both the appeal and the third "clarification request," and made further adjustments to petitioners' total AA, ECR and DOB figures as a result of the aforementioned documents. *See* verified answer, Lozito aff, ¶¶ 69-74. Specifically, NY Rising: 1) increased the AA and decreased the DOB pertaining to petitioner's property renovation costs, but found that petitioners were still not entitled to a grant to reimburse them for those costs, since petitioners had obtained more than sufficient funds from other sources (i.e., the SBA loan, the NFIP funds and the later augmentations thereto); and 2) decreased the AA - and correspondingly increased the DOB - pertaining to petitioners' property elevation costs, which resulted in a finding that petitioners were not entitled to a grant to reimburse them for those expenses at all, and mandated that petitioners be required to return the entire $79,455.89

NY Rising grant that they had received. *Id.* Respondents based this latter finding upon information - discovered in petitioners' documents - that they had elevated their property to a height of thirteen feet, which was five feet higher than the maximum height permitted by the governing guidelines. *Id.*, ¶¶ 72-73. Respondents also note that a NY Rising case manager called petitioners on May 24, 2014 to advise them that if they withdrew their third "clarification request," they would only have to repay the $53,436.94 specified in the payment letter, rather that remit the entire $79,455.89 grant. *Id.*, ¶ 74. Respondents declined to do so, however. *Id.*

As a result, on August 2, 2017, GOSR sent petitioners a letter that officially denied their appeal of the repayment letter (the denial letter). *See* verified answer, Lozito aff, ¶ 75; Adm. Rec. R0822-0824. The relevant portions of the denial letter state as follows:

> "The [GOSR]'s NY Rising Reconciliation Evaluation Team met on August 1, 2017 to review the appeal received on October 8, 2016. After careful consideration, your appeal is denied.
>
> "Your application was deemed to have received NY Rising grant funds in excess of the total amount you are eligible to receive under federal and program regulations. Financial assistance received from another source that is provided for the same purpose as the grant funds is considered a [DOB] as outlined in Section 3.6 of the NY Rising Homeowner Policy Manual. Your grant award was determined by calculating your Total Project Cost (a combination of Allowable Activities, Estimated Cost to Repair and Elevation - if applicable) and deducting other funds you have received from third parties which is considered a [DOB] (e.g., FEMA assistance, SBA Loan, Homeowner or Flood Insurance or Charitable Assistance).
>
> * * *
>
> "Federal law does not allow Grant funds to be awarded if any other funding has been received for the repair and/or construction of the property. You received $162,572.55 from SBA and Flood Insurance NFIP for the Construction repair of your home. Additionally, you received $98,900.00 from NFIP ICC (Elevation) and SBA Mitigation for the elevation of your home. As outlined in Section 3.6.3 of the NY Rising Homeowner Policy Manual, per federal regulation, the disbursed

> SBA loan for the repair/reconstruction is applied as a [DOB] to the Construction repair of your home and the Mitigation is applied as a [DOB] to the Elevation. [NY Rising] confirmed that you received $85,800.00 from SBA for real estate repair/replacement and $68,900.00 from SBA for Mitigation. Your proof of loss statement was reviewed and it was determined that you received insurance funds for items that are not eligible through the NY Rising Program. As such, those funds received for ineligible items are not considered a [DOB], and therefore your insurance calculation was reduced by $7,901.73 for funds you received for pressure wash, built-in bookcase, flood loss cleanup air movers and dehumidifiers. Your Reconciled Total Net [DOB] is $253,570.82. This is comprised of $154,670.82 Construction Repair DOB and $98,900.00 Elevation DOB.
>
> "The reconciled Total Net [DOB] is greater than the reconciled Total Project Cost [of $171,758.47] resulting in a $0.00 award.
>
> "Please remit payment for $79,455.86 as instructed on the attached Repayment Form."

Id., Adm. Rec. R0822-0824. Respondents conclude that, despite their having made several demands for the aforementioned repayment, petitioners have failed to remit it, and the amount remains due. *Id.*; Lozito aff, ¶¶ 76, 83.

For their part, petitioners assert that the August 2, 2017 denial letter was not a final agency determination, and they present a quantity of email correspondence between themselves and the NY Rising Reconciliation Case Agent which took place afterwards. *See* petitioners' mem of law at 3-6; verified petition, Coman/McAlonan aff, exhibits A, F, H, I. Petitioners specifically assert that "it was not until [they] received a letter from respondents dated October 26, 2017 which provided a 'final calculation' - and [they] received no further opportunity to have their claims reviewed - that they understood the matter to be officially concluded at an administrative level." *Id.*, at 5. That letter is actually an email from the NY Rising Reconciliation Case Agent, dated October 26, 2017, which contains an explanation of the

elevation-related findings set forth in GOSR's August 2, 2017 denial letter. *See* Adm. Rec., R0895-0896. The email does not indicate that any new evidence was reviewed after August 2, 2017 or set forth any new findings. *Id.* As regards the "final calculation" that petitioners' counsel refers to in their memorandum of law, the October 26, 2017 email states, at the end, as follows:

> "Final Calculation
> "The total funds received from SBA and ICC for the elevation of your home total $98,900.00 which exceeds your Total Project Cost of $93,783.00 resulting in no unmet need for the elevation of your home. Thus, you are required to return all the funds previously disbursed by [NY Rising].
>
> "Next.Steps
> "You indicated you were financially unable to repay the funds owed. To file for financial help, please complete the attached application and return [it to NY Rising] . . ."

Id. The court notes that, thereafter, GOSR continued to send petitioners demand letters for repayment until as recently as January 16, 2018. *Id.*, R0902-0913. Whatever petitioners' understanding of the situation may have been, it is clear that they commenced this Article 78 proceeding on February 23, 2018 by filing a petition and notice of petition. *See* verified petition. Respondents filed a verified answer on April 23, 2018. *See* verified answer. The matter is now before the court (motion sequence number 001).

DISCUSSION

Article 78 proceedings are governed by a four-month statute of limitations which begins to run "after the determination to be reviewed becomes final and binding upon the petitioner . . . or after the respondent [agency's] refusal, upon the demand of the petitioner . . . to perform its duty." CPLR 217 (1); *see also Matter of Best Payphones, Inc. v Department of Info. Tech. &*

Telecom. of City of N.Y., 5 NY3d 30, 34 (2005). The Court of Appeals has identified two requirements for fixing the time when agency action shall be deemed to be "final and binding upon the petitioner." 5 NY3d at 34. "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." *Id.* Here, petitioners argue that their February 23, 2018 Article 78 petition was timely, despite being filed more than six months after GOSR's August 2, 2017 denial letter. *See* petitioners' mem of law at 3-6. Petitioners specifically refer to an October 16, 2017 email that they received from the NY Rising Reconciliation Case Agent in response to one of their own earlier emails that stated, in part, as follows:

> "We received your email. I have forwarded it to Meredith as we wait for [NY Rising's] additional guidance. In the meantime, can you please tell me if you installed a ramp or lift while elevating your home?"

See Adm. Rec., R0893-0894. Petitioners then argue that respondents "indication that [they] were waiting for further guidance, and their "request for new information/documentation relating to wether petitioners [had] installed a ramp or used a lift . . . strongly suggested that the matter was still under consideration and not yet final." *See* petitioners' mem of law at 4-5. Respondents counter that "as indicated by the administrative record, the email communications after August 2, 2017 were intended to clarify the Final Award Calculation and included no indication that petitioners were entitled to submit additional documentation for review, or could otherwise change the determination." *See* respondents' mem of law at 9-11. Petitioners' reply papers merely restate their original argument. *See* Coman/McAlonan reply aff, ¶¶ 9-18. After reviewing all of the instant correspondence, however, the court finds for respondents on the

statute of limitations issue.

The administrative record discloses the context in which the NY Rising Reconciliation Case Agent made the statements in her October 16, 2017 email regarding "further guidance" and the purported "request for new information/documentation" upon which petitioners base their argument. Both refer back to an earlier email, dated October 6, 2017, from petitioners to Estefania Gonzalez (Gonzalez), the NY Rising Reconciliation Case Agent to whom the review of petitioners' NY Rising grant had been assigned. The October 6, 2017 email states, in pertinent part, as follows:

> "Hi Estefania
>
> "We would be available for a follow-up call after the holiday on Tuesday, October 10th. . .
>
> "Among other things, hopefully we can cover a couple of key underlying issues, such as:
>
> > "why we never received an elevation ECR since the elevation work was not complete when the inspector visited, as can be seen from his report and its photos; [and]
> >
> > "the handling of the DOB review by Katrina Zendarian and her handling of the 6100 request for which we attach additional emails."

See Adm. Rec., R0872-0892.

In Gonzalez's subsequent October 16, 2017 email reply, her statement regarding "further guidance" refers to the first issue that petitioners had mentioned; i.e., their assertion that they should have received an elevation ECR, since the documentary evidence showed that the elevation-related work on their home had *not* been completed at the time of the NY Rising inspector's January 9, 2014 visit. *See* Adm. Rec., R0893-0894. Gonzalez's October 16, 2017

email indicates that she had passed this issue on to her co-worker, NY Rising Appeals Manager Meredith Derr (Derr), for "further guidance." *Id.* However, it is evident from Gonzalez's final October 26, 2017 email that NY Rising's appeals unit had concluded that it did not need to re-open its review of petitioners' case in response to this allegation. *Id.*, Adm. Rec., R0895-0896. That email makes reference to two items of work that apparently had not been completed at the time of the inspector's January 9, 2014 visit: 1) installation of flood vents; and 2) payment of storage fees for the elevation-related construction materials that had been kept on site. *Id.* Gonzalez's October 26, 2017 email noted that, pursuant to the provisions of the NY Rising Homeowner Program Manual, these specific items of work are not eligible for reimbursement via NY Rising grant. *Id.* As a result, they could not be included as AA items, and the fact that they had not been completed did not trigger the need for an ECB, either. *Id.* This appears to have been the "guidance" that Gonzalez received from Derr on this issue. For its part, the court notes that the administrative record shows that petitioners did not, and have not, presented any evidence to support their allegation that any qualifying elevation-related work was performed after the January 9, 2014 inspection. Instead, the court concludes that petitioners' allegation was unfounded. Because it is unfounded, the court therefore finds that it cannot afford petitioners a ground upon which to avoid the applicable four-month statute of limitations period. Had petitioners presented such evidence, NY Rising would have presumably acted on it, or petitioners might have requested this court to remand the proceeding to NY Rising in the interests of justice. Such is not the case, however. Accordingly, the court rejects petitioners' first opposition argument.

The statement in Gonzalez's October 16, 2017 which petitioners characterize as a

"request for new information/documentation" as to whether or not they had "installed a ramp or lift while elevating your home," refers to the second "issue" petitioners had mentioned in their previous October 6, 2017 email; i.e., "the handling of the DOB review . . . and the 6100 request" by Gonzalez' co-worker, NY Rising Project manager Katrina Zendarian (Zendarian). *See* Adm. Rec., R0872-0894. One day earlier, on October 5, 2017, petitioners had emailed Zendarian to complain that the Scope of Work Review and the 6100 request (which together made up petitioners' third "clarification request") had not been afforded a complete review by NY Rising, because: 1) the review had "omitted . . . the installation of the industrial strength folding stairway, pictured in the inspector's report, needed to allow two men to hoist the heavy boiler and hot water tank to the attic"; and 2) "all the other listed items [i.e., in petitioners' 6100 form] remain unanswered." *Id.*, R0872-0892. As was previously mentioned, petitioners allege that Gonzalez's subsequent October 6, 2017 inquiry about this folding stairway (which she referred to as a "ramp or lift") constituted a "request for new information/documentation . . . [which] strongly suggested that the matter was still under consideration and not yet final." *See* petitioners' mem of law at 4-5. However, this interpretation is untenable in light of Gonzalez's final October 26, 2017 email which plainly states that "all line items on your Form 6100 . . . dated 2/28/17, submitted by your design professional . . . have been added to your elevation Scope of Work . . . [and] these additions are reflected in the elevation scope of work report, dated 7/17/17." *See* Adm. Rec., R0895-0896. GOSR's denial letter was issued *after* that date, on August 2, 2017. *Id.*, Adm. Rec. R0822-0824. Thus, petitioners' suggestion that Zendarian had failed to complete her work on their Scope of Work Review or 6100 request *before* the denial letter was issued is another unfounded allegation. As a result, the court finds that the portions of

Gonzalez's October 6 and October 26, 2017 emails that concern this "issue" amount to no more than an explanation of the action that GOSR had already concluded on August 2, 2017, and that they do not afford petitioners any reason to assume that the matter of their third "clarification request" was still open. It was plainly closed. Accordingly, the court rejects petitioners' second opposition argument.

As was observed at the beginning of this decision, the Court of Appeals deems agency action to be "final and binding upon the petitioner" when: 1) "the agency [has] reached a definitive position on the issue that inflicts actual, concrete injury"; and 2) "the injury inflicted may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party." *Matter of Best Payphones, Inc. v Department of Info. Tech. & Telecom. of City of N.Y.*, 5 NY3d at 34. Here, it is clear that both factors are present. GOSR's August 9, 2016 repayment letter informed petitioners that NY Rising had revised their grant award, and that petitioners were therefore obligated to repay the award amount to GOSR, although the petitioners also had 60 days within which to appeal GOSR's determination. *See* Adm. Rec., R0629-0634. GOSR's subsequent August 2, 2017 denial letter stated that petitioners' appeal was denied, and instructed petitioners to make reimbursement. *Id.*, Adm. Rec. R0822-0824. In the court's view, these letters demonstrate GOSR's "definitive position" on the issue of whether petitioners are obligated to reimburse GOSR for the NY Rising grant. GOSR has plainly found that they are. The fact that petitioners sought and received additional explanations from NY Rising, which GOSR administers, is of no moment, since it is GOSR which makes the final determinations regarding NY Rising grants (pursuant to regulations). GOSR's August 2, 2017 denial letter also makes it clear that there is no "further administrative

action or . . . steps available" by which petitioners could challenge GOSR's denial of their appeal. That letter plainly states that "[a]fter careful consideration, your appeal is denied," and does not mention any other procedural avenues for petitioners to pursue. As was discussed earlier in this decision, the court has rejected - as mischaracterizations - petitioners arguments that the text of their subsequent correspondence with NY Rising shows ambiguity as to whether GOSR's decision was final. The court finds that there was no ambiguity on this issue. In view of its finding that GOSR's decision - as presented in its August 2, 2017 denial letter - constituted a "final and binding" agency determination, the court concludes that the four-month statute of limitations mandated by CPLR 217 (1) began to run on that date. Because petitioners did not commence this Article 78 proceeding until February 23, 2018, it is therefore untimely, and should be dismissed on that ground.

The court notes, in closing, that, although CPLR 217 does not provide for the tolling of the limitations period "in the interests of justice," CPLR 306-b does permit the late service of a petition and notice of petition on this ground when certain mitigating factors are present. CPLR 306-b; *see also Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95 (2001). One of those factors is that the petitioners' claims "have merit." *See e.g. Matter of Palmateer v Greene County Indus. Dev. Agency*, 38 AD3d 1087 (3d Dept 2007). Here, however, it appears that petitioners' claims lack merit, since they are based on further factual mischaracterizations such as: 1) that elevation work on their property had not been completed at the time of NY Rising's January 9, 2014 inspection of their property; and 2) that the Town of Islip's local regulations and ordinances required petitioners to elevate their property by an additional five feet. *See* verified petition, Coman & McAlonan aff, ¶¶ 30-34. The evidence at hand plainly shows these statements to be

incorrect. *Id.*, exhibit K; Adm. Rec., R0306-0449. Thus, the court finds that petitioners may not seek to excuse their untimely commencement of this proceeding "in the interests of justice," and concludes that it must be dismissed.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition of Brenda Coman and Frank McAlonan for relief, pursuant to CPLR Article 78 (motion sequence number 001), is denied and the petition is dismissed with prejudice. And it is further

ORDERED that counsel for respondents shall serve a coy of this Order with Notice of Entry within twenty (20) days of entry on counsel for petitioners.

Dated: New York, New York
August 8, 2018

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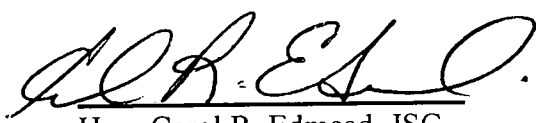

Hon. Carol R. Edmead, JSC
HON. CAROL R. EDMEAD
J.S.C.