

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application of
MICHAEL SEIDEL and MARION SEIDEL,

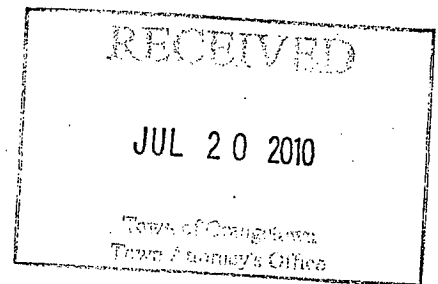
DECISION & ORDER

Petitioners,

INDEX NO. 236/2010

-against-

PATRICIA PRENDERGAST, as the
Commissioner of Personnel of Rockland
County, and Individually, the ROCKLAND
COUNTY DEPARTMENT OF PERSONNEL, THE
COUNTY OF ROCKLAND, THE TOWN OF
ORANGETOWN, THE TOWN BOARD OF THE
TOWN OF ORANGETOWN, THE POLICE
COMMISSION OF THE TOWN OF ORANGETOWN,
PAUL WHALEN, as Town Supervisor,
as Police Commissioner, and Individually,
DENNIS TROY, as Town Board Member,
as Police Commissioner and Individually,
TOM DIVINY, as as Town Board Member, as
Police Commissioner and Individually,
NANCY LOW HOGAN, as Town Board
Member, as Police Commissioner
and Individually, MICHAEL MATURO, as
Town Board Member, as Police
Commissioner and Individually,
and KEVIN NULTY,



Respondents.

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The following sets of papers numbered 1 to 9 were considered
on the motion by Kevin Nulty and the motion by the Town of
Orangetown to dismiss the petition:

Notice of petition, petition, and
exhibits A-G

1

Notice of motion, affirmation, and
exhibit A; memorandum of law

2,3

Notice of motion, affirmation, and
exhibits A-K; memorandum of law

4,5

Affirmation in opposition and exhibits A-G and B&C; memorandum of law	6,7
Reply memorandum of law	8
Reply memorandum of law	9

Upon review of the foregoing, Nulty's motion and the Town of Orangetown's motion are granted.

The petition in this proceeding seeks, among other things, to annul the May 13, 1997 appointment of Kevin Nulty to the position of Chief of Police in the Town of Orangetown on the ground that the appointment did not comport with the Rockland County Police Act or with the merit and fitness requirement of the New York State Constitution.

The petitioners lack standing to bring this proceeding because they

failed to show that "he or she will suffer a harm that is in some way different from that suffered by the public at large and that the alleged injury falls within the zone of interest sought to be promoted or protected by the statute under which the government agency has acted" (*Matter of Rediker v. Zoning Bd. of Appeals of Town of Philipstown*, 280 A.D.2d 548, 549 [2001], citing *Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 772-774 [1991]; *Matter of Long Is. Pine Barrens Socy. v. Town of Islip*, 261 A.D.2d 474, 475 [1999]).

Clark v. Town Board of Town of Clarkstown, 28 A.D.3d 553, 553 (2d Dept. 2006).

Further, the petitioners do not qualify for "Common-law Taxpayer Standing" because they challenge an administrative

action, and because there was no barrier to judicial scrutiny of the appointment. See *Clark v. Town Board of Town of Clarkstown*, *supra*.

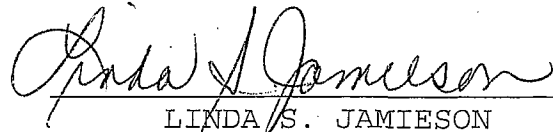
In any event, this proceeding is time-barred because the statute of limitations began to run when Nulty was appointed. See *Platt v. Town of Southampton*, 46 A.D.3d 907 (2d Dept. 2007). While the four-month statute of limitations does not apply to continuing violations of the merit and fitness requirement of the New York State Constitution (see, e.g., *Grossman v. Rankin*, 43 N.Y.2d 493 [1977]), Nulty's appointment does not represent a continuing practice, and a violation of the Rockland County Police Act, assuming for the sake of argument that there was one, is not a violation of the Constitution.

In view of these grounds for dismissal, the Court need not address any of the parties' other contentions.

This decision shall constitute the order of this Court.

E N T E R

Dated: New City, New York
July 12, 2010



LINDA S. JAMIESON
SUPREME COURT JUSTICE

BUNYAN & BAUMGARTNER LLP
500 Bradley Hill Road
Blauvelt, New York 10913

KEANE & BEANE, P.C.
445 Hamilton Avenue, Suite 1500
White Plains, New York 10601

JOHN S. EDWARDS, ESQ.
Town of Orangetown
26 Orangeburg Road
Orangeburg, New York 10962