

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1059

TP 08-01804

PRESENT: SMITH, J.P., CENTRA, FAHEY, CARNI, AND PINE, JJ.

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IN THE MATTER OF PATRICIA GLANVILLE, PETITIONER,

V

MEMORANDUM AND ORDER

CAYUGA COUNTY BOARD OF HEALTH AND ELANE DALY,  
PUBLIC HEALTH DIRECTOR, RESPONDENTS.

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ABITBOL & CHERRY, LLP, LIVERPOOL (GILLES R.R. ABITBOL OF COUNSEL), FOR  
PETITIONER.

FREDERICK R. WESTPHAL, COUNTY ATTORNEY, AUBURN, FOR RESPONDENTS.

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Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Cayuga County [Mark A. Fandrich, A.J.], entered August 25, 2008) seeking, inter alia, to annul a determination of respondents. The determination found after a hearing that petitioner violated the Clean Indoor Air Act and denied her application for a food service permit.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking, inter alia, to annul the determination that she violated the Clean Indoor Air Act (Public Health Law art 13-E) and denying her application for a food service permit. Contrary to the contention of petitioner, her "right to due process . . . was not violated inasmuch as the record establishes that [she] received adequate notice of the allegations against [her] and an opportunity to be heard" (*Matter of Oznor Corp. v County of Monroe*, 60 AD3d 1492, 1493). Also contrary to petitioner's contention, we conclude that the establishment in question is a "food service establishment" within the meaning of the State Sanitary Code (see 10 NYCRR 14-1.20 [a]), and petitioner therefore was required to obtain a food service permit to operate the establishment. Finally, the determination is supported by substantial evidence (see generally *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181-182; *Matter of 8-Ball Laundry Lounge, Inc. v Tobe*, 55 AD3d 1300).

Entered: October 2, 2009

Patricia L. Morgan  
Clerk of the Court