

Leprine v New York City Off. of Admin. Trials & Hearings

2024 NY Slip Op 31306(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 162237/2019

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

ANNETTE LEPRINE

Petitioner,

- v -

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS
AND HEARINGS,

Respondent.

-----X

INDEX NO. 162237/2019

MOTION DATE 4/10/2024¹

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for ARTICLE 78.

The petition is granted as described below.

Background

Petitioner explains that she owns a home in Jamaica, Queens. In September 2018, a city inspector observed that a side entrance to this property did not have a handrail and issued a summons to petitioner. Petitioner then received a second summons in November 2018 for failure to file a certificate of correction. Petitioner insists, however, that she submitted paperwork demonstrating that she corrected the issue by having a contractor install a handrail.

After a hearing in 2019, petitioner was assessed a fine of \$312 for the failure to have a handrail and a \$1,250 fine for failing to file the certificate of correction (NYSCEF Doc. No. 19).

¹ Although this proceeding was only reassigned to the undersigned this week, the Court is well aware that this proceeding has been pending for far too long. The Court apologizes, on behalf of the Court system, for the inexplicable and inexcusable delay in the resolution of this proceeding.

The hearing officer imposed a mitigated penalty for the failure to have a handrail (the \$312 fine) (*id.*). Petitioner appealed this decision and respondent denied it.

In its decision, respondent observed that petitioner admitted that there were no handrails when the initial summons was issued but submitted evidence that the issue was subsequently corrected (NYSCEF Doc. No. 21 at 2). Respondent also observed that petitioner's neighbor apparently filed a certificate of correction on petitioner's behalf, but that the paperwork was rejected "based on the filing of paperwork copies instead of the originals" (*id.*).

Petitioner insists that the fines imposed are excessive and violate the Eighth Amendment to the United States Constitution and the New York State Constitution. She observes that she submitted photographs of the newly-installed railing and a receipt from the company hired to do this installation. Petitioner contends that the imposition of such a substantial fine for issues with the form of the paperwork is not justified. She questions how the fine for the lack of a certificate of correction could be more than four times the fine for the missing railing.

In opposition, respondent emphasizes that there are serious potential consequences for not having a handrail where it is required. It points out that petitioner admitted at the hearing in June 2019 that she had not filed an *approved* certificate of correction for this violation with the appropriate city agency (the Department of Buildings). Respondent contends that the civil penalty imposed on petitioner was proportional to the offense. It observes that the violation at issue here was a Class 2 major violation.

Respondent argues that petitioner's correction of the violation by installing handrails reduced the civil penalty for the first summons to \$312 but that she did not dispute that her certificate of correction with disapproved by the DOB and so she received a standard penalty of \$1,250.

In reply, petitioner argues that the fine for the failure to submit a proper form does not justify the imposition of a \$1,250 fine.

Discussion

“It is a long-standing, well-established standard that the judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record and once it has been determined that an agency's conclusion has a sound basis in reason, the judicial function is at an end. Indeed, the determination of an agency, acting pursuant to its authority and within the orbit of its expertise, is entitled to deference and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record” (*Partnership 92 LP v State Div. of Hous. and Community Renewal*, 46 AD3d 425, 428-29 [1st Dept 2007], *affd* 11 NY3d 859 [2008] [internal quotations and citations omitted]).

As an initial matter, the Court observes that the vast majority of the facts in this proceeding are uncontested. Petitioner admits that she did not have the handrail at the time the first summons was issued and no party disputes that she complied with the law and had a handrail installed by the time of the hearing before respondent. The central question in this proceeding is whether or not the penalty imposed, particularly because the neighbor who helped her filed copies instead of originals, is excessive under the federal and state constitutions.

“The Eighth Amendment of the United States Constitution forbids the imposition of excessive fines. The New York State Constitution contains the same prohibition. The Excessive Fines Clause limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense. A fine is unconstitutionally excessive if it notably exceeds in

amount that which is reasonable, usual, proper or just. Thus, the Excessive Fines Clause is violated where the fine is grossly disproportional to the gravity of the offense” (*Prince v City of New York*, 108 AD3d 114, 118-19, 966 NYS2d 16 [1st Dept 2013] [internal quotations and citations omitted]).

“The relevant inquiry is not whether the fine arises in the civil or criminal context, but whether the fine constitutes punishment. Civil penalties serving solely remedial purposes do not fall under the rubric of the Eighth Amendment. But where a civil fine serves, at least in part, deterrent and retributive purposes, it is considered punitive and subject to the Excessive Fines Clause” (*id.* at 119-20 [internal quotations and citations omitted]).

Here, there is little question that the fines issued here were punitive as opposed to remedial (*id.* at 121). That is, the fine imposed “bears no relationship to the actual loss sustained” (*id.* at 120). This requires the Court to assess whether or not the fines imposed were “grossly disproportional” to the offense (*id.* at 121). “The touchstone of this constitutional inquiry is the principle of proportionality: The amount of the fine must bear some relationship to the gravity of the offense that it is designed to punish. In determining gross disproportionality, a court should consider the seriousness of the offense, the severity of the harm caused and the potential harm had the defendant not been apprehended, the maximum fine to which the defendant could have been subject, and the defendant's economic circumstances” (*id.* [internal quotations and citations omitted]).

The Court finds that the \$312 fine is proportional and appropriate under these circumstances. This fine, based on the lack of a handrail, was modified to account for the fact that petitioner had, in fact, corrected the issue. However, the Court finds that the \$1,250 fine for

the failure to file an approved certificate of correction is excessive under any rational evaluation of these circumstances.

As petitioner observes, it makes little sense to impose a fine for paperwork that is more than four times the amount for the actual, underlying offense. That is an obvious example of disproportionality. The potential harm at issue here arises from not having the handrail, not from the paperwork. And, critically, this is not a situation in which petitioner ignored her responsibility. She installed the handrail. And she did, in fact, attempt to file the correct paperwork but it was rejected, apparently, because it was filed with copies instead of with originals (NYSCEF Doc. No. 21 at 2). No party disputes that petitioner's attempted submission included photographs showing that the handrail was installed and a receipt for the work done.

While this Court has no intention of wholly excusing the failure to properly file documents, that failure does not justify imposing a greater fine for a procedural paperwork issue than for the actual violation itself. In this Court's view, the purpose of the fines is to encourage property owners to quickly address potentially dangerous conditions at their properties. Petitioner did that and was given an appropriate fine that took into account her remedial measures. The problem for this Court is that there is a complete absence of justification for a \$1,250 fine for not submitting paperwork in original form where no one questions the substance of the contentions in the submissions themselves.

The Court therefore remands this proceeding, as requested by petitioner in the alternative, to respondent so that there can be a new consideration of the penalty to be imposed. The Court declines to dismiss these violations as petitioner admittedly did not have a handrail nor did she properly submit the required paperwork. This Court's finding is therefore limited to a reconsideration of the \$1,250 fine.

Accordingly, it is hereby

ADJUDGED that the petition is granted only to the extent that this dispute is remanded to respondent for reconsideration of the \$1,250 penalty without costs or disbursements to either party.

4/11/2024

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

CASE DISPOSED

GRANTED

DENIED

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE