

Matter of Chin v New York City Bd. of Stds. & Appeals

2011 NY Slip Op 30539(U)

March 8, 2011

Supreme Court, New York County

Docket Number: 111748/2010

Judge: Cynthia S. Kern

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

PRESENT: CYNTHIA S. KERN
J.S.C.

PART 52

Index Number : 111748/2010

CHIN, JEAN

vs

NYC BOARD OF STANDARDS

Sequence Number : 001

ARTICLE 78

INDEX NO.

111748/10

MOTION DATE

MOTION SEQ. NO.

01

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is decided in accordance with the annexed decision

FILED

MAR 09 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated:

3/8/11

CYNTHIA S. KERN
J.S.C.

CK

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X

In the Matter of the Application of:
JEAN CHIN,

Petitioner,

Index No. 111748/2010

-against-

DECISION/ORDER

NEW YORK CITY BOARD OF STANDARDS
AND APPEALS, THE CITY OF NEW YORK,
516 EAST 6th STREET, LLC, and
514 EAST 6th STREET, LLC,

FILED

MAR 09 2011

Respondents.

NEW YORK
COUNTY CLERK'S OFFICE

-----X

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner Jean Chin brought this petition pursuant to Article 78 of the Civil Practice Law and Rules seeking to annul and vacate a determination made by the Board of Standards and Appeals of the City of New York ("BSA"), filed on August 5, 2010 (the "Resolution"). In the Resolution, the BSA granted multiple variances to respondents 516 East 6th Street, LLC and 514 East 6th Street, LLC (together, the "Building Respondents") to provisions of the New York State Multiple Dwelling Law (MDL). For the reasons set forth below, petitioner's petition is denied.

The relevant facts are as follows. The Building Respondents sought variances to

provisions of the MDL to enable them to add an additional floor or floors to the 5-story tenement buildings owned by them. Both buildings were built prior to 1948. The BSA reviewed their application under §310(2)(a) of the MDL. Petitioner, a tenant in the buildings, contends that the BSA reviewed their application under the wrong section and that the proper section to be applied is §310(2)(c). MDL §310(2) permits the BSA to allow building owners to not comply with certain provisions of the MDL if they are too onerous. MDL §310(2) currently states:

Where the compliance with the strict letter of this chapter causes any practical difficulties or any unnecessary hardships the board shall have the power... to vary or modify any provision or requirement of this chapter... as follows:

a. For multiple dwellings and building existing on July first, nineteen hundred forty-eight... provisions relating to:

- (1) Height and bulk;
- (2) Required open spaces;
- (3) Minimum dimensions of yards or courts;
- (4) Means of egress;
- (5) Basements and cellars in tenements and converted dwellings.

b. For multiple dwellings and buildings erected or to be erected or altered after July first, nineteen hundred forty-eight pursuant to plans filed prior to December fifteenth, nineteen hundred sixty-one, provisions relating to:

- (1) Required open spaces; or
- (2) Minimum dimensions of yards or courts.

c. For multiple dwellings and buildings erected or to be erected or altered pursuant to plans filed on or after December fifteenth, nineteen hundred sixty-one... provisions relating to:

- (1) Height and bulk;
- (2) Required open space; or
- (3) Minimum dimensions of yards or courts.

Petitioner is not entitled to any relief because the court must defer to the reasonable statutory interpretation of the agency applying the statute. The courts have held that when a

statute is ambiguous, “construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld.” *Beekman Hill Association, Inc. v Chin*, 274 A.D.2d 161, 167 (1st Dept 2000) (citations omitted); *see also Howard v Wyman*, 28 N.Y.2d 434, 438 (1971); *Johnson v Joy*, 48 N.Y.2d 689, 691 (1979).

In the present case, the court finds that the statute is ambiguous. On its face, either subsection (a) or subsection (c) could be applicable to the present case and there are viable arguments as to why each different subsection should apply as well as problems with those arguments. However, only one subsection can be applied. Because both interpretations are reasonable, thereby creating an ambiguity, this court must defer to the relevant agency’s interpretation. *See Beekman Hill Association, Inc.*, 274 A.D.2d at 167; *see also Howard*, 28 N.Y.2d at 438; *Johnson*, 48 N.Y.2d at 691.

By its terms, MDL §310(a) applies because the relevant buildings are buildings “existing on July first, nineteen hundred forty-eight.” However, the application of subsection (a) is also problematic since it does not explicitly apply to future “alterations” but merely applies to buildings already “existing” (unlike subsection (c)). Although this might, at first glance, seem to mean that this subsection is meaningless, since variances are generally needed because of proposed alterations, in this context it could have application where buildings were being converted from single-family to multiple dwellings within the meaning of the statute. When such a building undergoes a change in legal status, it does not necessarily have to undergo any alterations, but it still may need a variance from certain requirements, such as the size of yards.

Subsection (c) is also applicable on its face. However, applying subsection (c) presents its own problems. In the first instance, subsection (a) would be rendered nearly moot if

