

Greenwood 2, Inc. v NYC Bus. Integrity Commn.

2011 NY Slip Op 31018(U)

April 13, 2011

Supreme Court, New York County

Docket Number: 103686/2010

Judge: Saliann Scarpulla

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

PRESENT: Saliann Scarpulla - PART 19
Justice

Index Number : 103686/2010
GREENWOOD 2, INC.
vs.
NYC BUSINESS INTEGRITY
SEQUENCE NUMBER : 002
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

n 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 determined in accordance with the accompanying decision/order.*

FILED

APR 20 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/13/11

Saliann Scarpulla
SALIANN SCARPULLA v.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: CIVIL TERM: PART 19

-----X
GREENWOOD 2, INC.,

Petitioner,

-against-

Index No.:103686/10

Submission Date: 2/16/2011

THE NYC BUSINESS INTEGRITY COMMISSION,

Respondent.

DECISION AND ORDER

-----X
For Petitioner:
Lawrence B. Goldberg, P.C.
220 Fifth Avenue, 13th Floor
New York, NY 10001

For Respondent:
Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007

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Papers considered in review of this motion to reargue:

Motion 1
Aff in Opp. 2
Reply 3

HON. SALIANN SCARPULLA, J.:

In this hybrid action brought as an Article 78 proceeding in the nature of mandamus (and also including a declaratory judgment cause of action), petitioner Greenwood 2, Inc. ("Greenwood") moves to reargue the Court's September 27, 2010 decision and order which denied its petition and dismissed the action.

Greenwood is a company that provides trucks and drivers for the transportation of construction related materials. On or about March 26, 2009, Greenwood submitted an application for Class 2 registration to respondent The NYC Business Integrity Commission ("BIC"). BIC has not issued a determination on the application.

[*3]

Greenwood then commenced this hybrid action, maintaining that BIC was extensively delaying the Class 2 registration application evaluation process, and seeking an order directing BIC to issue a determination forthwith. In a decision and order dated September 27, 2010, this Court denied the petition and dismissed the action, holding that no evidence was presented that BIC failed to discharge any duty in its evaluation of Greenwood's application.¹ This Court explained that the Administrative Code set forth no time limit for issuing a determination and no evidence was presented that BIC extensively delayed the application evaluation process. In addition, Greenwood itself had requested several adjournments of depositions. This Court further held, "Greenwood has pointed to no probative case law or other legal authority to support its argument that the Court should intervene in the application process and direct BIC to issue a determination immediately."

Greenwood now moves to reargue the September 27, 2010 decision and order. Pursuant to CPLR 2221(d)(2), a motion to reargue must "be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion."

Greenwood argues that the court overlooked or misapprehended the law relating to its authority to intervene in the class 2 registration application process. Greenwood

¹ This Court issued an amended decision and order on October 27, 2010 which reached the same conclusion, but included correction of a minor error set forth in the September 27, 2010 decision and order.

[* 4]

contends that the court did not “apprehend” that it possessed the authority to intervene in the application process and to direct BIC to take action on the application. It further maintains that because of a misunderstanding at oral argument of the petition, it failed to specify case law that supported its petition, and now points to several cases to support its argument.

In opposition, BIC argues that (1) reargument is only permitted if the court misapprehended the law, not if counsel failed to present case law to the court in the first instance; (2) the oral argument occurred after the parties filed their papers and memoranda of law and thus Greenwood should have included any relevant case law support in those papers; and (3) in any event, the cases now cited by Greenwood in its motion to reargue do not alter the Court’s analysis or the outcome of the action.

In determining Greenwood’s motion to reargue, the Court has carefully considered all papers submitted in connection with the motion, and upon such consideration, the Court denies Greenwood’s motion to reargue.

Contrary to Greenwood’s contention, the Court, in its September 27, 2010 decision and order, never indicated that it did not possess the authority to intervene in the application process. The Court is well aware of the scope of its authority. Rather, the Court held that Greenwood did not make a sufficient showing that the Court *should* intervene in the application process. The arguments advanced and cases submitted by Greenwood now do not change this determination.

[* 5]
As such, because Greenwood fails to demonstrate that the court overlooked or misapprehended controlling law or material factual matters that were before the court on the underlying petition, its motion is denied. *See McGill v Goldman*, 261 A.D.2d 593 (2nd Dept. 1999).

In accordance with the foregoing, it is

ORDERED that petitioner Greenwood 2, Inc.'s motion to reargue the court's decision and order is denied.

This constitutes the decision and order of the Court.

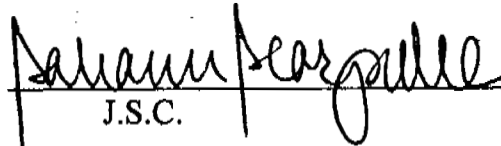
Dated: New York, New York
April 13, 2011

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J.S.C.

SALIANN SCARPULLA