

**Pirov v New York City Dept. of Bldgs.**

2011 NY Slip Op 31132(U)

March 9, 2011

Supreme Court, Queens County

Docket Number: 20363/10

Judge: Augustus C. Agate

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

## MEMORANDUM

SUPREME COURT : QUEENS COUNTY  
IA PART 24

	X	INDEX NO. 20363/10 MOTION CAL. NO.: 24 MOTION SEQ. NO.: 1 MOTION DATE: 1/11/11
YURIY PIROV, et al.		
- against -		
NEW YORK CITY DEPARTMENT OF BUILDINGS, et al.		BY: AGATE, J.
	X	

This is an Article 78 proceeding brought to annul a determination of the New York City Environmental Control Board (ECB) which denied petitioner Yuriy Pirov new hearings on four violations issued by the New York City Department of Buildings (DOB).

Petitioner Yuriy Pirov, residing at 147-26 76<sup>th</sup> Avenue, Flushing, New York, is one of the founding members of Torah Haim, a new Jewish synagogue located at 114-11 77<sup>th</sup> Avenue, Queens, New York. Pirov and two other individuals initially took title in their names with the intention of transferring the property to Torah Haim, which they did in June, 2010. Torah Haim undertook to renovate its building before the transfer, but during the course of the renovation inspectors from DOB issued more than fifteen violations against the premises. All of these violations have been resolved or are awaiting administrative resolution with the exception of: (1) Violation No. 347-845-55N (NOV 55N) (unlawfully continuing work despite a stop work order), (2) Violation No. 347-976-34Y (NOV 34Y) (unlawfully continuing work despite a stop work order), (3) Violation No. 348-054-35Z (NOV 35Z) (occupancy of the premises without a valid certificate of occupancy), and

(4) Violation No. 347-845-56P (NOV 56P) (work without a permit). The notices of violation for these four infractions named Pirov as the respondent, but listed the address of the synagogue as the mailing address. Pirov swears flatly in a verified petition that he did not receive the four notices of violation even though his home address is a “matter of record with the City of New York.”

The respondents allege that DOB served the notices of violation upon Pirov by attaching them to the front door of the synagogue and then mailing a copy to Pirov using the synagogue’s address. The affirmations of service completed by DOB inspectors in support of each NOV state that the NOV was posted on the front door of the synagogue, and ECB records show that each NOV was mailed to the synagogue’s address shortly after it was issued. The respondents further allege that no other address was on file with DOB, ECB, or the New York City Department of Housing Preservation and Development (HPD).

According to the respondents, Pirov failed to appear for the scheduled hearing for NOV 34Y on October 27, 2009, and on November 2, 2009 ECB issued a default order against him which imposed a penalty in the amount of \$25,000. Pirov failed to appear for a scheduled hearing for NOV 55N on November 10, 2009, and on November 16, 2009, ECB issued a default order against him which imposed a penalty of \$25,000. Pirov failed to appear for a scheduled hearing for NOV 56P on November 10, 2009, and on November 16, 2009, ECB issued a default order against him which imposed a penalty in the amount of \$4,000. Pirov failed to appear for a scheduled hearing for NOV 35Z on November 10, 2009,

and on November 16, 2009, ECB issued a default order against him which imposed a penalty of in the amount of \$5,000.

Upon learning about the violations, Pirov contacted the synagogue's attorney, Sheldon Lobel, Esq., who, on or about April 14, 2010 requested the ECB to vacate the defaults. Lobel stated that Pirov first learned of the four violations on April 14, 2010.

On April 20, 2010, ECB sent letters to Pirov and Lobel denying the requests for new hearings "because your claim of lack of notice is not supported by ECB records."

On May 6, 2010, ECB sent Lobel another letter which stated in relevant part: "Under 48 RCNY 3-82(f), a denial of a stay of default is a final agency action. Review of a denial of a request may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules."

48 RCNY § 3-82 allows a party who did not appear at an ECB hearing to make a request for a new hearing. 48 RCNY § 3-82 provides in relevant part: "(c) \*\*\* Such request may be granted and a hearing conducted only if the respondent establishes that a new hearing was requested within one year of the time the respondent learned of the existence of the violation, and that there is a reasonable basis to believe that the respondent (1) did not receive the notice of violation because the respondent was (A) not properly served with the violation under article three of the civil practice law and rules \*\*\*, section 1049-a of the New York City Charter \*\*\*." Section 1049-a(d)(2)(a)(ii) of the City Charter in effect allows the service of a notice of violation by DOB to be made "by affixing such notice in a conspicuous

place to the premises where the violation occurred \*\*\* ” and then pursuant to section 1049-a(d)(2)(b) by mailing to the respondent at the address of such premises and by mailing to the address of registered owners or agents.

The petitioner in an Article 78 proceeding has the burden of demonstrating that the administrative determination under review is either arbitrary, capricious or affected by an error of law. (*Grossman v Rankin*, 43 NY2d 493; *Civil Service Employees Ass’n Inc., Local 1000, AFSCME, AFL-IO v State University of New York*, 286 AD2d 850; *Civil Service Employees Ass’n Inc., Local 1000, AFSCME, AFL-IO v State University of New York*, 280 AD2d 832.) Petitioner Pirov failed to carry that burden.

In order to vacate his defaults pursuant to 48 RCNY § 3-82(c), Pirov had to demonstrate to ECB that there was a “reasonable basis” to believe that he did not receive the notices of violation because DOB did not properly serve them in the manner provided by section 1049-a of the New York City Charter. Pirov did not demonstrate here that ECB improperly determined that he had failed to make the required showing. Pirov did not show that there are genuine issues of fact and credibility concerning whether DOB actually made service of the notices of violation upon him in the legally prescribed manner. Three different inspectors issued the four disputed violations and completed the affirmations of service. In regard to the required mailings, the respondents alleged without adequate rebuttal from Pirov that no other address was on file with the Department of Finance, DOB, ECB, or HPD. Pirov admits that: “I can only speculate that the Violation tickets were given to the contractors at

the Premises.” His speculation does not suffice to raise an issue of credibility concerning whether DOB made service, and he did not establish in this Article 78 proceeding that ECB had a reasonable basis to believe that DOB failed to make service in the prescribed manner.

Pirov’s complaint that he did not receive actual notice of the violations does not successfully raise a constitutional challenge to the administrative action under review. “It is hornbook law that a constitutionally proper method of effecting substituted service need not guarantee that in all cases the defendant will in fact receive actual notice \*\*\*. It suffices that the prescribed method is one ‘reasonably calculated, under all the circumstances, to apprise [the] interested part[y] of the pendency of the action’ \*\*\*.” (*Bossuk v Steinberg*, 58 NY2d 916, 918-919, quoting *Mullane v Central Hanover Trust Co.*, 339 US 306, 314.) Where property rights are involved, an administrative agency need not give actual notice, but must give notice reasonably calculated under the circumstances. (*See, Zaccaro ex rel. Estate of Zaccaro v Cahill*, 100 NY2d 884.) Under all of the circumstances of this case, DOB gave reasonable notice.

Pirov argues that his default on the administrative violations should be vacated “because Petitioner has established an excusable default and a meritorious defense.” His excuse is that the notices of violation were posted and mailed to the address of the synagogue where he did not reside. However, the standard for vacating a default that he wants to impose on the ECB is the standard applicable to vacating a default of a court order (*see*, CPLR 5015 [a][1]; *Gray v B.R. Trucking Co.*, 59 NY2d 649; *Cilindrello v Rayabin*,

297 AD2d 699; *Fort Madison Associates v Caldararo*, 280 AD2d 581), which differs from the standard used by the ECB pursuant to 48 RCNY § 3-82(c): “there is a reasonable basis to believe that the respondent did not receive notice of the violation because the respondent was not properly served with the violation order under \*\*\* section 1049-a of the New York City Charter \*\*\*.” The ECB determined that Pirov had not made the showing required by 48 RCNY § 3-82(c), and, upon reviewing the record, the court finds that its determination was not arbitrary, capricious, unsupported by the facts, or contrary to law.

While the court is mindful of the adage that “no good deed goes unpunished,” regrettably for Pirov, the court cannot simply substitute its judgment for that of the administrative agency. (*See, Rossney v Zoning Bd. of Appeals of Inc. Village of Ossining*, 79 AD3d 894; *City Services, Inc. v Neiman*, 77 AD3d 505.)

Accordingly, the petition is dismissed.

Submit judgment..

Dated: March 9, 2011

---

AUGUSTUS C. AGATE, J.S.C.