

Nestle Waters North America, Inc. v City of New York

2013 NY Slip Op 30403(U)

February 28, 2013

Supreme Court, Westchester County

Docket Number: 104096-2012

Judge: Eileen A. Rakower

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.

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

PRESENT: RAKOWER
Justice

PART 15

NESTLE WATERS NORTH AMERICA, INC.

INDEX NO. 104096/12

MOTION DATE _____

- v -
THE CITY OF NEW YORK, ETAL.

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 2/21/13

[Signature]
HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

FOR THE FOLLOWING REASON(S):

RECEIVED IN NEW YORK COUNTY CLERK'S OFFICE

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

PRESENT: Hon. EILEEN A. RAKOWER

PART 15

Justice

**In the Matter of the Application of
NESTLE WATERS NORTH AMERICA, INC., on its own
behalf and on behalf of all other similarly situated,**

Petitioners,

INDEX NO. 104096-2012

MOTION DATE _____

MOTION SEQ. NO. 001, 002, 003

- v -

MOTION CAL. NO. _____

**THE CITY OF NEW YORK, THE CITY OF NEW YORK
DEPARTMENT OF FINANCE, THE NEW YORK CITY
DEPARTMENT OF FINANCE COMMERCIAL
ADJUDICATIONS UNIT A/K/A ADJUDICATION
DIVISION, DAVID M. FRANKEL, Individually and
as New York City Commissioner of Finance, and
MARY GOTSPOULIS, Individually and as Chief
Administrative Law Judge of the New York City
Department of Finance Commercial Adjudications
Unit,**

Respondent.

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

PAPERS NUMBERED

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

1, 2, 3

Answer — Affidavits — Exhibits _____

4, 5, 6, 7

Replying Affidavits _____

8, 9

Cross-Motion: Yes No

Petitioner brings this Article 78 petition challenging Respondent's policy of deeming "IRP" an accurate description of out-of-state "apportioned" license plates and registrations for purposes of adjudicating parking summonses. Specifically, petitioner seeks annulment of the adjudications of guilt made by respondents as to 38 parking summonses which were issued to its trucks with New Jersey "apportioned" license plates but coded as "IRP".

3]

Petitioner owns and operates a fleet of trucks that make deliveries in the City of New York and elsewhere. Companies with fleets of trucks operating across state lines typically obtain "apportioned" license plates from their state of registration. These plates are labeled "apportioned" because they are issued under the International Registration Plan, a privately-administered registration reciprocity agreement, under which the highway use tax paid by the truck owner is apportioned among the states and provinces in which the trucks are used.

Petitioner states that in every other state except New York, trucks registered under the International Registration Plan are issued license plates and registrations that state "apportioned". In New York, trucks registered under the International Registration Plan are issued "IRP" registrations.

Between March 28, 2012 and April 10, 2012, New York City Police Department traffic agents issued 38 notices of parking violations for various parking infractions against trucks owned by Petitioner. The infractions included parking in no standing and no parking zones, parking by a fire hydrant, double-parking in Midtown, and platform lifts in low position.

Each of the trucks to which the summonses were issued had an "apportioned" license plate issued by the State of New Jersey, and an "apportioned" registration issued by the State of New Jersey. Each of the thirty-eight summonses describes the license plate type of the truck to which it was issued as "IRP".

On May 24, 2012, Petitioner's representative, Empire Commercial Services ("Empire") requested a hearing for the 38 challenged parking violations. Empire was provided a hearing before ALJ Stanley Weinberg. As a defense to the 38 parking violations, Empire alleged that they should all be dismissed because the plate type was inaccurately described as "IRP" rather than "APP" for "apportioned", the word written on all subject vehicles' plates. After reviewing all evidence submitted on behalf of Empire, ALJ Weinberg issued a Decision and Order dated May 24, 2012, finding Petitioner guilty on all 38 challenged parking violations.

On June 5, 2012, Empire submitted an Application for Appeal of the May 24, 2012 Decision and Order. The PAD Appeals Board granted Empire's appeal request and scheduled a hearing for June 26, 2012. On appeal, Empire once again argued that the parking violations should be dismissed because the 38 challenged parking

violations inaccurately describe the plate types on the subject vehicle. On June 26, 2012, the PAD Appeals Board issued a final determination affirming ALJ Weinberg's Decision and Order dated May 24, 2012. In the Appeal determination, the PAD Appeals Board stated that "[u]pon review of the entire record before us, we find no error of fact or law."

Nestle now alleges that the prior administrative determinations must be set aside as arbitrary, capricious and contrary to law because the summonses failed to properly identify the vehicles by transcribing the correct plate type on the notice of violation, as required by NYS VTL §238(2). Nestle also moves for a permanent and preliminary injunction, enjoining respondents from adjudicating guilt or affirming any finding of guilt for the subject parking violations.

"Where the substantial evidence issue specified in question four of section 7803 is not raised, the court in which the proceeding is commenced shall itself dispose of the issues in the proceeding." (*See, CPLR 7804[g]*). As Petitioner has not raised the substantial evidence standard in its petition, this proceeding remains before this court.

It is well settled that the "[j]udicial review of an administrative determination is confined to the 'facts and record adduced before the agency'." (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the agency's determination but must decide if the agency's decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency's determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

Pursuant to VTL §238(2), the parking violation must contain the plate designation, the plate type as shown by the registration plates of the subject vehicle, the expiration date, the make and body type of the subject vehicles, and a description of the violation. "If any information which is required to be inserted on a notice of violation is... misdescribed... the violation shall be dismissed upon application of the

person charged with the violation.” (VTL §[2-a][b]). Pursuant to both VTL §238(1) and 19 RCNY §39-08(f)(4), the parking violation serves as prima facie evidence of the facts contained therein. When a prima facie case has been established, the individual challenging the parking violation must present credible evidence to rebut the presumption created by the statute.

Here, a rational basis exists for the PAD Appeals Board’s determination affirming ALJ Weinberg’s finding of guilt for the 38 subject parking violations. Respondent annexes the ALJ Manual, which states in relevant part, “‘APP’ and ‘IRP’ on the face of the summons is sufficient to establish a prima facie case because these acronyms are used interchangeably.” While Petitioner submits letters from the NJ Motor Vehicle Commission to show that NJ only issues plates with the designated “apportioned” display, such evidence does not dispute the fact that the terms “IRP” and “APP” can be used interchangeably to describe apportioned plates. Since the record established that the plate type on the 38 subject parking violations was accurately described as “IRP” and since Petitioner did not present any other defense or evidence to refute the prima facie evidence within the parking violations, the Appeals Board’s final determination denying Petitioner’s appeal was rational and reasonable.

Wherefore, it is hereby,

ORDERED and ADJUDGED that this petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: February 21, 2013


HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE