

Matter of Strong Steel Door Corp. v City of New York
2013 NY Slip Op 31010(U)
May 8, 2013
Supreme Court, New York County
Docket Number: 103695/12
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

In the Matter of the Application of
STRONG STEEL DOOR CORPORATION, et. al.,

Index No. 103695/12

Petitioner,
-against-

MOTION DATE _____

CITY OF NEW YORK, et al.,
Respondents.

MOTION SEQ. NO. 001

MOTION CAL NO. _____

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

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits 2,3

Replying Affidavits _____

UNFILED JUDGMENT

CROSS-MOTION: YES ~~NO~~ 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).

Upon the foregoing papers, it is ordered that the motion is granted.

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 5/8/13

Donna M. Mills
J.S.C.
DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

-----X
In the Matter of the Application of
STRONG STEEL DOOR CORPORATION, and
FENG WEI,

Petitioners,

For a Judgment Pursuant to CPLR Article 78

-against-

Index No. 103695/12

CITY OF NEW YORK; and NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondents

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).

DONNA M. MILLS, J.:

In this special proceeding pursuant to C.P.L.R. Article 78, petitioner Strong Steel Door Corporation and its president and principal owner Feng Q, Wei (collectively "Petitioner"), seek to challenge the respondent New York City Department of Environmental Protection's ("DEP") decision to issue a performance evaluation to Petitioners with an overall unsatisfactory rating of its performance. Petitioner is also challenging the publication of the evaluation on the City's Vendor Information and Exchange System ("VENDEX"). In addition to this Article 78 claim, Petitioner also seeks to recover monies allegedly due based on respondents purported breach of contract in terminating the job orders.

Petitioner is and has been a contractor on numerous DEP projects. As a DEP contractor, petitioner receives periodic evaluations of its performance on these projects. In and around May 2012, petitioner received a highly negative evaluation from the DEP. Petitioner claims that the DEP evaluator was forced to sign the negative evaluation

upon direction from his superiors, who had prepared the evaluation without first-hand knowledge of petitioner's actual performance.

Petitioner commenced this action on the premise that the evaluation was fabricated with the intent to justify DEP's prior unwarranted termination of petitioner's DEP contracts in breach of those agreements. Petitioner argues that the issuance of the inaccurate evaluation was arbitrary and capricious, and thus the action of respondents in issuing an evaluation without factual basis must be annulled.

Respondents maintain that these allegations are without merit. Respondents argue that its rating of petitioner's overall performance as unsatisfactory in the 2012 evaluation accurately reflected petitioner's actual performance, and therefore had a rational basis. Additionally, respondents contend that the money damages being sought by petitioner is not incidental within the meaning of CPLR Rule 7806 and therefore cannot be recovered in this Article 78. Lastly, respondents argue that there was no breach because DEP complied with Article 64 of the Contract, which gave the City the unconditional right to cancel the job orders for convenience.

Article 64 of the Contract, entitled Termination by the City provides:

64.1 In addition to termination pursuant to any other Article of this Contract, the Commissioner may, at any time, terminate this Contract, a Job Order or portion of a Job Order, by written notice to the Contractor.

The applicable standard of review is whether the administrative decision was: (1) made in violation of lawful procedure; (2) affected by an error of law; or (3) arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR 7803 [3]). An agency abuses its exercise of discretion if its

administrative orders lack a rational basis. "[T]he proper test is whether there is a rational basis for the administrative orders, the review not being of determinations made after quasi-judicial hearings required by statute or law" (Mater of Pell v Board of Educ. Of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]).

In the instant action, Petitioners failed to show, as prerequisite to obtaining relief in Article 78 proceeding, that the unsatisfactory rating that it received was arbitrary and capricious or was imposed in violation of any lawful procedure or substantial right that it possessed. The unsatisfactory rating cannot be found to be arbitrary and capricious where the rating is supported by several pieces of correspondence from respondents to petitioner indicating dissatisfaction with petitioner's substandard work, including its dilatory submission of proposals, the delays to its work, its insufficient office space and field staff over a period of months, its submission of untimely and inaccurate sign in sheets and payroll, as well as its lack of cooperation with project staff.

In reviewing respondents' issuance of the 2012 evaluation and its publication on VENDEX, it is not the province of the Court to weight the facts (*id.*, at 230). In this Court's opinion there was a rational basis for the unsatisfactory rating. I find petitioner's other claims to also be without merit.

Accordingly it is

ADJUDGED that the petition is denied and the proceeding is dismissed, with costs and disbursements to respondents.

Dated: 5/8/13

ENTER:
Donna
J.S.C.

DONNA M. MILLS, J.S.C.