

Greenhouse USA v New York City Fire Dept.

2013 NY Slip Op 32968(U)

October 29, 2013

Sup Ct, New York County

Docket Number: 101283/2013

Judge: Eileen A. Rakower

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

PRESENT: RAKOWER
Justice

PART 15

GREENHOUSE USA

INDEX NO.

101283/13

MOTION DATE

- v -
THE N.Y.C. FIRE DEPT.,
ET AL.

MOTION SEQ. NO.

01

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

After oral argument see decision

FILED

NOV 25 2013

COUNTY CLERK'S OFFICE
NEW YORK

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LIS MOTION SUPPORT OFFICE
100 SOUTH STREET, 10TH FLOOR
NEW YORK, NY 10038

Dated: 10/29/13

EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. EILEEN A. RAKOWER PART 15

Justice

GREENHOUSE USA,

Petitioner,

- v -

THE NEW YORK CITY FIRE DEPARTMENT,
COMMISSIONER SALVATORE CASSANO,
THE NEW YORK CITY DEPARTMENT OF BUILDINGS,
COMMISSIONER ROBERT LIMANDRI, et. Al.,

Respondent.

INDEX NO. 101283/2013

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answer — Affidavits — Exhibits _____	<u>2, 3</u>
Replying Affidavits _____	_____

Petitioner brings this CPLR Article 78 proceeding seeking a temporary restraining order (“TRO”) allowing Petitioner to operate a cabaret without a Certificate of Operation. Petitioner does not seek judicial review of the revocation of its Certificate of Operation, but only seeks temporary injunctive relief.

Petitioner Greenhouse USA owns and operates a night club located on the 1st floor and in the cellar of the building located at 150 Varick Street, New York, NY. On March 5, 2013, the Department of Buildings (“DOB”) audited the place of assembly plans for the cabaret and issued objections as a result of the audit.

By letter dated March 19, 2013, the DOB notified the owner of the building located at 150 Varick Street and RIP Construction Consultants, the place of assembly plans applicant, of DOB’s intent to revoke the Certificate of Operation because the March 5, 2013 objections were outstanding.

In July of 2013, the DOB revoked the subject cabaret’s Certificate of Operation. The BSA has no record of an appeal filed regarding the revocation of the subject cabaret’s Certificate of Operation.

On September 14, 2013, inspectors from the Mayor’s Office for Special

Enforcement inspected the subject cabaret. As a result of this inspection, DOB issued two Notices of Violation and Hearing (“NOVs”) because the subject cabaret was operating a place of assembly without a current certificate of operation and also because the means of egress were concealed by curtains. The NOVs provided that the hearing date on each violation would be October 31, 2013.

As a result of the same inspection by the Mayor’s Office for Special Enforcement on September 14, 2013, the FDNY also issued a violation order directing “in the interest of public safety [that Petitioner must] 1. provide a valid permit to maintain and operate a place of assembly at Greenhouse night club or maintain occupancy at 74 people (patrons and employees) or less at all times... [and] 2. remove all drapery obstructing view of exit doors located in the 1st floor of Greenhouse night club...” The violation order directed that the order be complied with “forthwith”. Petitioner did not file an appeal regarding the September 14, 2013 FDNY violation issued regarding the subject cabaret.

By Order to Show Cause dated September 17, 2013, Petitioner commenced this proceeding seeking a temporary restraining order prohibiting Respondent from “[r]evoking or suspending the Place of Assembly Certificates [sic] of operation issued to Greenhouse [and] restricting the occupancy of Greenhouse from that allowed in its most recently issued Place of Assembly Certificates [sic] of Operation.”

After oral argument, Justice Rakower denied Petitioner’s application for a TRO. As the TRO has been denied and as Petitioner seeks no other relief, the Petition must be dismissed.

Pursuant to CPLR §3211(7) the Petition must be dismissed because it fails to state a cause of action. Although an Article 78 proceeding, the petition does not seek any of the relief authorized by CPLR Article 78. The petition does not allege that DOB’s revocation of its Certificate of Operation was arbitrary, capricious, or an abuse of discretion or the effect of an error of law. (See, CPLR 7803). Nor does the petition compel DOB to reinstate the Certificate of Operation.

All that the Petition seeks is a “temporary restraining order so that Greenhouse may continue to operate” while it pursues the necessary steps to have the Certificate of Occupancy reinstated. However, this Court heard arguments for a TRO on September 17, 2013 and denied such application. Because the petition

does not allege a cause of action under CPLR Article 78, and only seeks a TRO which has already been denied by this court, the petition fails to state a cause of action.

Wherefore, it is hereby,

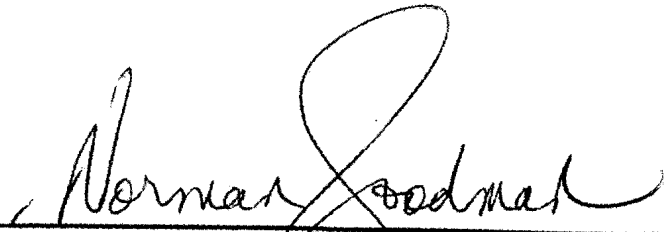
ORDERED and ADJUDGED that this Petition is denied and the proceeding is dismissed.

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

Dated: October 29, 2013


~~HON. EILEEN A. RAKOWER~~
J.S.C.

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clerk of the court

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