

Matter of Braun v New York City Dept. of Fin.

2014 NY Slip Op 30598(U)

March 4, 2014

Supreme Court, New York County

Docket Number: 401788/2013

Judge: Peter H. Moulton

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. Peter H. Moulton PART 57

Justice

JASON D. BRAUN

INDEX NO. 401788/2013

MOTION DATE _____

v.

MOTION SEQ. NO. 001

NYC DEPARTMENT OF FINANCE

MOTION CAL. NO. _____

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

Papers Numbered

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

This case has been disposed pursuant to the attached written decision dated
March 4, 2014.

Dated: 3/4/14

New York, New York



J.S.C.

PETER H. MOULTON

- 1. Check one: Case Disposed Non-Final Disposition
- 2. Check as Appropriate: Motion is: Granted Denied Granted in Part Other
- 3. Check if Appropriate:: Settle Order Submit Order
 Do Not Post Fiduciary Appointment Reference

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).

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

6-2
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 57

-----X
In the Matter of the Petition of JASON BRAUN,

Petitioner,

-against-

Index No. 401788/2013

NEW YORK CITY DEPARTMENT OF FINANCE,

Respondent,

For a Judgment Pursuant to Article 7511 of the CPLR.
-----X

PETER H. MOULTON, J.:

Petitioner Jason Braun brings this Article 78 petition to vacate Respondent Department of Finance's ("DOF") decision to uphold a ticket against petitioner for a parking violation as well as towing expenses paid by petitioner in connection with that ticket. Petitioner claims that respondent's decision was arbitrary and capricious.

Respondent cross-moves, pursuant to CPLR §§ 3211(a)(3) and 7804(f) for an order dismissing the petition on several grounds, including that respondent exercised its authority appropriately, and that petitioner has no standing to challenge respondent's determination.

✓
BACKGROUND

On February 23, 2013 petitioner parked an automobile in the vicinity of Fortieth Street in Sunnyside, New York. Petitioner parked his automobile near an orange construction barrel that petitioner claims was fully enclosing a fire hydrant. Petitioner's automobile was subsequently towed and a \$115 fine was assessed against petitioner for parking within three feet of a fire hydrant. In order to regain access to the automobile, petitioner paid a towing charge of \$180. Petitioner

* 3]

subsequently contested the ticket, offering as evidence photographs of the fire hydrant fully enclosed by an orange construction barrel as well as an affidavit of a witness who claimed to have seen the hydrant enclosed by the container. On May 11, 2013, Administrative Law Judge Susan Scarpati ruled against petitioner, stating that she found petitioner's account that an orange construction barrel covered the fire hydrant to be unpersuasive. Petitioner timely appealed Judge Scarpati's decision and was later heard by a panel of three Administrative Law Judges, who affirmed Judge Scarpati's decision on June 3, 2013. Petitioner subsequently commenced the instant proceeding to challenge respondent's decision to sustain the ticket levied against petitioner for the parking violation as well as the towing expenses paid by petitioner in connection with that ticket.

DISCUSSION

Under Article 78 of the CPLR, judicial review of an agency determination is limited to ascertaining whether an agency's action was illegal, arbitrary and capricious, or an abuse of discretion. See CPLR § 7803[3] ("whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion"). In applying the "arbitrary and capricious" standard, a court inquires whether the determination under review had a rational basis. Under this standard, a determination should not be disturbed unless the record shows that the agency's action was "arbitrary, unreasonable, irrational or indicative of bad faith" (*Matter of Cowan v. Kern*, 41 NY2d 591, 599 (1977); see *Matter 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), ["Arbitrary action is without sound basis in reason and is generally taken without regard to the facts"]). Consequently, when reviewing an administrative determination pursuant to

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CPLR Article 78, courts consistently have been limited to reviewing the record before the agency and the question of whether its determination was arbitrary or capricious and had a rational basis in the record. See CPLR § 7803(3); *Matter of Gilman v. New York State Div. of Hous. & Community Renewal*, 99 NY2d 144 (2002); *Matter of Nestor v. New York State Div. of Hous. & Community Renewal*, 257 AD2d 395 (1st Dept. 1999).

In order to have standing to contest an administrative action, a party must show that the action will have a harmful effect on that party different in kind and degree from the community. See *Matter of Mobil Oil v. Syracuse Indus. Dev. Agency*, 76 NY2d 428 (1990); *Society of Plastics Indus., Inc. v. County of Suffolk*, 77 N.Y.2d 761 (1991) (“Standing is a threshold determination, resting in part on policy considerations, that a person should be allowed access to the courts to adjudicate the merits of a particular dispute that satisfies the other justiciability criteria”); *Matter of New York Propane Gas Assn v. New York State Dept. of State*, 17 AD3d 915 (3d Dept. 2005) (“To establish the first requirement of associational standing, [petitioner] must show both an ‘injury-in-fact’ . . . and that the injury asserted falls ‘within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted.’ . . . While the individual’s asserted injury may not be speculative . . . and it ‘must be more than conjectural’ . . . it need not be stated with specific quantification”)

Here, on the threshold issue of standing, respondent avers that petitioner does not have standing to contest respondent’s actions, because petitioner is not the owner of the automobile that was assessed a ticket. Notwithstanding that, respondent recognizes that petitioner is the principal driver of that automobile. Furthermore, respondent’s initial decision and subsequent affirmation of that decision both mention petitioner by name as the aggrieved party in this matter. Indeed, in

adjudicating petitioner's claims on the merits on May 11, 2013, Judge Scarpati recognized petitioner as having standing to contest both the ticket and towing charge levied against him. Moreover, by raising no objection on the grounds of standing to petitioner's appeal, the panel of Administrative Law Judges that affirmed Judge Scarpati's decision implicitly recognized petitioner's standing to contest the charges preferred against him. Finally, petitioner paid a \$180 towing charge to retrieve possession of the automobile. In order to challenge that payment and retrieve his money, petitioner must successfully overturn the underlying \$115 fine assessed against the automobile. Consequently, petitioner necessarily has standing to regain the money that he has already forfeited in connection with this matter, which falls outside the ambit of speculation and firmly into the province of an injury-in-fact. Consequently, petitioner has standing in this proceeding.

In light of petitioner's standing, the next issue before this court is whether respondent's actions were arbitrary and capricious. Here, petitioner was found guilty of parking next to a fire hydrant. In reaching that determination, Judge Scarpati rejected petitioner's claim that the fire hydrant that petitioner parked next to was obstructed by an orange construction barrel. In rejecting that claim, Judge Scarpati stated that petitioner's evidence was unpersuasive because photographs that petitioner had submitted in his defense did not contain date and time stamps that would have corroborated their authenticity. Judge Scarpati did not address petitioner's defense to that issue in her written decision; namely that the photographs had been taken by a witness who submitted an affidavit in petitioner's defense attesting to the date and time that the photographs were taken.¹

¹It is worth noting here that Judge Scarpati's decision was dated April 11, 2013 while the affidavit purportedly submitted by petitioner at his hearing is dated May 6, 2013, subsequent to Judge Scarpati's decision. Although respondent does not appear to challenge whether the affidavit was in fact submitted at the time of petitioner's hearing, the date of the affidavit raises question as to whether petitioner did in fact submit it on the date of his hearing for Judge Scarpati's review.


Nonetheless, Judge Scarpati was entitled to reject the affidavit as the affiant did not appear in court and was therefore not subject to cross-examination. In rejecting petitioner's claims, Judge Scarpati acted well within the scope of her powers to make credibility determinations with respect to petitioner's claims. Indeed, Judge Scarpati's determinations were affirmed by the DOF's Appeals Unit, which concluded that Judge Scarpati made no errors of fact or law when rendering her decision. Petitioner may take issue with respondent's decision, but this court is not in a position to second-guess it. Consequently, the court rejects petitioner's argument that respondent's determination was arbitrary and capricious.

It is hereby ORDERED that respondent's cross-motion to dismiss is granted; and it is further ORDERED and ADJUDGED that the petition is denied and the proceeding dismissed.

This Constitutes the Decision, Order and Judgment of the Court.

Dated: March 4, 2014

ENTER:


J.S.C

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).