

**Campbell Apt., Ltd. v Metropolitan Transp. Auth.**

2017 NY Slip Op 31165(U)

May 24, 2017

Supreme Court, New York County

Docket Number: 100532/2016

Judge: Kathryn E. Freed

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED, J.S.C.
Justice

PART 2

THE CAMPBELL APARTMENT, LTD.,
Petitioner,

INDEX NO. 100532/2016

MOTION DATE

MOTION SEQ. NO. 003

- v -

METROPOLITAN TRANSPORTATION AUTHORITY, METRO-NORTH COMMUTER RAILROAD, THE GERBER GROUP LIMITED PARTNERSHIP, THE GERBER GROUP, JOHN DOES 1 TO 5,

DECISION AND ORDER

Respondent.

The following e-filed documents, listed by NYSCEF document number 96, 97, 98, 99, 100, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129

were read on this application to/for Attorneys' Fees

Upon the foregoing documents, the motion is denied.

The Campbell Apartment, Ltd., the former tenant of the Campbell Apartment, a bar at Grand Central Terminal, commenced a proceeding pursuant to CPLR article 78 alleging that respondents/landlords The Metropolitan Transportation Authority and Metro-North Commuter Railroad (collectively "the MTA") conducted an improper request for proposals ("RFP") seeking a new tenant for the bar, thereby violating Public Authorities Law ("PAL") section 2897(3) by failing to obtain an independent appraisal of the rental value of the premises. The petitioner further alleged that the entire rental process was fatally flawed.

In a decision and order dated June 22, 2016, this Court agreed that the MTA violated the PAL but allowed it to conduct an independent appraisal of the fair market rental value of the Campbell Apartment in order to salvage the RFP process. Specifically, this Court determined that, if the MTA conducted an independent appraisal which established that the rental value of the Campbell Apartment was less than that bid by the proposed new tenant of the space during the RFP process, the said process would be saved. This Court explained that the RFP process could be cured since possession of the premises had not yet been transferred to the proposed new tenant found by the MTA and that the intent of PAL 2897(3) would be satisfied so long as the successful bidder's proposed rent exceeded fair market value. By order and judgment dated August 9, 2016, this Court dismissed the petition after it determined that an independent appraisal conducted by the MTA revealed that the successful bidder's proposed rent exceeded fair market rental value.<sup>1</sup>

Petitioner now seeks reimbursement of attorneys' fees from the MTA pursuant to the Equal Access to Justice Act ("the EAJA") as set forth in CPLR article 86. It also seeks costs and disbursements pursuant to CPLR 8101 and 8301. For the reasons set forth below, the application is denied.

The EAJA provides that "a court shall award to a prevailing party, other than the state, fees and other expenses incurred by such party in any civil action brought against the state, unless the court finds that the position of the state was substantially justified or that special circumstances make an award unjust." CPLR 8601(a). "The statute was enacted to 'improv[e] access to justice

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<sup>1</sup> The facts of this matter are set forth in detail in the decision and order of this Court dated June 22, 2016 and the decision and judgment of this Court dated August 9, 2016.

for individuals and businesses who may not have the resources to sustain a long legal battle against an agency that is acting without justification' (Governor's Approval Mem, L 1989, ch 770, 1989 NY Legis Ann, at 336)." *New York State Clinical Lab. Ass'n v Kaladjian*, 85 NY2d 346, 351 (1995).

Initially, the motion must be denied since petitioner is not a "[p]arty", as defined by CPLR 8602(d). Thus, it is not "eligible to receive to receive an award pursuant to the EAJA." *Matter of Lighthouse Pointe Prop. Assoc. LLC v New York State Dept. of Env'tl. Conservation*, 90 AD3d 1529, 1529 (4<sup>th</sup> Dept 2011).

Even assuming, arguendo, that petitioner were a party eligible to seek attorneys' fees pursuant to the EAJA, it could not recover the same herein since it has not established that it is a "[p]revailing party" within the meaning of CPLR 8602 (f). That statute defines a "[p]revailing party" as "plaintiff or petitioner in the civil action against the state who prevails in whole or in substantial part where such party and the state prevail upon separate issues." *Id.* "Although the legislative history is silent regarding the import of the definitional phase at issue, the Legislature's reference to success on separate issues is significant because it indicates that the *degree* of success obtained by a plaintiff in relation to the other goals of the lawsuit is a *threshold factor* in determining eligibility for a fee award of any kind" (*emphasis provided*) *Kaladjian*, 85 NY2d 346, at 353. In *Kaladjian*, the Court of Appeals held that:

[A] party has "prevailed" within the meaning of the State EAJA if it has succeeded in acquiring a substantial part of the relief sought in the lawsuit. Thus, a "prevailing party" is not one who has succeeded on merely "any significant issue" in the litigation which achieved only "some of the

benefit” sought in bringing the lawsuit . . . Rather it is a plaintiff who can show that it succeeded in large or substantial part by identifying the original goals of the litigation and by demonstrating the comparative substantiality of the relief actually obtained.

*Kaladjian*, 85 NY2d 346, at 355.

Based on this standard, this Court concludes that the petitioner did not prevail in this matter. *Kaladjian*, 85 NY2d 346, at 355; *Apollon v Giuliani*, 246 AD2d 130, 136 (1<sup>st</sup> Dept 1998). The petitioner sought to annul the RFP process due to the MTA’s alleged failure to 1) have an independent appraisal performed; and 2) conduct an open and fair bidding process. Ex. D to Nicolich Aff. In Opp., at p. 14. The petitioner also sought to enjoin the MTA “from entering into any lease in connection with the RFP.” *Id.* Although, as noted above, this Court found that the RFP process was deficient because the MTA did not obtain an independent appraisal, this Court, in its decision and order dated June 22, 2016, allowed the MTA to rectify this deficiency so that the RFP process could be salvaged. Once the MTA obtained the independent appraisal, this Court, in its order and judgment dated August 9, 2016, determined that the MTA had satisfied PAL 2897(3), that the RFP process was properly conducted, that the stay preventing the MTA from re-letting the Campbell Apartment to another tenant was vacated, and that the petition was dismissed.

It is evident that the petitioner prevailed on the limited issue of the improper appraisal which violated PAL 2897(3). However, this was a quintessentially pyrrhic victory: once an independent appraisal was performed and the amount of the appraisal was less than the amount bid by the MTA’s proposed new tenant, the petition was dismissed and the MTA was permitted

to enter into a new lease with the proposed new tenant. Since the petitioner did not “demonstrate[e] the comparative substantiality of the relief [it] actually obtained”, as compared to that awarded to the MTA, it has failed to establish that it was a prevailing party herein. *Kaladjian*, 85 NY2d 346, at 355; *cf.*, *Dicent v Wing*, 283 AD2d 185 (1<sup>st</sup> Dept 2001).

Given the above, it is not necessary for this Court to address the parties’ remaining contentions.

In light of the foregoing, it is hereby:

ORDERED that the petitioner’s motion for attorneys’ fees pursuant to the Equal Access to Justice Act is denied; and it is further

ORDERED that this constitutes the decision and order of the court.

5/24/2017  
DATE

  
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HON. KATHRYN E. FREED, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE