

Sonaal Indus., Inc. v New York City Loft Bd.
2019 NY Slip Op 30681(U)
March 18, 2019
Supreme Court, New York County
Docket Number: 154897/2018
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X
SONAAL INDUSTRIES, INC.,
Petitioner,
- v -
NEW YORK CITY LOFT BOARD,
Respondent.
-----X

INDEX NO. 154897/2018
MOTION SEQ. NO. 001

**DECISION, ORDER &
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to ARTICLE 78 (BODY OR OFFICER) / COMPEL

Upon the foregoing documents, it is ordered that the application is **decided as follows**.

In this CPLR article 78 proceeding, petitioner Sonaal Industries, Inc. (“Sonaal Industries”) moves, by order to show cause, for an order from this Court “compelling Respondent to issue an order forthwith on the application of non-parties Ximena Garnica and Shigekazu Moriya, filed under Loft Board Docket No. R-0359, seeking reconsideration of Loft Board Order No. 4702, and vote thereon at its June 21, 2018 meeting or as soon thereafter as possible” (Doc. 14 at 1.) Respondent New York City Loft Board (“the Loft Board”) cross-moves, pursuant to CPLR 3211(a)(7) and 7804(f), to dismiss the petition. After oral argument, and after a review of the parties’ papers and the relevant statutes and caselaw, it is ordered that the application is **decided as follows**.

FACTUAL AND PROCEDURAL BACKGROUND:

In March of 2014, tenants residing on the first, third, and fourth floors and in the garage of 58 Grand Street in Brooklyn applied to the Loft Board for “interim multiple dwelling” status under

New York's Multiple Dwelling Law. (Docs. 18 at 6; 21 at 1.) The Loft Board transferred the application to the New York City Office of Administrative Trials and Hearings ("NYC OATH"), which commenced a hearing before an Administrative Law Judge ("ALJ"). (*Id.*; Doc. 22 at 2.) On June 24, 2016, the ALJ recommended, *inter alia*, that the units on the first 4 floors of the building should be covered as interim multiple dwellings (Doc. 21 at 12, 33), but that the garage unit should not be covered since it "lack[s] a window that opens on to a street or lawful yard or court. The garage is therefore ineligible for coverage under Article 7-C" (*id.* at 25). The ALJ's report and recommendation were transferred back to the Loft Board for a final order. (Doc. 22 at 3.)

On January 17, 2017, while the report and recommendation were pending before the Loft Board, the New York City Department of Buildings ("the DOB") issued violation #352-091-91R to Sonaal Industries based upon the residential occupancy of the garage unit in violation of the building's certificate of occupancy. (*Id.*) Sonaal Industries received further violations from the DOB in March and May of 2017. (*Id.* at 6.)

On May 15, 2017, the Loft Board issued a proposed order deciding the tenants' March 2014 application. (*Id.* at 4.) Consistent with the ALJ's recommendations, the proposed order found that the first 4 floors of the building qualified as interim multiple dwelling units, but that the garage did not. (*Id.*) Although the proposed order was placed on the Loft Board's agenda for its meetings on September 21 and October 19, 2017, the Loft Board was unable to make a final determination, since a majority therefore was not in favor of either accepting or rejecting the proposed order. (Doc. 18 at 7.) However, on October 26, 2017, the Loft Board voted in favor of the proposed order.¹ (*Id.*)

¹ This Court notes that, prior to the Loft Board's October 26, 2017 vote, Sonaal Industries had filed a petition seeking an order to compel the Loft Board to make a final vote on the proposed order. (*See* Doc. 22.) Sonaal Industries had claimed that the absence of a final order prohibited its "ability to either move to reconsider [the Loft Board's] order on the Application or to register the Building and proceed with its obligation to legalize." (*Id.* at 6.)

On December 1, 2017, the garage unit's tenants—Ximena Garnica and Shigekazu Moriya—filed an application with the Loft Board for reconsideration of its October 26, 2017 vote. (*Id.* at 8; Doc. 27.) On December 22, 2017, Sonaal Industries filed an answer to the garage tenants' application (Doc. 28), arguing that the Loft Board's prior vote should be upheld and that the garage unit was not an interim multiple dwelling unit (*id.* at 3–9).

On May 22, 2018, Sonaal Industries filed the instant order to show cause seeking an order of this Court to “compel[] [the Loft Board] to issue an order forthwith on the application of non-parties Ximena Garnica and Shigekazu Moriya, filed under Loft Board Docket No. R-0359, seeking reconsideration of Loft Board Order No. 4702, and vote thereon at its June 21, 2018 meeting or as soon thereafter as possible” (Doc. 14 at 1.) In opposition, the Loft Board has filed a cross motion, pursuant to CPLR 3211(a)(7) and 7804(f), to dismiss the petition. (Doc. 17.)

LEGAL CONCLUSIONS:

An article 78 mandamus proceeding may be brought to compel an agency “to perform a duty enjoined upon it by law.” (CPLR 7803[1].) It is well-settled that a mandamus to compel “applies only to acts that are ministerial in nature and not those that involve the exercise of discretion.” (*Matter of Maron v Silver*, 14 NY3d 230, 249 [2010].) Thus, “the petitioner must have a clear legal right to the relief demanded and there must be a corresponding nondiscretionary duty on the part of the administrative agency to grant that relief.” (*Matter of Anonymous v Commr. of Health*, 21 AD3d 841, 842 [1st Dept 2005] (internal quotations omitted).)

This Court finds that the petition must be denied. 29 RCNY § 1-07 provides the procedural framework for reconsideration of the Loft Board's determinations. In particular, 29 RCNY § 1-07(a)(2) states: “The Loft Board, upon the application of a party aggrieved by a determination of the Loft Board, *may, in its sole discretion*, reconsider its determination” (emphasis added). It is

thus self-evident from the statutory language itself that reconsideration “involve[s] the exercise of discretion” (*Matter of Maron*, 14 NY3d at 249), for which mandamus to compel is not appropriate. Therefore, the order to show cause is denied and the petition dismissed pursuant to CPLR 3211(a)(7) for failure to state a cause of action. Further, the Loft Board’s cross motion is denied as moot.

In accordance with the foregoing, it is hereby:

ORDERED AND ADJUDGED that the order to show cause by petitioner Sonaal Industries, Inc. is denied and the proceeding is dismissed; and it is further


ORDERED that the cross motion to dismiss by respondent New York City Loft Board is denied as moot; and it is further

ORDERED that counsel for the petitioner is to serve a copy of this order, with notice of entry, on all parties and on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) within 30 days after the entry of this order onto NYSCEF; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that this constitutes the decision, order, and judgment of this Court.

3/18/2019
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	