

Grace Carting Corp. v City of New York

2019 NY Slip Op 33707(U)

December 20, 2019

Supreme Court, New York County

Docket Number: 160392/2019

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

-----X

GRACE CARTING CORP.,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION

Defendant.

-----X

INDEX NO. 160392/2019

MOTION DATE 12/18/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

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

The petitioner, Grace Carting Corp. (Grace Carting) brings an article 78 petition based on the New York City Business Integrity Commission's (NYCBIC) decision to not allow Grace Carting's withdrawal of its application for a Class 2 Exempt Registration renewal, claiming that said denial was arbitrary and capricious. NYCBIC argues that no final determination has been reached regarding the withdrawal in question, and that the decision was not arbitrary and capricious.

Facts

The facts of the case are generally not in dispute. Grace Carting applied for a renewal of a commercial trade waste license called a Class 2 Exempt Registration on March 8, 2018. Its application for this license indicated they had been fined in 2011 for an incident in New Jersey. In May 2018, Grace Carting's trade waste license was suspended in New Jersey, a determination that has been challenged by Grace Carting, and the disposition of which remains pending.

Following their application and this suspension, the principals of Grace Carting appeared for a

meeting with NYCBIC. The suspension noted above was not disclosed by the Grace Carting's representatives at the meeting, nor was it disclosed prior to an August 14, 2019 letter, that asked for Grace Carting's president to appear for a sworn interview. Following this request, on August 19, 2019, Grace Carting asked for its application to be withdrawn. NYCBIC sent a letter to the Grace Carting on August 23, 2019 denying their application to withdraw, stating that NYCBIC "declines to accept [Grace Carting's] withdrawal request and plans to issue a decision on [Grace Carting's] application after [NYCBIC's] investigation has been completed."

This order to show cause was served on NYCBIC on October 28, 2019. On October 29, 2019, NYCBIC sent a letter to the Grace Carting "clarify[ing]" that no final decision had in fact been made on their withdrawal, and that this issue could be revisited following the sworn testimony of Grace Carting's President.

Standard of Review

In an Article 78 proceeding, the scope of judicial review is limited to whether a governmental agency's determination was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law (see CPLR § 7803[3]; *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230 [1974]; *Scherbyn v BOCES*, 77 NY2d 753, 757-758 [1991]). A determination subject to review under Article 78 exists when, first, the agency "reached a definitive position on the issue that inflicts actual, concrete injury and second, the injury inflicted may not be significantly ameliorated by further administrative action or by steps available to the complaining party" (*Walton v New York State Dept. of Correctional Servs.*, 8 NY3d 186, 194 [2007]). Article 78 review is permitted, where it is alleged 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...." NY CPLR §7803(3).

“Arbitrary” for the purpose of the statute is interpreted as “when it is without sound basis in reason and is taken without regard to the facts.” *Pell* 34 NY2d at 231.

A court can overturn an administrative action only if the record illuminates there was no rational basis for the decision. *Id.* “Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.” *Id.* If the court reviewing the determination finds that “[the determination] is supported by facts or reasonable inferences that can be drawn from the records and has a rational basis in the law, it must be confirmed.” *American Telephone & Telegraph v State Tax Comm’n* 61 NY2d 393, 400 [1984].

Discussion

A discussion of this case must begin with an acknowledgement of the history of the trade waste business in New York City. In 1996, due to concerns that New York City government had regarding organized crime activity in the trade waste industry, enacted Local Law 42 to crack down on this activity. Subsequently, in 2001, what would become the NYCBIC was created by voter referendum.

As to whether there has been a final determination to make this Article 78 action ripe, this Court holds that there was such an action through the August 23, 2019 letter from NYCBIC which stated that a decision had been made to not allow for the withdrawal. It was only when this action was brought that NYCBIC wrote to clarify that no final decision had been made. To rule otherwise would permit NYCBIC to circumvent the Article 78 procedure through clarification in future actions. Other governmental entities that have similar regulatory frameworks could do so as well.

The Court, however, does not find that the action of NYCBIC denying the request for withdrawal was arbitrary and capricious. This Court first agrees with the rationale of then

Justice Emily Jane Goodman’s determination in *Pure Earth v NYCBIC*, 2011 NY Slip Op 32841 (Sup. Ct. NY County 2011) that the ability to deny withdrawal is not in and of itself an arbitrary and capricious decision, in light of the history of the trade waste industry and the mandate of NYCBIC to regulate that industry. In its reply submission, Grace Carting argues that it did disclose the violation issued by New Jersey in 2011. Grace Carting also argues that it did not disclose the 2018 suspension because it was after their application had been submitted to NYCBIC and there had not been a final determination by New Jersey. Grace Carting. However, does not discuss whether failing to disclose New Jersey’s action against them did not violate New York City Administrative Code Section 2-05(a)(2), which requires within ten days disclosure by an applicant where it has been “found to be in violation of the administrative rules or regulations of any municipal, state or federal agency....” Moreover, even if this Court were to find that the action of New Jersey was not a final finding of violation and thus did not fall under this section, this Court would still find it reasonable that upon learning of this action by New Jersey and not hearing about it from Grace Carting, the NYCBIC would want to investigate the instant application further.

This Court therefore finds that the decision by NYCBIC in this matter was not arbitrary and capricious. It is therefore

ADJUDGED that the Article 78 petition is denied.

12/20/2019
DATE

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"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:


LYLE E. FRANK, J.S.C.

HON. LYLE E. FRANK
J.S.C.