

Prestige Stone & Pavers Corp. v New York City Bus. Integrity Commn.
2020 NY Slip Op 32569(U)
August 7, 2020
Supreme Court, New York County
Docket Number: 159929/2019
Judge: W. Franc Perry
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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PRESTIGE STONE & PAVERS CORP.

Petitioner,

- v -

NEW YORK CITY BUSINESS INTEGRITY COMMISSION,

Respondent.

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INDEX NO. 159929/2019
MOTION DATE 10/16/2019
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 47

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

Petitioner brings this matter before the Court alleging that the respondent acted in an arbitrary and capricious manner, and without basis in fact and law, when it denied petitioner's application for an exemption from licensing requirements for removal of construction and demolition debris.

In the case at bar, the record shows that respondent agency, in making its decision, reviewed as documentary evidence, petitioner's application including; bank and credit card statements, petitioner's general ledger, petitioner's commercial lease, the Office of the Comptroller Determination and Order report and the complaint and responses to interrogatories in the matter of Sullivan et al. v Prestige Stone & Pavers Corp., No.16-CV-3348 (S.D.N.Y. filed May 5, 2016).

Following a review of the application, petitioner's principal's testimony, and the documentary evidence, respondent denied petitioner's application.

Respondent found that petitioner’s sole principal, Angelica Fortich, knowingly provided false and misleading information during her sworn testimony. Specifically, petitioner testified that her husband, Mr. Duarte Lopes, “has no involvement at all” with petitioner. However, based on its review of the documentary evidence, respondent discovered that at the time of the review process, Mr. Lopes was very much involved with petitioner, as a co-account holder of three of petitioner’s credit cards and being listed as a tenant on petitioner’s lease.

Respondent also determined that petitioner knowingly provided false and misleading information on its application by never disclosing Mr. Lopes as a principal or employee.

Respondent determined that Mr. Lopes met the definition of “Principal” as set forth in Administrative Code § 16-501(d); 17 RCNY § 1-01, as he is a co-account holder on credit card accounts. He, therefore, was able to make financial decisions on petitioner’s behalf and had been a consultant for petitioner. Mr. Lopes had also listed petitioner as his employer on a credit card application.

Based on the above, respondent found that the intertwining of Mr, Lopes and petitioner’s legal affairs supported the conclusion that Mr. Lopes participated either directly or indirectly in the control of petitioner such that he should have been disclosed as a principal or at least an employee.

It should be noted that Mr. Lopes is barred from performing work under city contracts until 2022 and that petitioner performs work under city contracts.

Respondent also found that Mr. Lopes received substantial financial benefits from petitioner, including the payment of approximately \$58,000.00 in expenses on behalf of himself and another entity. Included in these payments were legal fees paid by petitioner on behalf of Mr. Lopes and petitioner.

Based upon these findings, petitioner concluded that Ms. Fortich gave false testimony in an effort to conceal or downplay Mr. Lopes' involvement with petitioner and denied the application. Petitioner then commenced this action.

In this proceeding, petitioner argues that its principal did not provide false information and that her answers reflected Mr. Lopes' past involvement in the business. Petitioner, states that most of the evidence upon which respondent bases its denial was never asked of petitioner's principal and that the questions posed to her were not asked to glean a "correct" answer from petitioner's principal. In other words, Ms. Fortich meant to say that at one time her husband had been involved in the business but he was not involved at the time of the application.

Petitioner also attacks the integrity of Ms. Fortich's interview with respondent-agency. Petitioner says that the "informal" interview was a formal deposition wherein Ms. Fortich was not represented by counsel and was told to only answer the posed questions and not to provide any context to her answers.

In reviewing the determination of an administrative agency, the Court must ascertain whether the decision was "arbitrary and capricious," and made "without sound basis in reason or regard to the facts." *Matter of Murphy v. New York State Division of Housing & Community Renewal*, 21 NY3d 649 (2013).

It is well settled that a court's role in such review is limited. The court must merely determine whether there was a rational basis for the agency's determination. If the court finds that the determination had a rational basis, it must sustain the determination. *Matter of Pell v. Board of Education*, 34 NY2D 222 (1974).


Even if a court could have come to a different conclusion than the agency, it is still required to affirm the agency’s decision if it finds it to be rational. *Mid-State Management Corp v. New York City Conciliation and Appeals Board*, 112 AD2d 72 (1985).

Giving petitioner the benefit of every doubt, the objections raised in opposition to respondent’s determination show to this court that the agency’s determination was not rational nor had no basis in law or fact. Contrary to Ms. Fortich’s argument, there is evidence that Mr. Lopes was involved in the business at the time of the application. Mr. Lopes remained a signatory on at least on of the company’s credit cards during the application process.

The respondent’s rationale for its decision was clearly supported by the evidence presented and reviewed by respondent. The determination was reasonable and the court finds no reason to disturb it.

Petitioner’s second affirmative defense, asserting lack of due process fails, as petitioner fails to show that it was deprived notice and an opportunity to be heard under 17 RCNY§ 1-02.

This is the decision and order of the court.

<u>8/7/2020</u> DATE		 W. FRANC PERRY, 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
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE