205 Spencer Realty LLC v City of New York
2020 NY Slip Op 33424(U)
October 20, 2020
Supreme Court, New York County
Docket Number: 158997/2019
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD **PART** IAS MOTION 35EFM

Justice

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205 SPENCER REALTY LLC,

Plaintiff,

- v -

CITY OF NEW YORK, CITY OF NEW YORK OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Defendant.

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INDEX NO. 158997/2019

MOTION DATE 10/24/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 120

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

Upon the foregoing documents, it is

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner 205 Spencer Realty LLC (motion sequence number 001) is denied with respect to the decisions rendered by the respondent City of New York Office of Administrative Trials and Hearings with respect to summons numbers 035175125X, 035175126H, 035175127J, 035179099J, 035183250P, 035183251R, 035183252Z, 035196517H, 035218090M, 700792960, 700745192, 700717005, 035182999M and 035182998K; and it is further

ORDERED that the petition for relief, pursuant to CPLR Article 78, of petitioner 205 Spencer Realty LLC (motion sequence number 001) is remanded to the respondent City of New York Office of Administrative Trials and Hearings for further proceedings with respect to the default decisions that said respondent entered in connection with summons numbers 178211615, 184111630, 184712336, 184714967, 184118261, 184848126, 041399396H, 041444111P, 187588666, 197451408, 191451426, 191451471, 700922081, 100935703, 701017460, 204260980, 700507107, 700521764,700536138, 100605492, 700627209, 700905352, 700909817, 700922045, 700935768, 701001896, 101043310 and 701245490; and it is further

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

ORDERED that counsel for respondent City of New York Office of Administrative Trials and Hearings shall serve a copy of this order on all parties within twenty (20) days of entry.

MEMORANDUM DECISION

In this Article 78 proceeding, petitioner 205 Spencer Realty LLC (205 Spencer) seeks an order to vacate a number of default judgments that were issued by the respondent City of New York Office of Administrative Trials and Hearings (OATH), and that the co-respondent City of New York (the City) collected from 205 Spencer via garnishment and levy (motion sequence number 001). For the following reasons, 205 Spencer's motion is denied in part, and the balance of it is remanded to OATH for further proceedings.

FACTS

205 Spencer is the owner of a building located at 205 Spencer Street in Kings County, New York (the building). *See* verified petition, ¶ 1. Between January 2014 and August 2018, various City agencies, including the Department of Buildings (DOB), the Department of Sanitation (DSNY), the Department of Transportation (DOT) and the New York Police Department's Transport Intelligence Division (TID), issued a total of 42 summonses to 205 Spencer for different violations at the building. *Id.*, ¶ 12; exhibits D - SS. 205 Spencer failed to appear at the hearings of 20 of those 42 summonses, after which the issuing agencies referred the cases to OATH, which in turn entered 20 default judgments against 205 Spencer. *Id.*, ¶ 13. Thereafter, the City issued an execution to 205 Spencer as garnishee, and subsequently levied $128,460.01 from 205 Spencer's bank account in April 2019. *Id.*, ¶¶ 7-11.

In its petition, 205 Spencer asserts that OATH acted improperly by issuing default decisions and other orders on forms that do not comply with Section 1049-a (d.) (1) (h) of the New York City Charter (the City Charter); specifically as they do not mention a certain notice requirement that is specified in the City Charter. *See* verified petition, ¶ 15; exhibit TT. OATH asserts that all of its forms comply with that notice requirement. *See* verified answer, ¶¶ 51-148.

205 Spencer commenced this Article 78 proceeding on September 16, 2019, and respondents filed an answer on November 25, 2019. *See* verified petition; verified answer. The COVID-19 national pandemic caused the court to suspend its operations indefinitely in the early part of this year, however, and the parties were unable to complete their submissions until recently. This matter is now ready for disposition (motion sequence number 001).

DISCUSSION

At the outset, the court notes that respondents divided the 42 summonses issued to 205 Spencer into three categories: 1) those which were decided on the merits after agency hearings and resulted in guilty verdicts (group 1);[1] 2) those for which 205 Spencer did not appear at the agency hearings, which resulted in OATH later issuing default decisions (group 2);[2] and 3) those for which 205 Spencer failed to appear at OATH hearings, and later moved to vacate the defaults, but OATH denied those motions (group 3).[3] *See* verified answer, ¶¶ 51-57. This is relevant because respondents assert that 205 Spencer may not seek relief for the groups 1 and 2 summonses pursuant to CPLR Article 78. *Id.*, ¶¶ 150-154. Respondents specifically argue that the petition should be denied with respect to those summonses because 205 Spencer "failed to exhaust all available administrative remedies" by (a) not making timely requests for post-default hearings on the group 1 summonses, and (b) not filing timely motions to vacate the defaults on the group 2 summonses. *See* respondents' mem of law at 11-13. 205 Spencer replies that the

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[1] Respondents state that the "group 1" summonses include those numbered: 035175125X, 035175126H, 035175127J, 035179099J, 035183250P, 035183251R, 035183252Z, 035196517H, 035218090M, 700792960, 700745192, 700717005, 035182999M and 035182998K. *See* verified answer, ¶ 52; exhibit B.

[2] The parties eventually agreed that the "group 2" summonses included those numbered: 178211615, 184111630, 184712336, 184714967, 184118261, 184848126, 041399396H and 041444111P. *See* verified answer, ¶ 54; exhibit B; Jones supplemental affirmation, ¶¶ 4-9; Riggs supplemental affirmation, ¶¶ 6-8.

[3] The parties eventually agreed that the "group 3" summonses included those numbered: 187588666, 197451408, 191451426, 191451471, 700922081, 100935703, 701017460, 204260980, 700507107, 700521764,700536138, 100605492, 700627209, 700905352, 700909817, 700922045, 700935768, 701001896, 101043310 and 701245490. *See* verified answer, ¶ 57; Jones supplemental affirmation, ¶¶ 4-9; Riggs supplemental affirmation, ¶¶ 6-8.

"exhaustion of remedies" rule does not apply in this proceeding because its petition raises "a question of law" rather than seeking review of the subject summonses pursuant to the "arbitrary and capricious" standard that usually governs Article 78 proceedings. *See* Fink reply affirmation, ¶¶ 25-36. The court finds 205 Spencer's argument persuasive.

In *Coleman v Daines*, the Appellate Division, First Department, observed as follows:

> "[O]ne who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law. The exhaustion rule, however, is not an inflexible one. It is subject to important qualifications. It need not be followed, for example, when an agency's action is challenged as either unconstitutional or wholly beyond its grant of power, or when resort to an administrative remedy would be futile or when its pursuit would cause irreparable injury. Exhaustion is also not required where only an issue of law is involved, or where the issue involved is purely the construction of the relevant statutory and regulatory framework."
> 79 AD3d 554, 560 [1st Dept 2010], *affd'* 19 NY3d 1087 [2012]) (internal citations and quotation marks omitted).

205 Spencer asserts that its petition "turns on a question of law: whether OATH's standard default notice fails to comply with Section 1049-a (d.) (1) (h) of the City Charter, not on OATH's determinations as to whether it was appropriate to vacate any particular default judgement at issue in this case." *See* Fink reply affirmation, ¶ 5. It also asserts that "whether a notice complies with a statute is a question of law." *Id.*, ¶ 6. The scant case law on this issue has held that the exhaustion doctrine will not bar a court from considering questions of whether or not a regulatory framework's notice provisions themselves are legally sufficient and/or Constitutional. *See e.g.*, *Matter of Lown v Annucci*, 183 AD3d 1246 (4th Dept 2020); *Matter of Moreta v Cestero*, 32 Misc 3d 563 (Sup Ct, NY County 2011). Here, 205 Spencer does not question either the legality or the Constitutionality of City Charter § 1049-a (d.) (1) (h). Further, the decision that 205 Spencer cited to support its argument, *Matter of Smith v Berlin* (43 Misc 3d 1209 [A], 2013 NY Slip Op 52305[U] [Sup Ct, NY County 2013]), was not on point since it

concerned the mootness doctrine rather than the exhaustion doctrine. This would appear to cast doubt on 205 Spencer's exhaustion argument. Nevertheless, the court believes that it may appropriately consider 205 Spencer's question as to whether OATH's various default notices comport with City Charter § 1049-a (d.) (1) (h). As the Court of Appeals recently observed:

> "As a general rule, 'courts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise.'" Thus, an agency's construction of its regulations '"if not irrational or unreasonable,' should be upheld." However, 'courts are not required to embrace a regulatory construction that conflicts with the plain meaning of the promulgated language.' Judicial deference to an agency's interpretation of its rules and regulations is warranted because, having authored the promulgated text and exercised its legislatively delegated authority in interpreting it, the agency is best positioned to accurately describe the intent and construction of its chosen language."
> *Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 174 (2019) (internal citations omitted).

Here, 205 Spencer squarely asserts that OATH's "regulatory construction . . . conflicts with the plain meaning of" the notice provision contained in City Charter § 1049-a (d.) (1) (h). It certainly cannot be said that OATH has any particular administrative expertise or mandate concerning issues of notice or statutory construction that the court is obliged to defer to. As a result, the court accepts 205 Spencer's argument that the doctrine of exhaustion of administrative remedies does not bar consideration of whether OATH's various default notices comply with the City Charter. Having given that matter due consideration, the court makes the following findings.

The relevant portions of City Charter § 1049-a provide as follows:

> "(g) Any final order of the [environmental control board (ECB), which sits within OATH] imposing a civil penalty, whether the adjudication was had by hearing or upon default or otherwise, shall constitute a judgment rendered by the board which may be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state, and may be enforced without court proceedings in the same manner as the enforcement of money judgments entered in civil actions; provided, however, that no such judgment shall be entered which exceeds the sum of twenty-five thousand dollars for each respondent.

> "(h) Notwithstanding the foregoing provision, before a judgment based upon a default may be so entered [the ECB/OATH] must have notified the respondent by first class mail in such form as [the ECB/OATH] may direct: *(i) of the default decision and order and the penalty imposed; (ii) that a judgment will be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state of New York; and (iii) that entry of such judgment may be avoided by requesting a stay of default for good cause shown* ***and*** *either requesting a hearing* ***or*** *entering a plea pursuant to the rules of [the ECB/OATH] within thirty days of the mailing of such notice.*"
> City Charter §§ 1049-a (d.) (1) (g) & (h) (emphasis added).

205 Spencer asserts that OATH utilized a "standard default notice" form in connection with the group 3 summonses which does not comport with City Charter § 1049-a (d.) (1) (h). *See* Fink reply affirmation, ¶¶ 11-14; verified petition, exhibit TT. 205 Spencer specifically argues that that form "contain[s] no language whatsoever about a stay," and "does not state that a 'stay of default' occurs by merely requesting a hearing." *Id.*, ¶¶ 15-19. 205 Spencer appears to be correct. City Charter § 1049-a (d.) (1) (h) requires OATH to provide defaulting parties with notice of three items: 1) the fact that OATH entered a decision based on the party's default judgment and imposed a penalty in a specified amount; 2) the fact that that default decision can be converted into a judgment against the party; and 3) the fact that the party may avoid the entry of such a default judgment by (a) requesting a stay "for good cause shown" (b) either requesting a hearing or agreeing to a guilty plea. It is evident that OATH's standard default notice form includes items 1, 2 and 3 (b), but omits item 3 (a). *See* verified petition, exhibit TT. The form appears to improperly conflate a "request for a stay of default" with a "request for a hearing," even though the regulation treats them as separate requests and imposes a "good cause" requirement on the former, but not the latter. Therefore, the court concludes that the standard default notice form that OATH sent to 205 Spencer in connection with the 20 group 3

summonses failed to comport with City Charter § 1049-a (d.) (1) (h).[4] However, this does not end the court's inquiry.

205 Spencer argues that, as a result of the foregoing deficiency in the standard default notice form, it "is entitled to a permanent stay barring OATH from docketing any of the default penalties at issue as judgments" in connection with the group 3 summonses. *See* Fink reply affirmation, ¶ 24. However, 205 Spencer does not identify any legal authority for granting such a stay, nor does its petition request injunctive relief. The petition's prayer for relief does request the court to declare that OATH's default judgments are void for failing to comply with the City Charter's notice provisions, and to order OATH to render and enter superseding decisions that comply with the City Charter. *See* verified petition at 10. However, the court cannot enter such relief. In *Matter of 985 Amsterdam Ave. Hous. Dev. Fund Corp. v Beddoe*, the First Department found that a trial court reviewing an Article 78 petition "may not usurp the administrative function by directing the agency to proceed in a specific manner, which is within the jurisdiction and discretion of the administrative body in the first instance." 126 AD3d 562, 563 91st Dept 2015) (internal quotation marks and citation omitted). The First Department concluded that the trial court had "exceeded its review function in an article 78 proceeding when it simply ordered a new hearing rather than remanding the proceeding to ECB for a determination whether petitioner demonstrated good cause for default." 126 AD3d at 563. Bearing that ruling in mind, this court declines to grant the relief that 205 Spencer requests, and instead remands so much of its petition as concerns the group 3 summonses to OATH for reconsideration.

As regards the group 1 and group 2 summonses, 205 Spencer argues that "[a]ll of the default judgements at issue in this case that OATH rendered against the Petitioner are ripe for

[4] The court notes that 205 Spencer did not assert a similar argument in to challenge the notices that OATH sent it in connection with the group 1 and group 2 summonses.

review in this Article 78 proceeding." *See* Fink reply affirmation, ¶¶ 25-36. 205 Spencer indicates that the OATH decisions involving the group 1 and group 2 summonses did not utilize OATH's standard default notice form, but its papers did not discuss the forms that OATH purportedly did use in connection with the group 1 and group 2 summons defaults. *Id.*, ¶¶ 9-10, n 3, n 4. OATH, however, has produced copies of its records pertaining to those two groups of summonses. *See* verified answer, ¶¶ 52-56; exhibits B, C. From these, it is clear that OATH did, in fact, use the deficient standard default notice form in connection with the group 2 summonses. *Id.*, exhibit C. As a result, the court finds that so much of 205 Spencer's petition as pertains to the group 2 summons defaults should also be remanded to OATH for reconsideration.

The group 1 summonses, which resulted in decisions after hearings rather than decisions after default, plainly did not utilize the deficient standard default notice forms that 205 Spencer objects to. As a result, the court agrees with 205 Spencer's assertion that those decisions "are ripe for review in this Article 78 proceeding." *See* Fink reply affirmation, ¶ 25. The court also notes OATH's assertion that its "final determinations were reasonable, rational, and in accordance with applicable law." *See* respondents' mem of law at 17-20. The court's role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious. *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 (1974); *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 (1st Dept 1996). A determination will only be found arbitrary and capricious if it is "without sound basis in reason, and in disregard of the facts." *See Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983); *citing Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale &*

Mamaroneck, Westchester County, 34 NY2d at 231. However, if there is a rational basis for the administrative determination, there can be no judicial interference. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232.

Here, OATH argues that 205 Spencer's petition must fail with respect to the group 1 summons decisions because 205 Spencer failed to exhaust its administrative remedies by filing timely agency appeals of those decisions. *See* verified answer, ¶ 152. OATH correctly notes that the governing City Charter regulation provides that:

> "The party seeking to appeal the decision of a Hearing Officer must file the appeal with [OATH] within thirty (30) days of the date of the Hearing Officer's decision, or within thirty-five (35) days if the decision was mailed, and the filing must contain proof that the appealing party served a copy of the appeal on the non-appealing party."
> City Charter § 6-19 (a) (1) (i).

OATH also avers that 205 Spencer failed to file any such administrative appeals after it rendered the post-hearing decisions of the group 1 summonses. *See* verified answer, ¶ 152. 205 Spencer does not deny this; instead, it submits an affirmation from its supervising member who states that he was simply unaware that 205 Spencer's counsel had appeared at OATH to challenge those summonses, and therefore inadvertently ignored the subsequent appeal deadlines. *See* Landau reply affirmation, ¶¶ 1-10. Nevertheless, the failure to exhaust this particular administrative remedy precludes 205 Spencer from seeking review of OATH's group 1 summons decisions pursuant to CPLR Article 78. *See Matter of Sahara Constr. Corp. v New York City Off. of Admin. Trials & Hearings*, 185 AD3d 401 (1st Dept 2020). Therefore, the court denies so much of 205 Spencer's petition as it pertains to the group 1 summons decisions.

CONCLUSION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner 205 Spencer Realty LLC (motion sequence number 001) is denied with respect to the decisions rendered by the respondent City of New York Office of Administrative Trials and Hearings with respect to summons numbers 035175125X, 035175126H, 035175127J, 035179099J, 035183250P, 035183251R, 035183252Z, 035196517H, 035218090M, 700792960, 700745192, 700717005, 035182999M and 035182998K; and it is further

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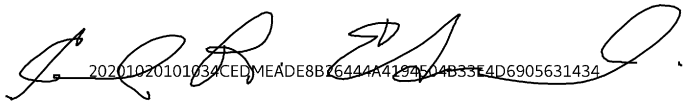
ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for respondent City of New York Office of Administrative Trials and Hearings shall serve a copy of this order on all parties within twenty (20) days of entry.



10/20/2020
DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE