

Wahid v New York City Dept. of Fin.

2021 NY Slip Op 31086(U)

April 6, 2021

Supreme Court, New York County

Docket Number: 156287/2020

Judge: Arthur F. Engoron

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

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INDEX NO. 156287/2020

ABDUL WAHID, MAHBOOB SAWAR, ABDUL WAHID
REVOCABLE TRUST,

MOTION DATE 10/28/2020

Petitioner,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF FINANCE, HOUSING
PRESERVATION & DEVELOPMENT AGENCY OF THE
CITY OF NEW YORK,

DECISION + ORDER ON
MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 4, 5, 6, 7, 8, 9, 10,
11, 12, 13, 14, 15, 16, 17, 18, 19, 20

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

Upon the foregoing documents and for the reasons set forth hereinbelow, (1) the instant CPLR
Article 78 petition by Abdul Wahid; Mahboob Sarwar; Abdul Wahid Revocable Trust; and
Mahboob Sarwar Trustee is denied as untimely; and (2) the instant cross-motion to dismiss by
respondents, the New York City Department of Finance and the Housing Preservation and
Development Agency of the City of New York, is granted.

Background

Petitioners allege, briefly put, as follows. From January 9, 2009 through on or about March 5,
2014, respondent the Housing Preservation and Development Agency of the City of New York
("the Housing Agency") made unauthorized repairs ("the Repairs") to residential premises in
Queens, New York ("the Premises") that petitioner Abdul Wahid ("Wahid") owned. At the time
of the Repairs (and, more specifically, between May 13, 2010 and June 12, 2012), Wahid did not
reside at the Premises, as he was incarcerated in federal prison. The Repairs were charged to
Wahid. Respondent the New York City Department of Finance ("The Finance Department")
produced an assessment ("the Assessment") of the subject property, which increased the taxes
owed for the Premises. The charges and ongoing interest on unpaid tax assessment(s) continue
to accrue. "Because of the outstanding tax lien, [the Premises] are also a potential candidate for
a tax lien sale" by the Finance Department. According to petitioners, Wahid, Mahboob Sarwar
("Sarwar"), Abdul Wahid Revocable Trust, and Mahboob Sarwar Trustee, as of July 23, 2020,
the Assessment and ongoing charges totaled \$57,316.85. (NYSCEF Documents 1 and 17.)

Petitioners now assert that neither the Housing Agency nor the Finance Department offers a
procedure by which petitioners can challenge the charges arising out of the Repairs and/or the

tax lien that arose therefrom. Wahid, Sarwar, “and their agent” claim that they have attempted to challenge the Assessment and that respondents have failed to respond. (NYSCEF Doc. 1.)

By petition dated July 23, 2020 (and e-filed on August 11, 2020), petitioners commenced the instant CPLR Article 78 special proceeding, seeking an order (1) directing the Finance Department to vacate the Assessment, the lien on the Premises, and all applicable interest and penalties “evidencing and resulting from” the Repairs; and (2) staying the imposition of all further assessment penalties, tax lien sales, and interest charges pending resolution of the instant application (NYSCEF Documents 1-2).

Respondents cross-move, pursuant to CPLR 217(1), 3211(a)(2) and (5), and Article 7804(f), to dismiss the instant petition against them on the grounds that petitioners (1) have failed to exhaust their administrative remedies, and (2) are time-barred from bringing the instant proceeding (NYSCEF Doc. 8).

Respondents assert, inter alia, the following: (1) the Repairs addressed violations that “were dangerous to human life and safety or detrimental to health”; (2) by correspondence dated September 2010, the Housing Agency informed Wahid of how one could protest the subject charges and that the subject charges were past due for such protest; (3) there is not any “final administrative determination” for this Court to review, as petitioners did not submit written objections prior to the due date for each charge, and, thus, petitioners have failed to exhaust their administrative remedies; and (4) the Finance Department has stayed the subject sale of the tax lien during the pendency of this proceeding. (NYSCEF Doc. 9.)

In opposition to the instant cross-motion and in further support of their CPLR Article 78 petition, petitioners asserts, inter alia, the following: (1) on September 13, 2010 or on another date prior to June 12, 2012, Wahid did not, as respondents allege, engage in a conversation with the Housing Agency; (2) after Wahid entered prison in May 2010, David and Ahmed Shah and their family began residing, illegally, at the Premises, and after his release from prison, Wahid successfully brought the matter to the Queens Housing Part to remove the “squatters/fraudsters,” who were in fact evicted from the Premises in 2014; and (3) between 2010 and 2012, the Repairs occurred “at the request of and/or on behalf of the fraudster Shahs,” who “intercepted” written correspondence that respondents sent to Wahid at the Premises and likely had oral communications with respondents. (NYSCEF Doc. 17.)

Discussion

It is well-settled that in a CPLR Article 78 special proceeding, the scope of judicial review is limited to the issue of whether the administrative action is rational. Pell v Board of Educ., 34 NY2d 222, 230-231 (1974). This Court may not disturb respondents’ determination unless there is no rational basis for the exercise of discretion or it was arbitrary and capricious. Id. at 231. “The arbitrary or capricious test chiefly relates to ... whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts.” Id. This Court may not simply second-guess respondents.

CPLR 3211(a)(5) states the following:

A party may move for a judgment dismissing one or more causes of action asserted against him on the ground that ... the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds.

(Emphasis added.)

CPLR 217(1) states the following:

Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact, or after the respondent's refusal, upon the demand of the petitioner or the person whom he represents, to perform its duty; or with leave of the court where the petitioner or the person whom he represents, at the time such determination became final and binding upon him or at the time of such refusal, was under a disability specified in section 208, within two years after such time.

(Emphasis added.)

As respondents note, pursuant to CPLR 217(1), the instant application is time-barred. Petitioners here seek to challenge Repairs that occurred between January 2009 and March 2014. However, petitioners commenced the instant proceeding between July and August 2020, more than six years following the Repairs. Respondents have e-filed the aforementioned September 13, 2010 correspondence to Wahid "in response to [his] request for an invoice that supports the above referenced charge for an emergency repair performed by [the Housing Agency]." In said correspondence, the Housing Agency clearly states that Wahid's request(s) for invoice(s) were not timely received, and that "any protest to an emergency repair bill that is not timely made will be denied, and requests for invoices made after that period cannot revive the owner's right to protest the bill." (NYSCEF Doc. 14). Thus, as respondents note, the four-month statute of limitations also bars petitioners' attempt(s) to challenge the September 13, 2010 correspondence. In any event, Wahid was released from prison in June 2012, and the matters he raises herein are obviously time-barred.

This Court finds that the subject actions by respondents were rational and do not meet the CPLR Article 78 arbitrary and/or capricious standard. Obviously, respondents were entitled to make numerous emergency repairs to make the Premises safe to inhabit and to bill the owner of the house.

Furthermore, although petitioners claim that Wahid has mental illness (NYSCEF Doc. 19), apparently no court has declared him incompetent.

This Court has considered petitioners' other arguments and finds them to be unavailing and/or non-dispositive.

Therefore, this Court will deny the instant petition and, pursuant to CPLR 3211(a)(5), grant respondents' cross-motion to dismiss the instant proceeding.

Conclusion

Thus, for the reasons stated hereinabove, (1) the instant CPLR Article 78 petition by Abdul Wahid; Mahboob Sarwar; Abdul Wahid Revocable Trust; and Mahboob Sarwar Trustee is denied as untimely; and (2) the instant cross-motion to dismiss by respondents, the New York City Department of Finance and the Housing Preservation and Development Agency of the City of New York, is granted. Accordingly, the Clerk is hereby directed to enter judgment denying and dismissing the instant petition.



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4/6/2021
DATE

ARTHUR F. ENGORON, 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