

City of New York v 235 Hotel LLC
2021 NY Slip Op 31999(U)
August 12, 2021
Supreme Court, New York County
Docket Number: 450541/2019
Judge: J. Machelle Sweeting
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART IAS MOTION 62

Justice

-----X

THE CITY OF NEW YORK

Plaintiff,

- v -

235 HOTEL LLC,

Defendant.

-----X

INDEX NO. 450541/2019

MOTION DATE 05/29/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

In the underlying action plaintiff, The City of New York (the “City”), alleges that on March 31, 2017, the Environmental Control Board (the “ECB”) imposed a penalty of \$53,000 on defendant 235 Hotel LLC (the “Hotel”) with respect to Violation No. 352-034-20Y, and on September 23, 2016, the ECB imposed a penalty of \$53,000 on the Hotel with respect to Violation No. 351-516-62P. The City argues that, although due and duly demanded, no part of the aggregate penalty amount of \$106,000.00 has been paid. The City now seeks a judgment against the Hotel in the amount of \$106,000.00 plus costs and disbursements.¹

Pending before the court is a motion wherein the City seeks an order, pursuant to CPLR §3212, granting the City summary judgment. Upon the foregoing documents, this motion is GRANTED.

¹ The City did not submit an affirmation, receipts or any other evidentiary proof in support of its claim for costs and disbursements. Accordingly, such relief is not considered herein.

Standard for Summary Judgment

The function of the court when presented with a motion for summary judgment is one of issue finding, not issue determination (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [Sup. Ct. App. Div. 1st Dept. 1985]). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (Alvarez v. Prospect Hospital, 68 N.Y.2d 320 [NY Ct. of Appeals 1986]; Winegrad v. New York University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (Assaf v. Ropog Cab Corp., 153 A.D.2d 520 [Sup. Ct. App. Div. 1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]).

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact, and failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (Alvarez v Prospect Hosp., 68 NY2d 320 [N.Y. Ct. of Appeals 1986]).

Further, pursuant to the New York Court of Appeals, “We have repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (Zuckerman v City of New York, 49 NY2d 557 [N.Y. Ct. of Appeals 1980]).

The City’s Motion

In its motion, the City argues that all dispositive issues in this case have already been decided in the City’s favor in the decision issued on March 31, 2017 by Hearing Officer Linda Ashley and in the decision issued on September 23, 2016 by Hearing Officer Mitchell Regenbogen. The City argues that under the doctrine of *res judicata*, the decisions issued in the above administrative proceedings are dispositive and binding upon the courts in subsequent lawsuits.

In support of its motion, the City submitted a copy of Hearing Officer Ashley's decision and a copy of Hearing Officer Regenbogen's decision. The City also submitted an affidavit from Anayansi Cervera, Supervisor in the Penalty Processing Unit for the Office of Administrative Trials and Hearings (the “OATH”), who averred to the validity of the two attached Hearing Officers’ decisions, and averred that no part of either penalty had been paid.

The doctrines of *res judicata* and collateral estoppel are applicable to give conclusive effect to the quasi-judicial determinations of administrative agencies when rendered pursuant to the adjudicatory authority of an agency to decide cases brought before its tribunals employing procedures substantially similar to those used in a court of law (Metro-N. Commuter R. Co. v New York State Exec. Dept. Div. of Human Rights, 271 AD2d 256 [Sup. Ct. App. Div. 1st Dept 2000]).

Here, defendant Hotel does not dispute that the decisions rendered by the OATH constitute quasi-judicial determinations of an administrative agency.

Given this, the court finds that the City has made its *prima facie* case, and the burden now shifts to defendant Hotel to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.

The Hotel's Opposition

In opposition, the Hotel argues that the “drastic relief” sought by the City is not warranted, as the Hotel is “actively proceeding to cure the violations” and has already filed applications for Certificates of Correction. The Hotel also argues that one of the violations was resolved with a penalty of “only \$3,000,” and that they have been in communication with the City in order to arrive at a stipulated settlement amount that will be accepted after all of the violations have been resolved. In support, the Hotel attached a number of applications for Certificates of Correction, and two notices each indicating that a particular violation had been resolved.

Contrary to the Hotel's claims, a close look at the relevant exhibit (NYSCEF Document #29) shows that the two resolved violations were Violation No. 351-516-63R and Violation No. 350-074-70Y. In contrast, the two violations that are the subject of this motion are Violation No. 352-034-20Y and Violation No. 351-516-62P. There is no dispute that the two subject violations remain open and the penalties unpaid.

The Hotel also argued that one of the resolved violations (No. 351-516-63R) was closed with a reduced penalty of “only \$3,000” and that given more time, the Hotel would also be able to reduce the penalties associated with the two subject violations here. While the records submitted by the Hotel show that the initial penalty imposed for Violation No. 351-516-63R was \$3,000, it

does not show, as the Hotel implies, that the penalty was reduced from a higher amount down to \$3,000.


Finally, with respect to the Hotel’s numerous applications for Certificates of Correction with respect to other violations on the subject property, there is no suggestion that any of these violations were resolved. In fact, the records submitted by the City in reply (NYSCEF Document #32) show that that there are at least seven remaining open violations on the property.

Accordingly, this court finds that defendant Hotel failed to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. Therefore, it is hereby:

ORDERED that the motion of the City is GRANTED; and it is further

ORDERED that a monetary judgment in the amount of \$106,000.00 shall be entered against the Hotel.

This is the Decision and Order of the court.

<u>8/12/2021</u> DATE					 _____ J. MACHEL E. SWEETING, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE