

Milch v New York City Dept. of Fin.
2022 NY Slip Op 30911(U)
March 22, 2022
Supreme Court, New York County
Docket Number: Index No. 158153/2021
Judge: Carol R. Edmead
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL EDMEAD **PART** **35**

Justice

-----X

JASON MILCH,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF FINANCE, DIANNE
PINE, IN HER OFFICIAL CAPACITY AS SENIOR
ADMINISTRATIVE LAW JUDGE OF THE PARKING
VIOLATIONS BUREAU,

Respondent.

-----X

INDEX NO. 158153/2021

MOTION DATE 02/14/2022,
02/14/2022

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 17, 18, 19, 20, 21 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

ORDERED AND AJDUDGED that the petition pursuant to CPLR Article 78 of petitioner Jason A. Milch (motion sequence number 001) is denied; and it is further

ORDERED AND ADJUDGED that cross motion, pursuant to CPLR 3211 (a) (3), of the respondents New York City Department of Finance and Dianne Pine, in her official capacity as Senior Administrative Law Judge of the Parking Violations Bureau (motion sequence number 002), is granted and this proceeding is dismissed; and it is further

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

ORDERED that counsel for respondents shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.

In this Article 78 proceeding, petitioner Jason A. Milch (Milch) seeks a judgment to overturn a decision of the respondent New York City Department of Finance (DOF; motion sequence number 001), and the DOF moves separately to dismiss his petition (motion sequence number 002). For the following reasons, the petition is denied, the cross motion is granted, and this proceeding is dismissed.

FACTS

In 2019 and 2021, Milch represented his non-party father before the DOF's Parking Violations Bureau (PVB) in connection with two separate tickets that his father had received for speed camera violations pursuant to Vehicle and Traffic Law (VTL) § 1180-b. *See* verified petition, ¶¶ 3-7, 17-22. Those tickets bore Notice of Liability numbers 4671945769 (NOL 69) and 4734045677 (NOL 77), respectively. *Id.*, ¶¶ 3, 17. After the PVB found Milch's father guilty of both violations at in-person hearings, Milch filed requests for administrative appeals of each conviction to the DOF's PVB Appeals Unit. *Id.*, ¶¶ 5, 18. In connection with those appeals, Milch requested and paid for copies of the transcripts of both in-person hearings. *Id.*, ¶¶ 6, 21.

The DOF contracts with a non-party administrative services support company called Ubiquis (Ubiquis) to provide written transcriptions of the audio records of PVB hearings. *See* verified petition, ¶ 13, n 4. Milch submitted his request for a transcript of the NOL 69 hearing on January 9, 2020, and later requested the transcript of the NOL 77 hearing on June 21, 2021. *Id.*, ¶¶ 6, 21; exhibits 2, 3, 9, 10; notice of motion, exhibit G. The PVB received the former transcript request on January 14, 2020, and the latter on the same day it was made (i.e., June 21, 2021). *Id.*, ¶¶ 6, 21; exhibits 2, 10. The PVB did not provide Milch with the transcript of the NOL 69 hearing until April 28, 2021, but it provided the transcript of the NOL 77 hearing in a

more timely fashion on July 21, 2021. *Id.*, ¶¶ 12, 22; exhibits 6, 7. Respondents aver that the lengthy delay in providing the transcript of the NOL 69 hearing was due to interruptions in its and Ubiquis's office operations that were caused by the Covid-19 national pandemic. *See* respondents' mem of law at 5, n1. Respondents also note that the PVB Appeals Unit afforded Milch a number of adjournments of the hearing of the appeal of the NOL 69 conviction so that he would have the opportunity to receive and review the transcript beforehand. *Id.* at 5-6. The administrative appeal of the NOL 69 conviction was eventually heard by the PVB Appeals Unit in person on June 9, 2021. *See* verified petition, ¶ 14. The parties do not state when (or if) the administrative appeal of the NOL 77 conviction was heard. Nevertheless, the documentary evidence shows that: 1) Milch received the transcript of the NOL 69 hearing on April 28, 2021, which was more than ten days before the administrative appeal of that conviction was heard on June 9, 2021; and 2) Milch requested the transcript of the NOL 77 hearing on June 21, 2021, sent payment on July 3, 2021, and received his copy of the transcript on July 21, 2021 - a month after submitting his request. *Id.*, exhibits 6, 7, 9, 10; notice of motion, exhibits D, H.

On June 22, 2021 and July 29, 2021, respectively, Milch submitted email requests to co-respondent administrative law judge Dianne Pine (ALJ Pine) for refunds of his payments for the NOL 69 and NOL 77 transcripts. *See* verified petition, ¶¶ 16, 23; exhibits 8, 11; notice of cross motion, exhibits F, J. ALJ Pine denied both of those requests in an email dated August 4, 2021. *Id.*, ¶¶ 16, 24; exhibits 9, 12; notice of cross motion, exhibits G, J, K. Milch thereafter commenced this Article 78 proceeding to contest ALJ Pine's denial on September 8, 2021 (motion sequence number 001). *See* verified petition, aff of service. Rather than submit an answer, respondents filed the instant motion to dismiss the petition on December 13, 2021 (motion sequence number 002). *See* notice of motion. This matter is now fully submitted.

DISCUSSION

A trial court's usual role in an Article 78 proceeding is to determine whether, upon the facts before an administrative agency, a challenged agency 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. Inc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 (1st Dept 1996). Here, however, respondents argue that the court cannot undertake the usual review of Milch's Article 78 petition because he lacks standing to commence this proceeding because "he has suffered no injury." *See* respondents' mem of law at 7-9. *Id.* After reviewing the controlling law, the court finds that respondents are correct.

In order to demonstrate standing to challenge the actions of a respondent agency, a petitioner must show that s/he "has suffered an injury in fact and that the injury falls within the zone of interests protected by the laws under which petitioners claim relief." *Matter of Bolofsky v City of New York*, 69 Misc 3d 1211(A), 2020 NY Slip Op 51259(U), *1 (Sup Ct, NY County 2020), citing *Mental Hygiene Legal Serv. v Daniels*, 33 NY3d 44, 50 (2019); *Association for a Better Long Is., Inc.*, 23 NY3d 1, 6 (2014); *New York State Assn. of Nurse Anesthetists v Novello*, 2 NY3d 207, 211 (2004); *Roberts v Health & Hosps. Corp.*, 87 AD3d 311, 318-19 (1st Dept 2011). In order to show an "injury in fact," the petitioner "must delineate how [the respondent agency's] actions actually harmed him and how the injury suffered is personal and distinct from injury to the general public." *Matter of Bolofsky v City of New York*, 69 Misc 3d 1211(A), 2020 NY Slip Op 51259(U), *1, citing *Mental Hygiene Legal Serv. v Daniels*, 33 NY3d at 50; *Real Estate Bd. of NY, Inc. v City of New York*, 165 AD3d 1, 8 (1st Dept 2018); *Roberts v Health & Hosps. Corp.*, 87 AD3d at 318. Where the petitioner fails to show "that [s/he] suffered any

injury from respondents' administrative actions, [s/he] lacks standing to challenge them.” *Matter of Bolofsky v City of New York*, 69 Misc 3d 1211(A), 2020 NY Slip Op 51259(U), *1. Here, the “law under which petitioner claims relief” is Vehicle and Traffic Law (VTL) §242, which provides, in pertinent part, as follows:

“3. A party aggrieved by the final determination of a hearing examiner may obtain a review thereof by serving, either personally in writing or by certified or registered mail, return receipt requested, upon the bureau, within thirty days of the entry of such final determination, a notice of appeal setting forth the reasons why the final determination should be reversed or modified. *Upon receipt of such notice of appeal, the bureau shall furnish to the appellant, at his request and at his own expense, a transcript of the original hearing. No appeal shall be conducted less than ten days after the mailing of the transcript to the appellant or his attorney . . .*”

VTL §242 (3) (“Administrative review”) (emphasis added). However, as was observed, the documentary evidence establishes that the PVB Appeals Unit did *not* conduct the administrative appeal hearings of either the NOL 69 or the NOL 77 convictions “less than ten days after the mailing of the transcript to the appellant or his attorney.” It emailed the NOL 69 transcript to Milch on April 28, 2021 and conducted the hearing 11 days later on June 9, 2021. *See* verified petition, ¶¶ 12, 14; exhibits 6, 7; notice of motion, exhibits D, E. The PVB emailed Milch the NOL 77 transcript on July 21, 2021, a month after he had requested in on June 21, 2021, but Milch offers no evidence that the Appeals Unit conducted a hearing on the NOL77 conviction less than ten days later (i.e., before July 31, 2021). *Id.*, ¶¶ 21-22; exhibits 9, 10; notice of motion, exhibits G, H, I. As a result, neither the extended delay in delivering the NOL 69 transcript nor the (purportedly) indefinite time frame for the delivery of the NOL 77 transcript resulted in an “injury [that] falls within the zone of interests protected by” VTL §242 (3). As a result, Milch has failed to show that he suffered an “injury in fact,” with the result that Milch lacks standing to challenge ALJ Pine’s denial of his request for refunds for the transcript fees.

Accordingly, the court finds that Milch's Article 78 petition must be denied for lack of standing, and consequently grants respondents' motion pursuant to CPLR 3211 (a) (3) to dismiss this proceeding on that same ground.

DECISION

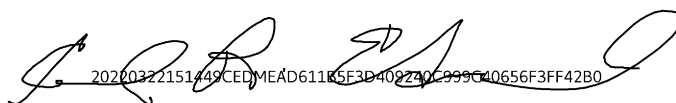
ACCORDINGLY, for the foregoing reasons it is hereby

ORDERED AND AJDUDGED that the petition pursuant to CPLR Article 78 of petitioner Jason A. Milch (motion sequence number 001) is denied; and it is further

ORDERED AND ADJUDGED that cross motion, pursuant to CPLR 3211 (a) (3), of the respondents New York City Department of Finance and Dianne Pine, in her official capacity as Senior Administrative Law Judge of the Parking Violations Bureau (motion sequence number 002), is granted and this proceeding is dismissed; and it is further

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

ORDERED that counsel for respondents shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.


202403221151449CEDMEAD611R5E3D402740C999640656F3FF42B0

<u>3/22/2022</u> DATE					<u>CAROL EDMEAD, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE