Greenpoint Indus. Servs. Corp. v City of New York Dept. of Bldgs.
2022 NY Slip Op 31314(U)
April 20, 2022
Supreme Court, New York County
Docket Number: Index No. 159651/2021
Judge: Frank Nervo

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. FRANK NERVO** **PART** **04**

Justice

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GREENPOINT INDUSTRIAL SERVICES CORP.,

Plaintiff,

- v -

THE CITY OF NEW YORK DEPARTMENT OF BUILDINGS, OFFICE OF TRIALS AND HEARINGS

Defendant.

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INDEX NO. 159651/2021

MOTION DATE 10/28/2021

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

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

Petitioner seeks to annul a determination of the Office of Administrative Trials and Hearings, as affirmed by that office's appeals unit, which, inter alia, after vacating petitioner's default and upon further hearing, declined petitioner's request to examine a non-appearing issuing officer with the Department of Buildings and found petitioner in violation.

As relevant here, the City's Department of Buildings (hereinafter DOB) issued a summons to petitioner related to missing overhead protection along two exposures of petitioner's building, exposures three and four. A hearing before the Office of Administrative Trials and Hearings (OATH) regarding the summons was scheduled for April 15, 2020, petitioner failed to appear, and

the mandatory penalty of $2,500.00 was issued on default. Thereafter, petitioner sought to vacate the default, vacatur was granted, and a new hearing date scheduled for April 19, 2021. At the April 19, 2021 hearing, petitioner appeared by telephone and requested to examine the DOB inspector who issued the summons. The hearing officer denied that request, finding that petitioner conceded the factual elements underlying the summons – chiefly that no overhead protection was in place at building's exposure three and four – and further finding petitioner did not have an absolute right to question the issuing officer where the hearing officer believed it was not helpful (NYSCEF Doc. No. 18 at tr. at p. 10-14). The hearing officer therefore credited the allegations in the summons, found respondent failed to rebut those allegations or present a valid defense, and issued the standard penalty of $2,500.00 (NYSCEF Doc. No. 3). Petitioner appealed this determination, and the appeal was denied by the Appeals Unit of OATH. Petitioner then brought this Article 78 proceeding, alleging OATH's determinations were arbitrary and capricious.

The standard of review of an agency determination via an Article 78 proceeding is well established. The Court must determine whether there is a rational basis for the agency determination or whether the determination is arbitrary and capricious (*Matter of Gilman v. New York State Div. of Housing and*

Community Renewal, 99 NY2d 144 [2002]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*Peckham v. Calogero*, 12 NY3d 424 [2009]; *see also 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]). When an agency determination is supported by a rational basis, this Court must sustain the determination, notwithstanding that the Court would reach a different result than that of the agency (*Peckham v. Calogero*, 12 NY2d at 431).

Here, petitioner's memo of law, petition, and affidavits are entirely conclusory. Indeed, petitioner fails to cite any authority for its proposition that the hearing officer abused their authority by denying petitioner's request to question the inspection officer. Conspicuously absent from the petition and supporting documents is any indication of what petitioner's questioning of the inspection officer would accomplish. Put simply, petitioner baldly asserts violations of due process and administrative rules without a scintilla of authority for same.

48 RCNY § 6-12(b) provides that a sworn summons is properly admitted as prima facie evidence of the facts stated therein. Consequently, petitioner is

mistaken that "I don't have to say anything" in response to the summons or that the summons must be dismissed because the issuing officer was not present (NYSCEF Doc. No. 18 tr. at p 17). Nor does the hearing officer or DOB owe petitioner an explanation for the inspection officer's absence at the hearing. Furthermore, petitioner admitted, on the record, that the overhead protection was missing on the exposures listed in the summons, thereby confirming the facts underlying the summons issued by the inspection officer (NYSCEF Doc. No. 18, tr. at p. 18 lines 3-10). Under these circumstances, the hearing officer was empowered to rely on the summons to establish DOB's prima facie case, and petitioner, in admitting the underlying facts, failed to rebut the DOB's prima facie case. Consequently, the hearing officer's determination, as affirmed by OATH's appeals unit, has a firm rational basis.

Accordingly, it is

ORDERED that the petition is denied in its entirety.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

4/20/2022
DATE

FRANK NERVO, J.S.C.

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