

Tall Bldrs. LLC v La Rocca

2022 NY Slip Op 31707(U)

May 26, 2022

Supreme Court, New York County

Docket Number: Index No. 158731/2021

Judge: Laurence Love

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This opinion is uncorrected and not selected for official publication.

Section 643 of The New York City Charter empowers the Department of Buildings (“DOB”) to enforce statues, laws and rules relating to the construction, alteration and maintenance of buildings or structures in the City of New York. Section 28 – 401.6 of the Administrative Code sets forth qualifications required of applicants for DOB – issued licenses and certificates of competence, and section 28 – 401.10 of the Administrative Code establishes the procedure to issue licenses and certificates to individuals and business entities engaged in work regulated by the New York City Construction Code.

Per the Affirmation in Support, “[t]he application for relicensure was timely submitted. As of June 25, 2021, it was and still is fully complete and free of impediments to obtain the relicensure. The [Environmental Control Board] and the associated OATH public websites show definitively that there are no violations outstanding on the part of the Petitioner” (see NYSCEF Doc. No. 8 Pars. 4, 5). Plaintiff submits the “General Contractor Registration Form” (see NYSCEF Doc. No. 3).

LACK OF SUBJECT MATTER JURISDICTION

Respondents’ Memorandum of Law states, “Petitioners’ substantive claims (i.e., the CPLR Article 78 mandamus, declaratory judgment, and mandatory injunction claims) are not ripe for judicial review because Respondents’ actions that allegedly gave rise to those claims have yet to take place” (see NYSCEF Doc. No. 18 P. 10).

Ripeness is a judicially – created doctrine designed to avoid premature review or adjudication of administrative actions (see *De St. Aubin v. Flacke*, 68 N.Y.2d 66, 75 [1986]). “A proceeding under [CPLR Article 78] shall not be used to challenge a determination ... which is not final or can be adequately reviewed by appeal to a court or to some other body or officer ...” (see *Comm. to Save the Beacon Theater v. City of N.Y.*, 146 A.D.2d 397, 404 [1st Dept. 1989]).

“Until [an] agency has formalized its decision and its impact is felt in a concrete way, the courts should avoid becoming entangled in abstract or hypothetical problems” (see *Dozier v. New York City*, 130 A.D.2d 128, 133 [2nd Dept. 1987]).

Respondents provide a NYC Office of Administrative Trials and Hearing search result for Tall Builders LLC (see NYSCEF Doc. No. 20). This Court notes that this search results shows “summons/notice no” with dates from 2016 to 2018.

The Respondents’ Memorandum of Law continues, “Petitioner has not cited to a final determination, and DOB’s review of the Petitioners’ application is still ongoing in part because Petitioners are allotted time to comply with the investigation process” (see NYSCEF Doc. No. 18).

FAILURE TO STATE A CAUSE OF ACTION

When considering a CPLR 3211(a)(7) motion to dismiss, the “sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law” (see *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 [1977]).

Petitioner seeks mandamus relief, CPLR 7803(1), in the form of an order requiring this Court to renew Petitioners’ License. A writ of mandamus “is an extraordinary remedy that is available only in limited circumstances” (see *Alliance to End Chickens as Kaporos v. New York City Police Dept.*, 32 N.Y.3d 1091, 1092 [2018]).

CONCLUSION

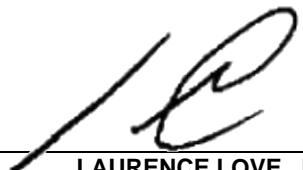
Through all the documents and exhibits submitted this Court is sympathetic to Petitioner in this circumstances where it appears the departments computer system and response are unclear. However, administrative decisions need to be completed and courts are wary to wade

into the administrative process, this Court will not disturb that procedure. The Department of Buildings has had ample time to reach a decision and apparently has not at this juncture. This Court is denying the Petition and granting Respondents’ relief at this time. However, it should be noted that if Respondents continue to withhold a final decision within a reasonable time period, the court would reconsider Petitioner’s further repeated application.

ORDERED that Petitioner Order to Show Cause to I) “Compel Relicensure,” and for II) “Damages” are DENIED; and it is further

ORDERED that the motion to dismiss is granted and the application to I) “Compel Relicensure,” and for II) “Damages” of the petition are dismissed.

5/26/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE