

**233 W. 4th St. Tenants Assn. v New York State Liq.
Auth.**

2022 NY Slip Op 32624(U)

August 3, 2022

Supreme Court, New York County

Docket Number: Index No. 153773/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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233 WEST 4TH STREET TENANTS ASSOCIATION, et al

Petitioner,

- v -

NEW YORK STATE LIQUOR AUTHORITY,

Respondent.

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INDEX NO. 153773/2022

MOTION DATE 05/13/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21

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

Petitioners seek an order pursuant to CPLR Article 78, to vacate, set aside, and annul the Declaratory Ruling issued on January 26, 2022 by the respondent New York State Liquor Authority (the "Authority") granting a "grandfather" exception to the public interest requirements of Alcoholic Beverage Control Law ("ABCL") §64(7)(b) and §64(7)(f) for a liquor license issued to the premises located at 225-231 West 4th Street, New York, New York 10014 and to vacate, set aside, and annul the Authority's denial on February 16, 2022 of a request by the Petitioner Tenants Association for reconsideration of the Ruling. Respondent opposes the instant petition. For the reasons set forth below, the petition is granted.

Facts

On January 26, 2022, the Authority issued a declaratory ruling that granted a grandfather exemption to the premises at 225-231 West 4th Street, New York, New York 10014¹. The

¹ See NYSCEF Doc. 3.

Authority granted this exemption despite the Authority's acknowledgement that the location had been unlicensed since September 1, 2017 and without a public hearing.

In the written ruling, the Authority cites two reasons to justify the ruling: (1) that there was no intervening use of the premises and (2) the impact of the Covid-19 pandemic on the bar/restaurant industry. On February 16, 2022, petitioner, 233 West 4th Street Tenants Association, requested, in writing, that the Authority reconsider the ruling, that request was denied and the original determination was upheld.

Article 78 Standard of Review

Article 78 review is permitted, where it is alleged a determination was made "in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion...." NY CPLR §7803(3).

"Arbitrary" for the purpose of the statute is interpreted as "when it is without sound basis in reason and is taken without regard to the facts." *Pell v Board of Ed. of Union Free School Dist. No. of the Towns of Scarsdale and Mamaroneck, Westchester Cty.* 34 NY2d 222, 231 [1974].

A court can overturn an administrative action only if the record illuminates there was no rational basis for the decision. *Id.* "Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard." *Id.* If the court reviewing the determination finds that "[the determination] is supported by facts or reasonable inferences that can be drawn from the records and has a rational basis in the law, it must be confirmed." *American Telephone & Telegraph v. State Tax Comm'n* 61 NY2d 393, 400 [1984].

Alcohol Beverage Control Law

ABCL §64(7)(b) prohibits the Authority from issuing a retail license for the sale or consumption of liquor for on-premises consumption where there are three or more such liquor licenses within 500 feet of the proposed location. There is an exception, pursuant to ABCL §64(7)(f), where issuance of the license would be in the public interest after a public hearing and consultation with the local community board and one exemption, pursuant to ABCL §64(7)(c), known as the "grandfather" exemption, where there has been a full liquor license "continuously in existence" at the location since on or before November 1, 1993.

Discussion

In opposition, respondent conclusory avers that its declaratory ruling was rational and not arbitrary and capricious as a matter of law, however, the Court does not agree. Respondent contends that the statute is vague and that the Authority's interpretation is rational and must be given deference.

The Court does not find the language in the statute to be vague, in contrast, it deems the subject provisions of the statute to be quite clear and finds that the Authority did act in contravention of the clear unambiguous language of the statute.

While the respondents argue that the Authority has generally allowed new applicants to be grandfathered-in provided: (1) that there was no intervening use of the premises as anything other than a bar or restaurant; **and** (2) in the absence of special circumstances, that no more than one-year has passed between the prior license becoming inactive and the new applicant filing an application, and that such one-year limit can be extended where there are extenuating circumstances (emphasis added). The Court finds that the Authority's action is in contravention of its own policy and does not provide any rational basis for excusing the 4 year and 5-month

gap in licensure, specifically the over two-year period before the Covid 19 pandemic.

Accordingly, it is hereby

ADJUDGED that the petition is granted; and it is further

ORDERED that the Declaratory Ruling issued on January 26, 2022 by the Respondent New York State Liquor Authority granting a "grandfather" exception to the public interest requirements of Alcoholic Beverage Control Law ("ABCL") §64(7)(b) and §64(7)(f) for a liquor license located at 225-231 West 4th Street, New York, New York 10014, is vacated; and the matter is remanded to the New York State Liquor Authority to take action consistent with this Decision and Order.

8/3/2022

DATE

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CASE DISPOSED

GRANTED

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DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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LYLE E. FRANK, J.S.C.

NON-FINAL DISPOSITION

GRANTED IN PART

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OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: