

449 W. 37 Realty LLC v New York City Off. of Admin. Trials & Hearings (OATH)
2022 NY Slip Op 33481(U)
October 11, 2022
Supreme Court, New York County
Docket Number: Index No. 161526/2021
Judge: Laurence Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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449 W. 37 REALTY LLC

Petitioner,

- v -

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH),

Respondent.

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INDEX NO. 161526/2021

MOTION DATE 03/07/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

The following read on the Petition to i) find that the New York City Office of Administrative Trials and Hearings ("OATH") did not comply with the notice requirements of New York City Charter 1049-a(d)(1)(h), and thus the default judgment OATH rendered against Petitioner cannot be executed in New York State Courts, and such default judgments is void; ii) to find that OATH arbitrarily and capriciously denied Petitioner's request to vacate the default; iii) to find that the default fines issued are arbitrary and capricious; and iv) upon vacatur, to remand to OATH.

Per Respondent's Memorandum of Law, "[o]n December 7, 2020, [Department of Buildings] ("DOB") issued four summonses to Petitioner for hazardous conditions at [449 W 37th Street, New York, New York 10018], including various violations of the New York City Building Code and Administrative Code related to transient use of an apartment at the subject premises. In accordance with the New York City Charter and Administrative Code, DOB posted the summonses at the subject premises and mailed them to petitioner at four different addresses that petitioner placed on filed with the New York City Department of Finance. Despite this, Petitioner failed to appear at the scheduled administrative hearing on February 18, 2021 ..., and

on February 25, 2021. Due to Petitioner's failure to appear on the scheduled hearing dates, OATH issued default notices and mailed the default notices to Petitioner at all four addresses on file for Petitioner. Approximately nine months after Petitioner defaulted at the hearing, Petitioner moved to vacate the default orders at OATH" (see NYSCEF Doc. No. 19 P. 3).

Chapter 45-A of the New York City Charter ("City Charter"), Section 1049 establishes OATH. Section 1049-a of the City Charter establishes the Environmental Control Board ("ECB") as part of OATH. City Charter 1049-a(c) authorizes the ECB to enforce provisions of the City Charter and the Administrative Code.

City Charter 1049-a(d)(1)(b) states that a Notice of Violation ("summons"), when filled in and served shall be prima facie evidence of the facts contained therein. City Charter 1049-a(d)(2) sets forth the methods of service permissible for each type of violation. City Charter 1049-a(d)(2)(a) allows the New York City Department of Buildings to affix to the door and mail service ("nail and mail") for the services of summonses.

The Rules of the City of New York codifies default orders for OATH. 48 RCNY 6-20(a), a Respondent who fails to appear at OATH for a hearing on a summons is deemed to have defaulted. Upon such default, all facts alleged in the summons "will b deemed admitted, the Respondent will be found in violation and the penalties authorized by applicable laws, rules and regulations will be applied.

CPLR 7803(3) states, "[t]he only questions that may be raised in a proceeding under this article are ... whether 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, including abuse of discretion as to the measure or mode of penalty or discipline imposed."

The affidavit Andrew Marin, managing member of Petitioner, 49 W. 37 Realty, LLC, affirms, “[m]y attorneys informed me that OATH allegedly mailed the default notices ... to the following addresses. However, I never heard of nor received any summons, default notices or the like relating to the defaulted ECB violations” (see NYSCEF Doc. No. 30 Par. 5, 6).

The Petition states, “Petitioner did receive the first summons ... from DOB. This was the only summons that the Petitioner received. In regard to this summons, the Petitioner and/or its counsel was ready, willing, and able to appear in the scheduled hearing date and time. However, the hearing date and time was administratively adjourned without providing any notice to the Petitioner and instead marked the hearing status as ‘DEFAULT’” (see NYSCEF Doc. No. 1 Par. 11).

The Petition continues, “[t]he aforementioned ECB Violations reflect a mailing address for Petitioner of ‘15 Penn Plaza, New York, New York 10001. At the time the ECB Violations were issued, Petitioner’s mailing address was ‘304 East 41st Street, Suite 1007A, New York, New York 10017.’ This mailing address was reflected on the Multiple Dwelling Registration (“MDR”), on file with the City of New York, in effect for the Building at the time said violations were issued, on December 7, 2020. Upon information and belief, the ECB Violations were mailed to the wrong address, despite the fact that the ECB was on notice of the correct mailing address as a result of Petitioner’s MDR” (see NYSCEF Doc. No.1 Pars. 6 – 8).

Petitioner exhibits the “Building Registration Summary Report with an address of ‘304 East 41st Street, Suite 1007A, New York, New York 10017’” (see NYSCEF Doc. No. 8), and summonses mailed to the above address with the “Suite 1007A” (see NYSCEF Doc. Nos. 4 – 7). It is clear that the address served failed to include the suite number.

The question before this court involves the notice requirements per lawful procedure of CPLR 7803(3).

Petitioner was ready and able to defend the one summons received. It has been shown that the wrong address was used to notice Petitioner and hence a violation of lawful procedure occurred per CPLR 7803(3).

ORDERED that the Petition is GRANTED, in that it is now,

ADJUDGED that the New York City Office of Administrative Trials and Hearings did not comply with the notice requirements of New York City Charter 1049-a(d)(1)(h); and it is further


ORDERED that the default judgment OATH rendered against Petitioner cannot be executed in New York State Courts, and such default judgments is void; and it is further

ADJUDGED that OATH arbitrarily and capriciously denied Petitioner’s request to vacate the default; and it is further

ORDERED that the default fines issued are arbitrary and capricious; and it is further

ORDERED that this matter is to be remanded to OATH to be noticed for a new hearing date and addressed on the merits of the alleged violations.

10/11/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE