

Solid State El. Corp. v New York City Dept. of Bldgs.
2022 NY Slip Op 33562(U)
October 12, 2022
Supreme Court, New York County
Docket Number: Index No. 153278/2021
Judge: Alexander M. Tisch
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH PART 18

Justice

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INDEX NO. 153278/2021

SOLID STATE ELEVATOR CORP.

MOTION DATE 04/05/2021

Petitioner,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF BUILDINGS,

DECISION + ORDER ON MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

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

Upon the foregoing documents, Petitioner, Solid State Elevator Corp., brings this special proceeding pursuant to CPLR Article 78, requesting that the Court direct the New York City Department of Buildings (hereinafter "DOB") to accept the elevator inspection test reports (hereinafter "ELV") and the affirmation of correction reports (hereinafter "AOC") for filing, and direct the DOB to annul the fines issued for the purported late filings of the ELV and AOC reports.

BACKGROUND

Petitioner is a corporation that is engaged in the business of installing, repairing, maintaining, and servicing elevators in the City of New York (NYSCEF Doc. No. 1, Verified Petition, ¶ 1). The DOB is a mayoral agency of the City of New York that enforces the laws, rules, and regulations that govern the maintenance, use, safety, mechanical equipment and inspection of buildings or structures, including elevators, in the City of New York (NYSCEF Doc. No. 16, DOB aff of Cross Motion, ¶ 3). Article 304 of Title 28 of the New York City Administrative Code (New York City, NY, Code § 28-304.6.1), provides the required

maintenance, inspections, and affirmations of correction for any defects found in elevators and conveying systems that Petitioner must abide by. In accordance with this code, a category 1 inspection (no-load safety test) of an elevator must be performed between January 1 and December 31 of each calendar year (Verified Petition at ¶ 5). Upon completion of the inspection, an ELV report must be submitted within sixty (60) days, or an AOC report must be submitted within one hundred eighty (180) days. Petitioner performs category 1 inspections for its customers and prepares ELV or AOC reports to file with the DOB (id. at ¶ 7). In or around December 2016 to on or about September 2019, Petitioner hired an individual to file the ELV and AOC reports for inspections completed by Petitioner on behalf of its clients (id. at ¶ 10). Around September of 2019, Petitioner learned that this individual did not file the required ELV or AOC reports for the calendar year of 2017, and that a total of one hundred eleven (111) AOC reports were not submitted (id. at ¶ 13). Said individual also failed to submit the required reports for 2018 and 2019 (id. at ¶ 14). As a result, the DOB issued monetary fines to Petitioner's customers on April 5, 2019 and September 6, 2019 for the missing 2017 reports¹ (id. at ¶ 16). When Petitioner attempted to file the late reports sometime in 2019, its attempt was allegedly rejected by the DOB, as Petitioner learned that the DOB provided service notices in or around July 2018, September 2018, and November 2018, stating that all filings are to be submitted by November 30, 2018.

PARTIES' CONTENTIONS

Petitioner argues that the DOB's service notice instituting a resubmission deadline of November 30, 2018, was arbitrary and capricious, and an abuse of discretion as to the penalty imposed. Petitioner further argues that DOB's purpose is to protect the safety and well-being of

¹ At the time of this motion, violations were not issued to building owners for the failure to file AOC reports during 2018 and 2019 (NYSCEF Doc. No. 16, DOB aff, ¶ 21).

those who use elevators, and not allowing proof of compliance with inspections, reports, and corrections, does not comport with that purpose. In opposition, the DOB argues that Petitioner does not have standing to bring this proceeding, that the claims are barred by the statute of limitations, and that the petition fails to state a cause of action.

DISCUSSION

Pursuant to CPLR 7803(3), “in a proceeding in the nature of mandamus to review...[t]he standard of review [] is whether the agency determination was arbitrary and capricious or affected by an error of law” (Anonymous v Comm’r of Health, 21 AD3d 841, 843 [1st Dept 2005] quoting Scherbyn v Wayne-Finger Lakes Bd. of Co-op. Educ. Servs., 77 NY2d 753, 758 [1991]). “An agency’s interpretation of the statutes and regulations that it administers is entitled to deference, and must be upheld if reasonable” (Matter of Delillo v New York State Div. of Hous. and Community Renewal, 45 AD3d 682, 683 [2d Dept 2007] see also Gilman v New York State Div. of Housing and Community Renewal, 99 NY2d 144, 149 [2002]). “It is a long-standing, well-established standard that the judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record” (Partnership 92 LP v State Div. of Hous. & Cmty. Renewal, 46 AD3d 425, 428 [1st Dept 2007]).

Petitioner argues that the DOB’s service notice which instituted a resubmission deadline of November 30, 2018, was arbitrary and capricious, and an abuse of discretion because the deadline prevented Petitioner from filing the reports in time to prevent their clients from being fined. However, the Court finds that Respondent’s decision was not arbitrary and capricious because an agency’s interpretation of the statutes and regulations that it administers is entitled to deference, and Respondent’s actions were rational and must be upheld.

Section 28-304.6.1 of the New York City Administrative Code describes the required maintenance, inspections, and affirmations of correction, *inter alia* for any defects found in elevators. Title 1 of Section 103-02 of the Rules of the City of New York provides the required guidelines pertaining to elevator inspections and tests, the filing requirements, and the applicable penalties for non-compliance. According to this section, approved elevator inspection agencies are to conduct the inspections during the designated test cycle, and inspection and test reports are to be submitted on forms provided by and in compliance with the agency commissioner by the filing deadline. An inspection agency will be subject to fines if the designated deadline is not met.

(d) Inspection and tests, reports and filing requirements. Periodic elevator inspections and tests conducted by approved elevator agencies on behalf of the owner and reports filed by such agency or owner shall comply with Article 304 of Title 28 of the Administrative Code and the following:

(1) Category 1, 3 and/or 5 tests and periodic inspections shall be conducted during the inspection and test cycle.

(2) Category 1, 3 and/or 5 test reports and periodic inspection reports shall be submitted on forms supplied by the department and in such a manner as required by the commissioner by the filing deadline. New York City, N.Y., Rules, Tit. 1, § 103-02, New York City, N.Y., Rules, Tit. 1, § 103-02

(f) Acceptance of filings. Late filings of inspection and test reports and/or untimely filings of affirmations of correction shall be accepted by the department as filed upon payment of the appropriate civil penalties as set forth in subdivisions (h) and (i) of this section, if filed within the timeframes set forth in subdivisions (h) and (i) of this section. Reports and affirmations filed after such timeframe shall be deemed expired. In such cases, the appropriate civil penalties shall be paid, a new inspection and test shall be performed for the current inspection and test cycle and a new report filed in accordance with this section (New York City, N.Y., Rules, Tit. 1, § 103-02, New York City, N.Y., Rules, Tit. 1, § 103-02).

Petitioner's argument revolves around Respondent's rejection of Petitioner's late ELV and AOC reports as it pertains to its client's elevator inspections for the year of 2017. Though Petitioner argues that it was arbitrary and capricious for Respondent to reject these reports,

Respondent had the right to do so because the rules that govern this agency were well established and defined for Petitioner and the agency to follow. Respondent’s decision to enforce subset (f) of § 103-02 of the Rules of the City of New York and require Petitioner to pay the applicable civil penalty fee, perform a new inspection and test, and provide a new report, has a rational basis in fact and law, and is therefore not arbitrary nor capricious which (see Tiwari v City of New York, 190 AD3d 442, 443 [1st Dept 2021] [DOB penalty serves remedial purpose]).


Furthermore, the enactment of the online DOB Now system which initiated the DOBs transfer from paper report filing to an online upload system, that prompted the service notices and resubmission deadline of November 30, 2018, has no connection to Petitioner’s failure to file the 2017 reports on time. For Petitioner learned of the mishap in September of 2019, well after the one hundred eighty (180) day mark. Subset (f) of § 103-02 of the Rules of the City of New York allows for the late filing of reports, but nothing to the extreme measures that Petitioner requests.

In light of the foregoing, the Court need not address standing nor the statute of limitations issues.

Accordingly, it is hereby ORDERED and ADJUGED that the petition is denied and dismissed.

This constitutes the decision and order of the Court.

10/12/2022
DATE


ALEXANDER M. TISCH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER