

Abadi v New York City Dept. of Fin.

2022 NY Slip Op 33933(U)

November 23, 2022

Supreme Court, New York County

Docket Number: Index No. 100701/2022

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

INDEX NO. 100701/2022

AARON ABADI,

Petitioner,

MOTION DATE 08/02/2022, 09/23/2022

- v -

MOTION SEQ. NO. 001 002

NEW YORK CITY DEPARTMENT OF FINANCE,

Respondent.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for INJUNCTION/RESTRAINING ORDER

Upon the foregoing documents, the petition is denied and the temporary restraining order is lifted.

The instant petition arises out of petitioner's contention that its issuance of a speeding ticket, by speed camera, and the subsequent denial of his appeal was unlawful and arbitrary and capricious. Petitioner further seeks to: (1) enjoin respondent from sending further speed camera tickets to petitioner; (2) to require respondent to immediately dismiss Notice of Liability (NOL) #156, and to remove any penalties or fees related to that violation; (3) to enjoin respondent from continuing its speed camera program; and (4) to require respondent to reimburse petitioner an amount sufficient to compensate for the hours spent preparing documents. Respondent opposes the instant petition.

Preliminarily, the Court notes, that while petitioner has submitted documentation regarding multiple NOLs, for the purposes of the instant petition the parties agreed at the oral

argument that the only NOL before this Court is NOL 4773741156 (“NOL #156”), issued to petitioner on April 4, 2022.

Respondent issued NOL #156 to petitioner, as owner of the vehicle with license plate number JJS9828, for violating Section 1180-b of the New York Vehicle and Traffic Law (“VTL”) ¹, by travelling 37 miles per hour in a zone where 25 miles per hour is the speed limit. By letter dated May 11, 2022, petitioner submitted a hearing by mail and argued that NOL #156 should be dismissed due to insufficient evidence, lack of due process, and lack of required signage, among other things. The Parking Violations Bureau Administrative Law Judge (“ALJ”) rejected this argument and sustained NOL # 156, and on June 9, 2022, the PVB Appeals Board affirmed the decision².

Standard of Review

Article 78 review is permitted, where a determination was made that “was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed...” 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

¹ VTL § 1180-B allows for automated enforcement of speed limits around New York City schools through the use of speed cameras (“speed camera law”).

² Although the Appeals Board ended its decision with “we reverse” the Court notes that the language before that sentence as well as the checking of the box “affirmed” establishes that the ALJ was affirmed and not reversed in finding petitioner guilty of the traffic violation.

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].

It is well established that the court should not disturb an administrative body’s determination once it has been established that the decision is rational. See *Matter of Sullivan Cnty. Harness Racing Ass’n, Inc. v Glasser*, 30 NY2d 269 [1972]; *Presidents’ Council of Trade Waste Assns. v New York*, 159 AD2d 428, 430 [1st Dept 1990].

Discussion

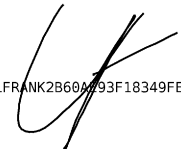
The Court finds that petitioner has failed to establish its prima facie entitlement to the relief sought. The ALJ and the Appeals Board did not reach a conclusion that unreasonable or irrational as a matter of law. Petitioner received a notice of liability for traveling 12 miles over the stated speed limit, in compliance with the speed camera law that allows violations to be issued for speeds over 10 miles per hour. Petitioner’s contention that the certificate of calibration that cites a margin of error of equal to or less than .62 miles per hour creates an issue with respect to the reliability of the calibration, is not an issue that is justiciable at this point as it does not relate to the NOL before this Court.

Here, petitioner was travelling 12 miles over the speed limit, making the .62 miles per hour margin, irrelevant as even assuming that it was at .62 mile per hour petitioner would still have been 10 miles over the speed limit. Moreover, it is un rebutted that the speed camera was operational pursuant to the “Daily Set-Up Log” provided by respondent.

The Court has reviewed petitioner’s remaining contentions and finds them unavailing. Further, any relief not specifically addressed is hereby denied. Accordingly, it is hereby

ADJUDGED that the petition is denied.

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11/23/2022
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: