

Singh v NYC Off. Admin. Trials & Hearings
2023 NY Slip Op 30379(U)
February 7, 2023
Supreme Court, New York County
Docket Number: Index No. 159603/2022
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

-----X

JARNAIL SINGH,

Plaintiff,

- v -

NYC OFFICE ADMINISTRATIVE TRIALS AND HEARINGS,
NYC DEPT. OF BUILDINGS, NYC DEPT. OF FINANCE,
THE CITY OF NEW YORK

Defendant.

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INDEX NO. 159603/2022

MOTION DATE 02/06/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 were read on this motion to/for HEARING.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

ALLEGED FACTS

Petitioner is the owner of properties located at 268 Targee Street, Staten Island, NY and 270 Targee Street, Staten Island, New York (Subject Properties).

In September 2020, DOB issued four summonses to the Subject Properties for violations of the New York City Administrative Code relating due to illegal dwelling units. Petitioner is not challenging these four summonses in this proceeding. These summonses contained orders to correct the illegal conditions and certify correction with DOB. The orders were not complied with, and, between November 2020 and August 2021, DOB issued a total of 22 summonses to Petitioner due to his failure to comply.

In accordance with City Charter § 1049-a(d)(2), DOB made a single attempt to personally deliver each of the DOB Summonses at the Subject Properties and then affixed them to the Subject Properties and mailed copies to Petitioner at the Subject Properties and other addresses on file with various City agencies, including 285 St. Marks Place, Staten Island, NY.

Petitioner failed to appear for OATH hearings on the DOB Summonses, and OATH issued default decisions imposing monetary penalties, which, under the City Charter, constituted judgments. OATH then mailed default decisions to Petitioner at the Subject Properties and other addresses on file with related City agencies. The default decisions informed Petitioner that he could avoid entry of judgment, either by requesting a new hearing or correcting the violations and paying a special reduced fine. Petitioner took no action at that time.

In July 2022, DOF notified Petitioner of docketed judgments on the DOB Summonses through a letter addressed to Petitioner at 285 St. Marks Place, Staten Island, NY. Thereafter, in August 2022, Petitioner submitted requests to OATH for new hearings on the DOB Summonses, claiming that he did not receive the DOB Summonses and that the summonses should have been mailed to the address on his New York State Driver License. OATH denied the requests on the basis that DOB properly served the DOB Summonses and that Petitioner failed to provide a reasonable excuse for his failure to appear.

PENDING APPLICATION FOR RELIEF

In this proceeding, Petitioner is requesting that the Court grant Petitioner new hearings on the DOB Summonses and vacate the judgments entered. OATH opposes. For the reasons stated below the application is denied, and the petition is dismissed.

DISCUSSION

Respondents' Final Determination Denying Petitioner's New Hearing Requests Was Reasonable

Administrative agencies enjoy broad discretionary power when making determinations on matters they are empowered to decide. CPLR §7803 provides that the court's review is limited to whether a determination was made in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious or an abuse of discretion,

When considering whether an administrative determination was arbitrary and capricious, the role of the reviewing court is only to determine whether there is a rational basis for the findings of fact supporting the agency's decision. *See Rudin Mgmt. Co. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 215 A.D.2d 243 (1st Dep't 1995). The court must accept the administrative determination "if it has 'warrant in the record' and a reasonable basis in law." *Lower Manhattan Loft Tenants v. N.Y. City Loft Bd.*, 104 A.D.2d 223, 224 (1st Dep't 1984).

In addition, the reviewing court must uphold an administrative agency's interpretation of the statutes and regulations it administers if that interpretation is reasonable and does not run contrary to the clear wording of a statutory provision. *See, e.g. Goodwin v. Perales*, 88 N.Y.2d 383 (1996); *Eastern Pork Products Co. v. N.Y. State Dep't of Hous. and Cmty. Renewal*, 187 A.D.2d 320 (1st Dep't 1992). "It is well-settled that the construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld." *N.Y. State Ass'n of Life Underwriters v. N.Y. State Banking Dep't*, 83 N.Y.2d 353, 359-360 (1994).

OATH's determination denying Petitioner's requests for new hearings on the DOB Summonses was reasonable, rational, supported by evidence in the administrative record and consistent with applicable law. Petitioner's request for new hearings on the DOB Summonses

was first submitted on August 10, 2022. With respect to the August 2021 Summonses, Petitioner's hearing request was made after 75 days but within one year of the date of the default decisions. Thus, pursuant to Title 48 RCNY § 6-21(b), Petitioner must have set forth a reasonable excuse for its failure to appear at the hearings on these summonses.

With respect to the November 2020 Summonses, the January 2021 Summonses, the March 2021 Summonses, the April 2021 Summonses, and June 2021 Summonses, Petitioner's hearing request was made after one year of the date of the default decisions. Thus, pursuant to Title 48 RCNY § 6-21(f), OATH may exercise its discretion and grant a new hearing on these summonses "in exceptional circumstances and in order to avoid injustice." OATH denied the hearings requests because Petitioner did not establish a reasonable excuse - let alone exceptional circumstances - for his failure to appear and because OATH records demonstrated that the DOB Summonses were properly served.

In accordance with City Charter §1049- a(d)(2)(a) and CPLR § 308, service of process of the DOB Summonses was made by personal service through affixing the summonses to the front door of the Subject Properties, after reasonably attempting to effectuate service on a person upon whom service may be made, and by mailing copies of the DOB Summonses to the addresses that Petitioner had on file with the City of New York. Petitioner's bare claim that he did not receive the DOB Summonses is insufficient to overcome a presumption that a proper mailing occurred here. *See Taj v. N.Y. Office of Admin. Trials and Hearings*, 2020 N.Y. Slip Op 32846(U)(Sup. Ct. N.Y. Co. Aug. 31, 2019). Therefore, service of the DOB Summonses was proper. *See Five Guys Constr. LLC v City of New York*, 2020 N.Y. Slip Op 32965(U)(Sup. Ct. N.Y. Co. Sept. 9, 2020). Moreover, Petitioner failed to provide a reasonable excuse for his failure to appear. Indeed, the sole reason Petitioner provided for failing to appear at the hearings was that DOB did

not mail the summonses to the address listed on his New York State Driver License. However, Respondents are only required to mail copies of the DOB Summonses to the Subject Properties and to addresses associated with Petitioner and the Subject Properties that are on file with City agencies. See City Charter § 1049-a(2)(b). Petitioner does not deny that this was done.

Finally, the court notes that Petitioner acknowledges receipt of DOF's notice of the collection actions, which were addressed to Petitioner at 285 St. Marks Place, Staten Island, an address to which DOB mailed copies of the DOB Summonses and OATH mailed the default decisions. It is also the same address to which DOF mailed the property tax bills for the Subject Properties during the period that DOB mailed copies of the DOB Summonses, tax bills that Petitioner paid in full.

For all the above reasons, OATH's determination denying Petitioner's requests for new hearings on the DOB Summonses was reasonable, rational, supported by evidence in the administrative record and consistent with applicable law.

Petitioner's Due Process Claims Lack Merit

Petitioner's due process claims do not warrant a different result. To satisfy the constitutional requirement of procedural due process, Respondents must provide Petitioner notice that is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

California Suites, Inc. v. Russo Demolition Inc., 98 A.D.3d 144, 150 (1st Dep't 2012).

Respondents provided Petitioner notice in the manner prescribed by City Charter § 1049-a(d)(2). The Court of Appeals has held that this service procedure is in fact reasonably calculated to inform owners of violations relating to their properties. *Mestecky v City of New York*, 30

N.Y.3d 239, 246 (2017). Respondents also afforded Petitioner an adequate opportunity to be heard on the DOB Summonses at an administrative hearing at OATH.

Although OATH administrative hearings were conducted remotely during the early stage of the COVID-19 pandemic, due process does not guarantee an opportunity to be heard in person. *See Doe v. City of New York*, 2009 U.S. Dist. LEXIS 130525 (E.D.N.Y. Nov. 10, 2009). This is particularly so here, where Petitioner never made any request to appear in person or with an attorney and never sought to obtain a translator.

Petitioner's bare claim that he did not receive the DOB Summonses is insufficient to establish a due process violation. *See Ariel Servs., Inc. v. N.Y. City Env'tl. Control Bd.*, 89 A.D.3d 415, 415 (1st Dep't 2011).

Petitioner appears to suggest that judgments entered against him were somehow deficient. Yet, as per City Charter § 1049-a(d)(1)(g), OATH decisions on the DOB Summonses constituted a judgment. Moreover, prior to entry of judgment, and in accordance with City Charter § 1049-a(d)(1)(h), OATH provided Petitioner notice of the default decisions and an opportunity to avoid entry of judgment, either by requesting a new hearing or correcting the violations and paying a special reduced fine.

Under these circumstances, Petitioner cannot establish an infringement of his procedural due process rights. Moreover, because Petitioner's substantive due process claim is premised on the same set of facts as his procedural due process claim, the substantive due process claim likewise fails. *See Carnell v. Myers*, 2019 U.S. Dist. LEXIS 40392, *23-24 (S.D.N.Y. Mar. 13, 2019).

Nor, under the circumstances set forth above, can Respondents' entry of judgment against Petitioner and determination to deny Petitioner's new hearing requests be considered so

“outrageously arbitrary as to constitute a gross abuse of governmental authority” in violation of substantive due process. *See Natale v. Town of Ridgefield*, 170 F.3d 258, 263 (2d Cir. 1999)

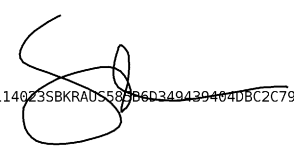
Accordingly, Petitioner has failed to establish a due process violation.

WHEREFORE it is hereby:

ADJUDGED that the petition or relief pursuant to CPLR Article 78 of petitioner JARNAIL SINGH (Motion seq no 1) is denied, and the instant Article 78 proceeding is dismissed; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that Respondents shall serve a copy of this order with Notice of Entry within 20 days on Petitioner’s counsel.



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2/7/2023

DATE

SABRINA KRAUS, 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