

Thomas v Esplande Gardens, Inc.

2023 NY Slip Op 30553(U)

February 23, 2023

Supreme Court, New York County

Docket Number: Index No. 156011/2022

Judge: Lisa S. Headley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LISA S. HEADLEY PART 28M

Justice

-----X

HATTIE THOMAS,

Plaintiff,

- v -

ESPLANADE GARDENS, INC., THE BOARD OF DIRECTORS FOR ESPLANADE GARDENS, INC.

Defendant.

-----X

INDEX NO. 156011/2022

MOTION DATE 12/01/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 37

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

Petitioner, Hattie Thomas ("petitioner"), filed this petition for a judicial review and a judgment, pursuant to Article 78 of the CPLR, on the grounds that respondents, Esplanade Gardens, Inc. and the Board of Directors for Esplanade Gardens, Inc. (collectively, "Esplanade Gardens"), acted in an arbitrary and capricious manner and with abuse of discretion in terminating the petitioner as a member of the Board of Directors of Esplanade Gardens. Respondents, Esplanade Gardens, oppose the motion, and petitioner submitted a reply.

Petitioner is a shareholder of Esplanade Gardens, which is a Mitchell-Lama cooperative apartment, and has lived in Esplanade Gardens since 1968. Petitioner was an active member in her community and had been her building's chairperson for 30 years. On January 24, 2021, petitioner was elected to the Board of Directors by shareholders of Esplanade Gardens. Petitioner alleges that she was falsely charged with violating "Article III, Section 2.B.1 and B.2" of the Board's Bylaws on the basis of solicitation and bribery. On March 24, 2022, petitioner contends that she was then wrongfully removed from the Board. Petitioner argues that the decision to terminate her was arbitrary and capricious given that her termination was based on an affidavit of Stanley Robinson from Esplanade Gardens' plumbing contractor, Latty's General Plumbing & Heating, Inc. (hereinafter, "Latty's Plumbing"). Petitioner was accused of soliciting discounted work or receiving a gratuity from Latty's Plumbing in April 2020.

In support of her petition, Petitioner submitted her own affidavit (NYSCEF Doc. No. 10), and the affidavit of her daughter, Wanda Richardson (NYSCEF Doc. No. 12). Petitioner argues that she never solicited work or received any gratuity from Stanley Robinson of Latty's Plumbing. In addition, Wanda Richardson states in her affidavit that "[Wanda] told the 'Esplanade Board' that she asked her mother [petitioner] to get her Latty's Plumbing's telephone number, but that her mother never had a conversation with Stanley Robinson or anyone from Latty's Plumbing about doing work for her at her brownstone." Petitioner contends that she was never given a copy of the affidavit of Stanley Robinson, which the Board primarily relied on. Petitioner contends that the affidavit was only read aloud during a meeting. Petitioner argues that she does not know whether

Stanley Robinson's affidavit was properly executed or whether his affidavit was an "acceptable document." In addition, petitioner argues that she was not a Board Member in April of 2020, which is when she was accused of soliciting from Latty's Plumbing.

In opposition, respondents submit the affidavit of Moiré Davis, who is the President of the Board of Directors of Esplanade Gardens. Mr. Davis states, in his affidavit, that in February 2022, Stanley Robinson, a supervisor at Latty's Plumbing, informed the Board of Directors that some Esplanade Board members had been soliciting and receiving "kickbacks," or otherwise improperly trying to leverage their position for personal benefit, to obtain work from Latty's Plumbing. Mr. Davis also states that he held a meeting with Mr. Robinson and discussed the details of the alleged conduct. In addition, Mr. Robinson submitted an affidavit regarding the details of such conduct. Thereafter, the Board, pursuant to the By-Laws, commenced the procedure for removal of Board members for cause. Mr. Davis alleges that the Board provided those subject to removal with notice and an opportunity to be heard by the Board. As it pertains to the petitioner, Mr. Davis alleges that on March 1, 2022, the Board adopted a resolution to provide the petitioner with a 14-day notice for her removal for solicitation of gratuities, and the meeting to consider removal was scheduled to be held on March 17, 2022. Mr. Davis contends that a 14-day notice letter was sent to Petitioner on March 2, 2022, and within that letter, petitioner was advised of the procedures and basis raised for her removal from the Board, and that she would have the opportunity to address her proposed removal at the scheduled board meeting on March 17, 2022.

The 14-day notice letter sent to the Petitioner reads as follows: "The majority of the Board of Directors believes you solicited discounted and/or free services from Esplanade Gardens, Inc.'s plumbing contractor, Latty's General Plumbing & Heating, Inc., regarding work at your daughter's brownstone, based upon direct statements made by a Latty's employee accusing you of such acts and messages sent by you to such employee. Such solicitation(s) is grounds for removal under the Bylaw provisions stated above." In addition to the notice letter, a copy of each of the pertinent Bylaw's provisions were enclosed with the letter.

Respondents submit that at the Board meeting held on March 17, 2022, the Board reviewed and discussed the accusations against petitioner, including reading the Affidavit of Stanley Robinson in its entirety, which detailed the kickback occurrences, and giving Petitioner an opportunity to speak. However, during the meeting, there were disruptions caused by attendees prior to voting on the board member's removal, therefore, the Board decided to end the meeting and schedule a continuance to March 20, 2022. At the next Board meeting, the accusations against Petitioner were further discussed and Mr. Robinson's affidavit was again read aloud in its entirety. After considering both the allegations and Petitioner's responses given during the March 17th meeting, the Board determined, that the allegations were credible and thus, warranted the petitioner's removal from the Board. By letter dated March 24, 2022, petitioner was notified that she had been removed from the Board. Subsequently, petitioner wrote a letter, dated June 10, 2022, to the Board requesting the reconsideration of her removal. (*NYSCEF Doc. No. 29*). At the next Board meeting that was held on June 21, 2022, the Board determined that it would be improper to reconsider Petitioner's removal, and by letter dated June 23, 2022, the Board advised Petitioner that the Board of Directors "stands by the action taken on March 20, 2022, to remove [petitioner] for cause[.]" Subsequently on July 20, 2022, the petitioner filed the within Petition for a judicial review of the determination to remove her from the Board of Directors.

DISCUSSION

In an Article 78 proceeding, the Court must decide whether an administrative agency's decision was rational, or whether it was arbitrary and capricious. *Matter of Gilman v. New York*

State Div. of Housing & Community Renewal, 99 N.Y. 2d 144, 149 (2002). “The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts.” *Matter of Pell v. Bd. of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 N.Y. 2d 222, 230 (1974). Furthermore, the Civil Practice Law and Rules (“CPLR”) provides that an Article 78 proceeding must not be used to challenge an administrative determination that is not final. *N.Y. CPLR §7801(1)*. Importantly, “courts must give deference to an administrative agency’s rational determinations in its area of expertise.” *Matter of Peckham v. Calogero*, 12 N.Y. 3d 424, 431 (2009). “When the interpretation of a statute involves specialized knowledge and understanding of underlying operational practices... the courts should defer to the administrative agency’s interpretation.” *Matter of Leggio v. Devine*, 34 N.Y. 3d 448, 460 (2020).

Here, the respondents, Esplanade Gardens, relied on the Cooperative By-Laws when they considered the removal of the petitioner from the Board. Specifically, Article III, Section 2, B. 1) and B. 2) (ii), of the Cooperative Bylaws, provides in pertinent part:

- 1) “...Any director may be removed for cause at a board of director’s meeting...by the affirmative vote of at least six of the remaining directors. Any director whose removal is to be discussed shall be given (i) fourteen (14) calendar days’ prior written notice of the fact that his/her removal from the Board is to be discussed at such meeting...which notice shall include the alleged cause for removal, and (ii) an opportunity to be heard, prior to any vote for removal. At such meeting, the director shall have a reasonable opportunity to address the Board...”
- 2) “For the purposes of this Article, “cause” shall be: ... (ii) the director has accepted gratuities from any parties in a contractual relationship with the corporation[.]”

The facts presented in this case, are undisputed as it pertains to the petitioner being afforded notice of the board meeting and/or hearing held on March 17, 2022, and the petitioner had an opportunity to learn of the allegations made against her and to respond to them. The record indicates that a motion was made by J. Washington and seconded by J. Lawrence, to remove the petitioner, Hattie Thomas for cause pursuant to Article III, Section 2, B., and B 2(ii) and 2 (v) of Esplanade’s Bylaws. The Board determined that the petitioner, Hattie Thomas was provided notice, dated March 2, 2022, and an opportunity to be heard, and “it is believed that the director has solicited the acceptance of gratuities from any parties in a contractual relationship with the corporation, and when refused, abused their directorship in the form of retaliation against contractor.” Pursuant to the Cooperative By-Laws, the Board conducted a meeting, reviewed, discussed, and voted in favor of the petitioner’s removal. Here, this Court’s review of the respondents’ findings does not indicate an action made without sound basis in reason, and the respondent’s determination to remove the petitioner from the Board was not generally taken without regard to the facts. Therefore, the petitioner’s motion is denied.

Accordingly, it is hereby

ORDERED that the *Article 78* petition is DENIED on the basis that this Court finds that respondents, Esplanade Gardens, Inc., and The Board of Directors for Esplanade Gardens, Inc.’s decision to remove petitioner Hattie Thomas as a Board Member of Esplanade Gardens, was not arbitrary or capricious; and it is further

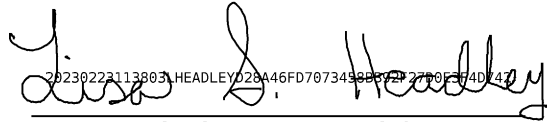
ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered and is denied; and it is further

ORDERED that within 30 days of entry, petitioner shall serve a copy of this decision/order upon the respondents with notice of entry.

This constitutes the Decision and Order of the Court.

2/23/2023

DATE



LISA S. HEADLEY, 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: