

Retter v City of New York

2023 NY Slip Op 31983(U)

June 13, 2023

Supreme Court, New York County

Docket Number: Index No. 156293/2022

Judge: Lisa S. Headley

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LISA S. HEADLEY **PART** **28M**

Justice

-----X

DANIEL RETTER

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 156293/2022

MOTION DATE 07/28/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 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).

Petitioner, Daniel Retter (“Petitioner/Retter”) filed a motion pursuant to *CPLR Article 78*, for an Order 1) to declare that *Section 1180-b* of the *New York Vehicle and Traffic Law* (“*VTL*”) is patently invalid and legally insufficient; 2) to vacate petitioner’s alleged violations of *VTL §1180-b*; to grant damages in an amount to be determined at trial; 3) to grant pre-judgment and post-judgment interest as provided by law; and 4) to grant reasonable attorneys’ fees. Respondent, the City of New York (“Respondent/City”) filed opposition and petitioner filed a reply.

This case stems from speed camera tickets issued to the petitioner between January 12, 2022, and April 1, 2022. The New York City Department of Transportation (“DOT”) issued the Notices of Liabilities to petitioner, as owner of the vehicle with Florida license plate number NYP002. Specifically, DOT issued the following twelve Notices of Liability (“NOL”) to petitioner: 1) ticket number 4764874398 (“NOL #398”); 2) ticket number 4764871762 (“NOL #762”); 3) ticket number 4764886492 (“NOL #492”); 4) ticket number 4765833471 (“NOL #471”); 5) ticket number 4766685507 (“NOL #507”); 6) ticket number 4766709627 (“NOL #627”); 7) ticket number 4766709561 (“NOL #561”); 8) ticket number 4766836066 (“NOL #066”); 9) ticket number 4767038145 (“NOL #145”); 10) ticket number 4767075968 (“NOL # 968”); 11) ticket number 4767212054 (“NOL # 054”); and 12) ticket number 4773049376¹ (“NOL # 376”). These tickets were issued to the petitioner for speeding more than ten miles over the posted speed limit near a school zone.

In support of the petition, Retter argues, *inter alia*, that he timely pleaded non-guilty to all twelve Notices of Liability, and argued the following defenses: (1) the exact location of the violation has not been cited or noted on the ticket, and it is a denial of petitioner’s due process

¹ The violation ticket number 4773049376 was dismissed on April 29, 2022. (*See Petitioner’s Exhibit C, NYSCEF Doc. No. 5*)

right to be able to rebut the speed charge; (2) the certification has nothing printed or written above it, and is simply not accurate as there is no time and place found above the certification; (3) the burden of proof is on the government to demonstrate that the alleged violation occurred within a school zone; (4) the ticket does not describe the make, year or type of vehicle as is required under the *Uniform Summons Act*; and (5) pursuant to *VTL§1180-b(a)(3)*, the daily set-up logs were not signed by a Speed Camera operator.

The Petitioner was found liable for eleven of the NOLs, however, the twelfth violation ticket number 4773049376 was dismissed on April 29, 2022. (*See Petitioner's Exhibit C, NYSCEF Doc. No. 5*)

Petitioner asserts he was found not guilty on Notice of Liability Number 4773049376; however, he was found guilty on the remaining eleven NOLs. Petitioner argues that the not guilty determination was predicated upon the same defenses proffered by petitioner on the other offenses. Petitioner claims that the judge's determinations on the ticket violations were inconsistent. Petitioner argues that since the petitioner was not liable for the speeding violation for ticket number 4773049376, he should have also been found not liable for all of the NOLs. Thus, petitioner argues that the final determination of being found liable for the eleven Notices of Liability was not supported by substantial evidence; was caused by an error of law; and was arbitrary, capricious and/or an abuse of discretion. Therefore, petitioner requests, *inter alia*, for the guilty determinations to be vacated and to awarded attorney's fees.

In opposition, respondent argues that the final determinations denying petitioner's contestation of his speed camera tickets were reasonable and consistent with all applicable law. Respondents asserts that pursuant to *CPLR §7803*, administrative agencies have a broad discretionary power when making determinations on matters they are empowered to decide. *CPLR §7803*. Respondent also argues there is very limited judicial review of administrative actions. *See, CPLR §7803*. Specifically, respondent contends the administrative record contains undisputed evidence of petitioner's vehicle exceeding the speed limit by more than ten miles per hour in a school speed zone. Respondent argues petitioner does not contest that the speed camera malfunctioned, incorrectly identified the vehicle or incorrectly recorded the vehicle's speed. Respondent asserts the Notices of Liabilities filed against respondent are accurate, and that such notices are available online. Respondent submits that "the Notices of Liability issued to petitioner explicitly states the location of the infraction, and that said location is within a radial distance not to exceed 1320 feet from a school" (*See, Exhibit P, NYSCEF Doc. No. 27*). Respondent also argues that contrary to the petitioner's contention, the daily set-up logs were signed by a speed camera operator. (*See, Exhibit E, NYSCEF Doc. No. 16*).

In response to the petitioner's claim for attorney's fees, the respondent argues that in an *Article 78* proceeding against municipalities, recovery of attorney's fees are not permitted. Respondent argues that any claim for damages beyond any payment of NOLs must be dismissed because it is not incidental to the primary relief sought. Therefore, respondent requests the Court dismiss the petition and award respondent with the cost and disbursement of this proceeding.

In reply, petitioner asserts, *inter alia*, the NOLs fail to provide an accurate location since the description that the violations occurred at the “intersection of Manhattan College Pkwy” does not specifically identify the location where the violation occurred. Petitioner also argues the NOLs “robo” signed certification is defective, and the respondent is required to submit to petitioner a valid certification pursuant to the Vehicle Traffic Law. Additionally, petitioner contends, *inter alia*, there is no sworn evidence that a school zone exists within 1320 feet of the alleged violation because respondent relies upon an inadmissible Google Maps printout. Petitioner also argues that the Administrative Law Judges (ALJ) failed to provide an explicit statement addressing all of petitioner’s defenses.

DISCUSSION

In Article 78 proceedings, 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).

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). Generally, administrative agencies are required to follow their own precedent. *See e.g., Matter of Lantry v. State of New York*, 6 N.Y.3d 49, 58, (2005). Under *Vehicle and Traffic Law § 1180-b*, the provision regarding owner’s liability for failure of operator to comply with certain posted maximum speed limits states, in pertinent part:

“[n]otwithstanding any other provision of law, the city of New York is hereby authorized to establish a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with posted maximum speed limits in a school speed zone within such city when a school speed limit is in effect as provided.”

1) Ticket Number #4764874398

Daniel Retter (“Petitioner”) was issued the first violation on January 12, 2022, at 5:36 p.m. near or around Southbound Henry Hudson Parkway at Manhattan College for traveling at a speed rate of more than ten miles per hour above the posted maximum speed limit of twenty-five miles per hour within the school speed zone. The decision of Administrative Law Judge Kevin G. O’Keeffe (“Judge O’Keeffe”) dated March 2, 2022, found petitioner guilty of failing to comply with the maximum speed limits in a school speed zone because petitioner was traveling at forty miles per hour in a twenty-five mile per hour speed zone.

Here, this Court finds the decision by the ALJ, Judge O’Keeffe, to find petitioner guilty was not arbitrary or capricious because the ALJ demonstrated petitioner’s vehicle

was observed speeding more than ten miles per hour over the posted speed limit near a school zone, which is in violation of *Section 1180-b* of the *New York Vehicle and Traffic Law*.

2) Ticket Number #4764871762

Petitioner was issued a violation on January 12, 2022, at 4:16 p.m. near or around Southbound Henry Hudson Parkway at Manhattan College for traveling at a speed rate of more than ten miles per hour above the posted maximum speed limit of twenty-five miles per hour within the school speed zone. On March 2, 2022, the ALJ, Judge O’Keeffe found petitioner guilty of failing to comply with the maximum speed limits in a school speed zone, because petitioner was traveling at forty-two miles per hour in a twenty-five mile per hour speed limit zone.

Here, this Court finds the decision by Judge O’Keeffe, to find petitioner guilty was not arbitrary or capricious since respondent demonstrated petitioner’s vehicle was observed speeding more than ten miles per hour over the posted speed limit near a school zone, which is in violation of *Section 1180-b* of the *New York Vehicle and Traffic Law*.

3) Ticket Number #4764886492

Petitioner was issued a violation on January 13, 2022, at 6:18 p.m. near or around Southbound Henry Hudson Parkway at Manhattan College for traveling at a speed rate of more than ten miles per hour above the posted maximum speed limit of twenty-five miles per hour within the school speed zone. On March 2, 2022, the ALJ, Judge O’Keeffe found petitioner guilty of failing to comply with the maximum speed limits in a school speed zone because petitioner was traveling at thirty-eight miles per hour in a twenty-five mile per hour speed limit zone.

Here, this Court finds the decision by Judge O’Keeffe to find petitioner guilty was not arbitrary or capricious since respondent demonstrated petitioner’s vehicle was observed speeding more than ten miles per hour over the posted speed limit near a school zone, which is in violation of *Section 1180-b* of the *New York Vehicle and Traffic Law*.

4) Ticket Number #4765833471

Petitioner was issued a violation on January 20, 2022, at 3:49pm near or around Southbound Henry Hudson Parkway at Manhattan College for traveling at a speed rate of more than ten miles per hour above the posted maximum speed limit of twenty-five miles per hour within the school speed zone. On March 2, 2022, the ALJ, Judge John Petrak (“Judge Petrak”) found petitioner guilty of failing to comply with the maximum speed limits in a school speed zone because petitioner was traveling at thirty-eight miles per hour in a twenty-five mile per hour speed limit zone.

Here, this Court finds the decision by Judge Petrak to find petitioner guilty was not arbitrary or capricious since respondent demonstrated petitioner’s vehicle was observed speeding more than ten miles per hour over the posted speed limit near a school zone, which is in violation of *Section 1180-b* of the *New York Vehicle and Traffic Law*.

5) Ticket Number #4766685507

Petitioner was issued a violation on January 27, 2022, at 11:50 a.m. near or around Southbound Henry Hudson Parkway at Manhattan College for traveling at a speed rate of more than ten miles per hour above the posted maximum speed limit of twenty-five miles per hour within the school speed zone. On March 22, 2022, the ALJ, Judge Martin Marks (“Judge Marks”) found petitioner guilty of failing to comply with the maximum speed limits in a school speed zone because petitioner was traveling at thirty-six miles per hour in a twenty-five mile per hour speed limit zone.

Here, this court finds the decision by Judge Marks to find petitioner guilty was not arbitrary or capricious since respondent demonstrated petitioner’s vehicle was observed speeding more than ten miles per hour over the posted speed limit near a school zone in violation of *Section 1180-b* of the *New York Vehicle and Traffic Law*.

6) Ticket Number # 4766709627

Petitioner was issued a violation on January 28, 2022, at 6:17 a.m. near or around Southbound Henry Hudson Parkway at Manhattan College for traveling at a speed rate of more than ten miles per hour above the posted maximum speed limit of twenty-five miles per hour within the school speed zone. On March 22, 2022, the ALJ, Judge Jeremy Deutsch (“Judge Deutsch”) found petitioner guilty of failing to comply with the maximum speed limits in a school speed zone because petitioner was traveling at thirty-six miles per hour in a twenty-five mile per hour speed limit zone.

Here, this Court finds the decision by Judge Deutsch to find petitioner guilty was not arbitrary or capricious since respondent demonstrated petitioner’s vehicle was observed speeding more than ten miles per hour over the posted speed limit near a school zone, which is in violation of *Section 1180-b* of the *New York Vehicle and Traffic Law*.

7) Ticket Number # 4766709561

Petitioner was issued a violation on January 28, 2022, at 6:16 a.m. near or around Southbound Henry Hudson Parkway at Manhattan College for traveling at a speed rate of more than ten miles per hour above the posted maximum speed limit of twenty-five miles per hour within the school speed zone. On March 22, 2022, the ALJ, Judge Marks found petitioner guilty of failing to comply with the maximum speed limits in a school speed zone, because petitioner was traveling at thirty-seven miles per hour in a twenty-five mile per house school speed limit.

Here, this Court finds the decision by Judge Marks to find petitioner guilty was not arbitrary or capricious since respondent demonstrated petitioner’s vehicle was observed speeding more than ten miles per hour over the posted speed limit near a school zone, which was in violation of *Section 1180-b* of the *New York Vehicle and Traffic Law*.

8) Ticket Number # 4766836066

Petitioner was issued a violation on January 28, 2022, at 6:21 a.m. near or around Southbound Henry Hudson Parkway at Manhattan College for traveling at a speed rate of more than ten miles per hour above the posted maximum speed limit of twenty-five

miles per hour within the school speed zone. On March 22, 2022, the ALJ, Judge Marks found petitioner guilty of failing to comply with the maximum speed limits in a school speed zone because petitioner was traveling at thirty-eight miles per hour in a twenty-five mile per hour school speed limit zone.

Here, this Court finds the decision by Judge Marks to find petitioner guilty was not arbitrary or capricious since respondent demonstrated petitioner's vehicle was observed speeding more than ten miles per hour over the posted speed limit near a school zone, which was in violation of *Section 1180-b* of the *New York Vehicle and Traffic Law*.

9) Ticket Number # 4767038145

Petitioner was issued a violation on February 1, 2022, at 4:51 p.m. near or around Southbound Henry Hudson Parkway at Manhattan College for traveling at a speed rate of more than ten miles per hour above the posted maximum speed limit of twenty-five miles per hour within the school speed zone. On March 22, 2022, the ALJ, Judge Deutsch found petitioner guilty of failing to comply with the maximum speed limits in a school speed zone because petitioner was traveling at thirty-eight miles per hour in a twenty-five mile per hour speed limit zone.

Here, this Court finds the decision by Judge Deutsch to find petitioner guilty was not arbitrary or capricious since respondent demonstrated petitioner's vehicle was observed speeding more than ten miles per hour over the posted speed limit near a school zone, which was in violation of *Section 1180-b* of the *New York Vehicle and Traffic Law*.

10) Ticket Number # 4767075968

Petitioner was issued a violation on February 2, 2022, at 4:48 p.m. near or around Southbound Henry Hudson Parkway at Manhattan College for traveling at a speed rate of more than ten miles per hour above the posted maximum speed limit of twenty-five miles per hour within the school speed zone. On March 22, 2022, the ALJ, Judge Deutsch found petitioner guilty of failing to comply with the maximum speed limits in a school speed zone because petitioner was traveling at thirty-six miles per hour in a twenty-five mile per hour speed limit zone.

Here, this Court finds the decision by Judge Deutsch to find petitioner guilty was not arbitrary or capricious since respondent demonstrated petitioner's vehicle was observed speeding more than ten miles per hour over the posted speed limit near a school zone, which was in violation of *Section 1180-b* of the *New York Vehicle and Traffic Law*.

11) Ticket Number # 4767212054

Petitioner was issued a violation on February 4, 2022, at 6:26 a.m. near or around Southbound Henry Hudson Parkway at Manhattan College for traveling at a speed rate of more than ten miles per hour above the posted maximum speed limit of twenty-five miles per hour within the school speed zone. On March 22, 2022, ALJ, Judge Jeremy Deutsch found petitioner guilty of failing to comply with the maximum speed limits in a school speed zone because petitioner was traveling at forty miles per hour in a twenty-five mile per hour school speed limit zone.

Here, this Court finds the decision by Judge Deutsch to find petitioner guilty was not arbitrary or capricious since respondent demonstrated petitioner’s vehicle was observed speeding more than ten miles over the posted speed limit near a school zone in violation of *Section 1180-b* of the *New York Vehicle and Traffic Law*.

Specifically, this Court finds that respondent’s Administrative Law Judges’ (“ALJ”) violation decisions were not arbitrary or capricious because respondent demonstrated petitioner’s vehicle was observed speeding more than 10 miles over the posted speed limit near a school on multiple occasions. Here, respondent did not stray from their own precedent because they properly administered the Notices of Liability to petitioner and provided petitioner’s speed camera violations which were supported by video and photographic evidence. Furthermore, respondent’s violation decisions for petitioner’s guilty NOLs stated with specificity the infractions caused by petitioner, and explained that Daniel Retter has been charged with failing to comply with the maximum speed limits in a school speed zone. This demonstrates that petitioner was in direct violation of *Vehicle Traffic law §1180-b*, which imposes owner liability for failure of operator to comply with certain posted maximum speed limits.

Finally, “[u]nder the general rule, attorneys' fees and disbursements are incidents of litigation and the prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties or by statute or court rule.” *See, Matter of Hynes v. City of Buffalo*, 52 A.D.3d 1216, 1217 (4th Dep’t 2008) (internal citations omitted). Here, this is not the case, since the petitioner is not the prevailing party, and there is no such agreement of same. This Court denies the application by petitioner for an award of attorney fees in the exercise of the Court’s discretion. This Court has considered the remaining contentions raised by petitioner and finds them unavailing.

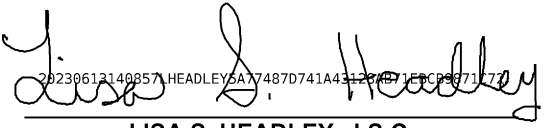
Accordingly, it is hereby

ORDERED that the *Article 78* petition is DENIED and the petition is DISMISSED; and it is further

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

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

This constitutes the Decision and Order of the Court.

<p><u>6/13/2023</u> DATE</p>	 20230613140857 HEADLEY SA77487D741A43120071EBCD9871177 LISA S. HEADLEY, 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"/> OTHER
		<input type="checkbox"/> REFERENCE