

Matter of Toussie v City of New York

2023 NY Slip Op 32136(U)

June 27, 2023

Supreme Court, New York County

Docket Number: Index No. 161114/2022

Judge: Frank P. Nervo

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: IAS PART IV

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In the Matter of the Application of
 ROBERT TOUSSIE and LAURA TOUSSIE,

Petitioners,

For a Judgment under Article 78 of the Civil Practice
 Law and Rules

DECISION and ORDER

-against-

Index No. 161114/2022

THE CITY OF NEW YORK and THE NYC MAYOR'S
 OFFICE OF HOUSING RECOVERY OPERATION,

Respondents.

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HON. FRANK P. NERVO, J.S.C.

Petitioners challenge respondents' determination that petitioners received an overpayment of grant funds under the Build It Back Better Program. As relevant here, it is undisputed that petitioners' home was damaged following Superstorm Sandy and that petitioners received federal grant funds under the Build It Back Better program. It is further undisputed that petitioners received \$500,000.00 from their private insurance for certain home damage and that these insurance proceeds were not included in the calculation of grant funds available to petitioners under the Build It Back Better program.¹ The parties do, however, dispute the effect these insurance proceeds should have on the calculation of grant funds and respondents' determination that petitioners

¹ The coordination of benefits worksheet listed private insurance proceeds of \$9,308.59.

received an improper overpayment of \$222,575.05 and demand for reimbursement of same. In *essentia*, petitioners contend that their attempts to inform respondents of the private insurance proceeds were rebuffed and that they suffered additional damages to the structure, as well as damages via lost rent, which respondents failed to consider in calculating the appropriate grant funds available to petitioners.² Respondents contend that, inter alia, upon review of the evidence submitted at the opportunity to be heard before the agency, petitioners failed to submit adequate proof of these additional damages and that damages from lost rent were unallowable self-dealing payments to a trust.

The standard of review of an agency determination via an Article 78 proceeding is well established. The Court must determine whether there is a rational basis for the agency determination or whether the determination is arbitrary and capricious (*Matter of Gilman v. New York State Div. of Housing and Community Renewal*, 99 NY2d 144 [2002]). “An action is arbitrary and

² Petitioners discuss, as length, their dealings with their accountant John Popovitch and reliance on his professional advice in submitting the grant application at issue here. However, there is no dispute that Popovitch was granted power of attorney by petitioners and acted pursuant to that authority regarding the grant funds at issue here (*see generally Memorial Hosp. v. Baumann*, 100 AD2d 701 [3d Dept. 1984]). Consequently, in this action, it is of no moment whether petitioners or their agent submitted the various documents at issue here (*id.*).

capricious when it is taken without sound basis in reason or regard to the facts” (*Peckham v. Calogero*, 12 NY3d 424 [2009]; see also *Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 [1974]). When an agency determination is supported by a rational basis, this Court must sustain the determination, notwithstanding that the Court would reach a different result than that of the agency (*Peckham v. Calogero*, 12 NY2d at 431).

Here, respondents’ determination is supported by a rational basis. The Build It Back Better program, as well as applicable federal law, prohibits receipt of duplicative benefits – the receipt of federal disaster funds for losses covered by private insurance or any other source (NYSCEF Doc. No. 25 at §6; 42 USC § 5155[a]). There can be no dispute that petitioners received private insurance funds which were not disclosed in their application and receipt of federal disaster funds, resulting in duplicative benefits. Respondents’ determination that petitioners failed to provide sufficient proof of the additional damages claimed is likewise supported by a rational basis. Petitioners failed to provide, inter alia, cancelled checks as required by the agency’s reviewing body and the proof submitted by petitioners established that the damages sought from lost rent were unallowable self-dealing payments to a trust.

Petitioners' argument that respondents failed to properly accept their claims of additional repair expenses must fail, as a practical matter, as the acceptance of these additional damages would render petitioners' home entirely ineligible for reimbursement of damages under the program. Put differently, were respondents to accept petitioners' position, the restoration cost of petitioners' property would exceed 50% of the property's pre-storm market value and render the property ineligible for the program and all funds received would constitute an overpayment, not a portion of the funds - as respondents calculated.

Accordingly, it is

ORDERED that the petition is denied in its entirety and the matter shall be marked disposed.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

Dated: June 27, 2023

ORDERED:



HON. FRANK P. NERVO
J.S.C.